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ENVIRONMENTAL DISPUTE RESOLUTION AND CONSULTATION WITHIN THE RMA
- A CASE STUDY -

THE FITZHERBERT AVENUE, CROSS RIVER TRANSPORTATION DISPUTE.

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

1988

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ABSTRACT

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

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

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

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

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

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

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

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ABBREVIATIONS USED

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

SECTION I

INTRODUCTION

RESEARCH PROBLEM

AND METHODOLOGY

CHAPTER 1 INTRODUCTION

1.1 RESEARCH PROBLEM

Russell Marshall (1984) as Minister for the Environment noted that the new resource and environmental policies of the 1984 Labour Government were "forged in the great amphitheatre of democratic politics, rather than in the bureaucracy... While these 'new' ideas may be quite rational; they were also revolutionary in terms of what was accepted and promoted before then" (in Salmon, 1985, p3, my ellipsis, ME henceforth).

This thesis aims to examine some of these democratically described *new* and *revolutionary* ideas, by considering how they came to be elucidated in the resource and environmental management framework provided in legislation, principally within the Resource Management Act, 1991, and thence to consider how they are given effect in current planning practice. The research focuses on consultation which seeks to resolve environmental disputes, not only to achieve 'sustainable' environment outcomes in an ecological sense but also, to give greater expression to democratic principles. This thesis identifies the principles and objectives *intended* and *anticipated* to be realized through *public participatory planning* and environmental dispute resolution (EDR henceforth) processes, and considers their practical expression by examining the EDR processes as undertaken to determine a management response to a specific problem, as a case study.

This research undertaking is in response to a continually reiterated need to *monitor* the *effectiveness* of planning practice in achieving its aims, (together with a necessity to then take appropriate responses to the results of 'monitoring'), for instance as found within the Resource Management Law Reform reports of the 1980's, in planning publications, as well as in the Resource Management Act, 1991 (RMA henceforth). Since the enactment of the RMA, there has been growing criticism of the ability of public participatory processes to achieve their full intentions, as can be read within the Parliamentary Commissioner for the Environment's, (1996) report "*Public Participation Under the [RMA] 1991: The Management of Conflict*". That study was also undertaken in response to criticisms being made directly to the Parliamentary Commissioner. It is then important to consider consultation or public participatory planning processes directly, to ascertain their characteristics, and thereby provide an overview of how effective these processes are in practice, in achieving what they intend to achieve.

The effectiveness of consultation processes in achieving the principles and objectives of

public participation in planning and EDR processes can be evaluated by consideration of the perspectives of participants in consultation processes. Therefore, this research sought to ascertain how such processes are being experienced by participants[1] to identify the benefits and strengths, and problems and limitations that arise. An analysis between expectations and experience may be extrapolated into an indicator of whether these processes are achieving the RMA's intentions, in terms of the principles and objectives which necessitate public consultation. This research also seeks to provide some explanation for the experiences of participants, thereby indicating how and why the underlying principles and objectives are or are not being met.

Further to that, planners and managers may use these findings as a basis for further work to improve the efficacy of their practical endeavours, as it is also possible to extrapolate from explanations for the characteristics of EDR processes, further means to improve consultation processes for the purposes of implementing the RMA. Councils ought to consider monitoring of the efficacy of their consultation *processes* as important, just as for example, monitoring biophysical resource and environmental outcomes, and how council finances are spent is important. However, this research does not develop a specific monitoring strategy or specific indicators that a council could use to fulfil Section 35 (2)(c) requirements of the RMA. This research identifies that formulating such a monitoring strategy, to evaluate the efficacy of consultation processes in achieving their aims, is necessary, but that it is also problematic. It would require consideration of how to draw analytical criteria and indicators from the broad principles and objectives of consultation, and an objective mechanism for conducting the evaluation, so that monitoring could be applied consistently, efficiently, and in a meaningful way. It would also require a Section 32 analysis. Issues for designing such a monitoring programme are described in the conclusions (Chapter 14), where it is suggested that there is a need for collaboration between local government agencies, central government agencies, and community groups to consider and design monitoring mechanisms for consultation processes.

This research has two branches:

A theoretical branch which seeks to describe: firstly, *the philosophical framework,* or what are considered the *principles* and *objectives* underpinning and intended to find expression in consultation / EDR processes, and; secondly, *the methodological framework* for EDR processes, to identify the different types of EDR process and forum, together with

[1] Participants in the case study dispute and EDR processes include: members of the public (as individuals or representatives of 'interest groups'), officers of Council, consultants and councillors.

generalisations about the characteristics of each type of process and forum. This research branch informs the observation of practice, which in turn can be used to evaluate theory, particularly as it relates to the features of different EDR methods and forums.

An empirical branch to derive descriptions of the evolutionary dispute context, *resolution* processes, and observations and perspectives of participants in EDR processes in practice. It does this by undertaking a case study of the processes employed to *resolve* a particular environmental dispute.

1.2 RESEARCH AIM

To identify and analyze the benefits and strengths, problems and limitations experienced by participants in a variety of EDR processes within the context of the RMA, as employed to resolve a particular dispute, as a means to monitor the effectiveness of current practice in achieving the intentions of the RMA.

1.3 RESEARCH OBJECTIVES

1 Identify the philosophical framework informing public participation in EDR, and the principles and objectives of consultation as elucidated within the RMA.

2 Identify theory informing the sources and causes of environmental disputes.

3 Examine theory informing EDR processes and forums.

4 Describe the use of different consultation processes for EDR as undertaken in the case study, and identify relationships with the RMA framework.

5 Describe the evolution of this conflict and its resolution efforts.

6 Determine the benefits and strengths, and problems and limitations of the EDR processes as indicated by the participants in consultation processes.

7 Draw conclusions about the characteristics of consultation and EDR processes in practice, and compare and contrast these observations with the theory informing the characteristics of different EDR processes.

8 Draw conclusions about the efficacy of consultation processes in giving effect to the principles and objectives of consultation, as elucidated within the RMA.

9 Present observations about RMA implementation issues, in regards to consultation processes, and provide suggestions for improving resource and environmental planning in practice.

1.4 RESEARCH APPROACH

The research approach was firstly to undertake a literature view to identify theoretical concepts and ideas, so that theory could inform observation of practice. This intended to identify and describe both the philosophical and methodological frameworks for public consultation or public participatory planning, within EDR processes, in the planning context of the Resource Management Act, 1991.

This research then required empirical study, as it considered participants' perspectives of EDR processes. Therefore, as Bryman (1988) observed "the ways respondents constructed and reported their views of the phenomena under investigation are crucial to the research process." A ramification of this is that one must "accept the inherent subjectivity of the research endeavour, as it is the participants' perspectives on and interpretations of the situation which are of value in understanding behaviour" (Cassell & Symon, 1994).

While this research is concerned with specific hypothetical and categorical frameworks identified in theory, it was not possible to define all that was of interest to participants or how each issue could be explained at the outset, because of the complex dynamic of the case study. Emergent themes and idiographic descriptions arose out of the research endeavour itself. In this way the research participants helped to define what was of interest to this research. The approach taken for the research was to employ a case study strategy and qualitative research methods.[2]

1.4.1 Why a Case Study Research Strategy?

Hartley (1994, ME) writes that "case study research consists of a detailed investigation, often with data collected over a period of time, of one or more organisations, or groups within organizations, with a view to providing an analysis of the context and processes involved in the phenomenon under study. The phenomenon is not isolated from its context but is of interest precisely because it is in relation to its context... A case study is not a method as such but rather a research strategy... Case study methods, therefore, are likely to be better able to adapt to and probe areas of original but also emergent theory. The value of theory is key. Although some case studies may begin with only rudimentary theory, they need to develop theoretical frameworks by the end which inform and enrich the data and provide not only a sense of the uniqueness of the case but also what is of more

[2] Lofland, J. & Lofland, L. (1995) and Silverman, D. (1993) provide guides to undertaking qualitative research and analysis of qualitative data.

general relevance and interest. In some situations, grounded theory may lead to emergent theory, while in other situations the researchers may have some clear propositions to explore."

Case studies may also therefore, be distinguished by their approach to theory building, which tends generally to be inductive. The opportunity to explore issues in depth, in their context, means that theory development can occur through the systematic piecing together of detailed evidence to generate (or perhaps replicate) theories of more general interest. The use of a case study strategy is fundamental to the aim of this research. Analysis of participant perspectives can only be achieved through observation and analysis of practice. This can, in turn, inform emergent theory.

Criticism as to whether universal relations or generalisations can be obtained from case studies (refer Eyles, 1983; Whyte, 1991; Bryman, 1988) is deflected on three counts. This research does not have as its key purpose to generate new generalisations or universalities but rather to evaluate the validity of those held currently. That is, this research is informed by theory. Secondly, it aims to generate comparative observations between theory and practice. Observations concerning the effectiveness of practice in measuring up to expectations, ideals and principles of the RMA (specifically with regards to public participation in EDR processes) are formulated. Finally it makes no claim to a 'universal truth' but rather generates observations as perceived and described by research participants. These observations can be compared with the findings of other analytical studies of practice as a test of generalizability.[3]

1.4.2 Case Study Selection

The 'Fitzherbert Avenue, cross-river-transportation' dispute in Palmerston North was chosen as the case study for a number of analytical reasons.

Firstly, the dispute context has more dimensions than are found in a dispute between a private resource consent applicant (or 'proponent' of environmental change) and members of the community. Palmerston North City Council is responsible for civic services and was the proponent of a major public work. It was instrumental in creating the project giving rise to conflict and is therefore one of the protagonists in the dispute. As a proponent, Council has a responsibility to consult the public about proposals and attempting to avoid, remedy

[3] For instance refer to "*Public Participation Under the Resource Management Act, 1991: The Management of Conflict*" (Office of the Parliamentary Commissioner for the Environment, 1996)

or mitigate any identified adverse effects, thereby attempting to resolve conflict prior to applying for consents. As is the role of a regulatory authority, Council is also expected to help resolve environmental disputes, by providing appropriate, effective public consultation (and policy and rule) mechanisms prior to adjudicating on resource consent applications which it, in effect, must make to itself in this instance.

Council is also a means by which citizens' *visions*[4] for the city find expression. It provides the political forums and processes in which diverse visions are articulated and the future character of the city politically described and planned for. In doing this Council is guided by the philosophies underpinning the RMA, but it is left largely to dynamic political processes to describe the 'future city'. Thus another role of Council is that it has responsibility to act as guardian of the 'public interest' and 'political will'. When considering environmental conflict or management issues the Council acts as an independent overseeing body with a focus on the public interest and/or public will.

In this way Council finds itself in the invidious position of being forced to assume different roles, that of: *provider*, responsible for managing the processes by which future visions of the city find expression and also for developing civic services and projects, (which makes it a resource user, proponent of environmental change and thus a protagonist in an environmental dispute); *enforcer,* of the integrity of the processes employed to include the public and resolve any dispute, and; *judge* of the success of these processes in giving effect to its civic responsibilities, its own policies and rules, as well as the more general intent of the RMA. This trichotomy of roles presents itself to every council attempting to undertake its civil responsibilities and gives rise to questions about public participation in EDR which need to be addressed.

The second reason for choosing the Fitzherbert Avenue dispute is that numerous consultation/EDR processes have been utilized and yet conflict persists. This enables a comparative analysis of the benefits and strengths, and problems and limitations experienced by participants in each of the different EDR forums and processes as undertaken during the evolution of the dispute, as well as analysis of the changing nature of conflict to provide explanations for its evolution and continuance.

The third reason, is the character of the issues and dispute itself. It represents conflict between perspectives on: diverse interests and values, public and private interests,

[4] 'Visions' refer to the desires and ambitions of citizens in relation to a future state of affairs or preferred (ideal) characteristics of the City, as formulated by individuals or groups within the community.

parochial and altruistic motives, scientific/technical reason and humanistic values/reasoning, power and influence (political relationships), political determination and will. This dispute thus has characteristics which make it 'representative' of most sources of environmental dispute identified in theory (as described in Chapter 5).

1.4.3 Why qualitative research methods?

"Qualitative techniques emerge from phenomenological and interpretive paradigms. Typically the emphasis is on constructivist approaches where there is *no clear-cut objectivity or reality*" (Cassell and Symon, 1994, my italics, henceforth MI). "Qualitative researchers are characteristically concerned in their research with attempting to accurately describe, decode and interpret the precise meanings to persons of phenomena occurring in their normal social contexts and are typically preoccupied with complexity, authenticity, contextualization, shared subjectivity of researcher and researched and minimization of illusion" (Fryer, in Cassell & Symon, 1994). Using a qualitative approach, theory is generated from the data collected. That is, it is 'grounded' in the data or *induced*; "Generalisations are developed from information presented in case studies using refinement, abstractions, typification and categorisation" (Eyles, 1983).

This research can be said to have a number of defining characteristics similar to those Cassell & Symon (1994) describe generally for any qualitative research. These include: "a focus on interpretation rather than quantification; an emphasis on subjectivity rather than objectivity; flexibility in the process of conducting research; an orientation towards process rather than outcome; a concern with context - regarding behaviour and situation as inextricably linked in forming experience; and finally, an explicit recognition of the impact of the research process on the research situation."

This research focuses on organisational and socio-political processes, as well as outcomes and trying to understand both individual and group experiences. It is interpretive research which seeks to describe, translate and come to terms with the meaning, not the frequency of certain phenomena occurring during the attempted resolution of an environmental dispute. Cassell & Symon (1994) state that, "only qualitative methods are sensitive enough to allow the detailed analysis of change". Given the aim of this research, theory must inform the observation of practice and can then be evaluated for its ability to accurately explain the observed phenomena. A variety of qualitative research methods were used with the emphasis on understanding processes alongside context. Therefore, certain assumptions must be made regarding the research approach in which qualitative methods

were chosen as appropriate. Attention was paid to the problems in adopting each of these methods.

Assumption 1: The 'triangulation' of data, in which multi-methods or sources are used to answer important questions about processes involving a number of people over time, acts to reduce subjectivity and improve generalizability (Silverman, 1993).

Assumption 2: A 'context' perspective is necessary as it recognizes the influence that the situation has on behaviour and that behaviour has on situations. Therefore, the organisational and environmental dispute context is essential for interpretive analysis, if it is to be formative in explaining specific processes and behaviours - "context and behaviour are interdependent" (Cassell & Symon, 1994).

Assumption 3: To conduct qualitative research that stands up to evaluation in terms of quality and rigour of research methods, certain methodological principles were adopted. Having established these as criteria that the research methods had to fulfil, methods were chosen and these 'principles' followed throughout the research task.

Principle 1: *Validity/ reliability/ triangularity*: as opposed to repeatability or predictability as a test of accuracy. A range of informants and archival sources were consulted during the research and a variety of methods were used to capture information from the case study.

Principle 2: *Subjectivity*: As the focus of the research is people, informants were given opportunity to reflect and evaluate experiences, in order to synthesise their ideas. This led to forewarning informants about the nature of the research and (in some instances), returning to informants for further discussion. Frequently, an individuals observations were verified by other informants or sources. This did not necessitate revealing identities, nor did it limit the individual 'intuitive' observations or reporting of 'personal' experiences. Many informants shared similar experiences and observations, or had empathy with others and often verified their observations.

Principle 3: *Neutrality*: as a recorder of observations made by participants, one must assume that peoples' ideas are at least rational from their point of view. By inquiring into their beliefs about the subject and its context, it was possible to draw out or to extrapolate an explanation for their rationale.

1.5 RESEARCH METHODS

Sample letters, the research information sheet, interview consent form and semi-structured interview schedule are provided in Appendix I. Research methods were selected with consideration to the methodological principles guiding the research, quality of information able to be retrieved by that method and practical considerations. The following section discusses how each research method was employed.

1.5.1 Literature Review

The literature review provides theoretical ideas informing: the philosophical underpinnings of public participation in EDR (or planning context) established within the framework of the RMA; the sources and causes of environmental disputes, and; environmental dispute 'resolution' processes and forums. These theoretical bases establish an overview by which implementation of EDR processes can be analyzed.

There is an extensive literature on environmental disputes and their resolution. The primary bibliographic database used was, "Sustainable Environmental Management; Community-Based Strategic Planning; Environmental Dispute Resolution", provided by the University of Colorado, Conflict Resolution Consortium. The role of management / regulatory authorities and planners is discussed extensively in 'planning theory' literature, as are the characteristics of EDR processes.

Public consultation and dispute resolution issues were widely debated during the process of resource management law reform undertaken during the 1980's, which culminated in the RMA. Reform 'Working Papers', the RMA itself, the discourse presented in the 'Planning Quarterly' (published by the New Zealand Planning Institute), discussion documents and 'plan policy statements' generated by government agencies, and statements made by the Planning Tribunal (renamed the Environmental Court since 1996) have been the sources for ideas presented as the philosophical underpinnings of public participation in EDR, within the context of the RMA.

1.5.2 Analysis of Council Documentation

This involved analysis of documentary, administrative and archival sources[5]. The purpose of which was to provide an historical account of the dynamic, dispute context and to analyze the official record of the consultation and EDR processes. As the case study focuses on the activities of a local government authority, access to information was granted under the "Official Information and Meetings Act, 1987". Newspaper archives also provided historical material as did participants in the EDR processes.

[5] Refer to Marshall (1994) for a full discussion on the analysis of company documentation as a research method.

1.5.3 Semi-Structured Interviews

The purpose of interviewing participants was to gather descriptions of their experience of each of the EDR processes as they perceived these, and their interpretation of the meaning of the described phenomena.[6] The goal was to see the research topic from the perspective of the participant, and to understand how and why they had come to have their particular perspective. Two types of participants were selected to be interviewed. The first were selected on the basis of the official role they played within the EDR processes. They were: Councillors representing the politically determined community interest, who were participants in EDR processes and who were ultimately the decision makers responsible for any resolutions made; Council officers responsible for the design of methods of consultation and EDR processes used, and advising/informing the EDR processes, analysing public input and/or designing planning outcomes, and; consultants, employed as aids to a particular process. The second group of participants were members of the public who were selected on the basis of their representativeness of the range of interests described within the dispute context and also on the basis of their participation within the variety of EDR processes employed to resolve this dispute.

28 participants were interviewed: 4 Councillors; 6 Council officers; 6 'consultants' (2 employed by Council, 2 employed by public participants, 1 who provided a professional overview on public consultation and EDR processes and 1 media representative), and; 12 members of the public - 3 were members of a 'public interest group' which formed in response to the conflict (and who had been involved in different capacities), the others were individuals who participated in the various processes as representatives of the range of interests and values ('stakeholder' organisations in some instances) relevant in this dispute context.[7]

Research participants were sent an introductory letter which informed them about this research and requested their consent to participate in it, and to be interviewed. On receipt of 'formal' consent, the interviewee was provided a semi-structured interview schedule. The

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[6] Refer to Cassell & Symon, 1994 or Silverman, 1993 for a full discussion of qualitative research interviews as a research method.

[7] A further three public participants, who were not interviewed, responded to the questions in writing. Ten out of thirteen 'participants' in a working party, sponsored by Council, participated in this research (three of those wrote responses). Seven people who were invited to participate declined to do so (three from the working party - as they didn't have the time, three 'consultants' employed by Council, and a Councillor - as they believed it unethical as employees to do so or indicated a "conflict of interest"). One participant withdrew his consent to participate, after the interview as he decided, on reflection, that he did not wish to have his personal observations and comments (perspectives) reported.

purpose of the schedule was explained in an accompanying letter as being a *guide* to the interview to enable their preparation for it. The semi-structured interview schedule was constructed using two sources; the research literature to inform what questions ought to be asked in an analysis of consultation and EDR processes within the context of the RMA, and a review of Council records to determine what public participation (EDR) processes had been undertaken.

As the EDR *processes* spanned a period of approximately three years[8], the research interviews were undertaken in two phases, a year apart. An implication of this undertaking, was that the dispute context had changed.[9] The first round of interviews were undertaken early in 1996; this marked the completion of a period of EDR activity which included the Annual Plan process, (which recurred each year), a resource consent application, a working party consensual approach and, a local government election. Only those processes were discussed in that round of interviews. The second round of interviews were undertaken early in 1997, this marked the completion of another period of EDR activity which included the Proposed District Plan process and a proposed change to the Transitional District Plan, as well as a series of informal passive and active 'protest' activity. The semi-structured interview schedule was updated to include references to those latter processes in Part D, question 3. In 1997 participants therefore provided their views on the full range of processes employed to resolve this dispute. As participants had opportunity to reflect on earlier process, in light of subsequent events, it was evident that some participants had synthesised new perspectives in relation to earlier events.

1.6 STRUCTURE OF THE RESEARCH INTERVIEW

During the interview the preferred format was to 'prompt' the participant to talk about a particular process or issue and allow the participant to recount their experiences and perceptions in their own way. Further inquiries sought clarification or extrapolation from

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[8] EDR processes were initiated in November 1993 with the notification of a resource consent application and ended in September 1996 with the posting of the decision of a commissioner in relation to a combined hearing on a plan change to the Transitional District Plan and the Proposed District Plan.

[9] Eleven participants were involved in the research in 1996. Five of those participants had no further involvement in EDR processes, as their participation had been in relation to a working party and they had confined their activities to that process. Most of the remainder of those participants were interviewed again, to monitor if and how their views had changed (after a year, as a result of subsequent processes), and also to canvass their perspectives in relation to later processes. A further seventeen participants were included in the second round of interviews (1997). As most of those had been involved throughout the period of EDR activity (beginning in 1993), they were also able to provide perspectives on all of the EDR processes.

participants. The researcher endeavoured to conduct the interviews uniformly, in that each of the topics was discussed in a specific order (given below). However, a number of the participants diverted into their own areas of interest. While allowing them to speak freely, the researcher directed the interview, as the participant would be told the subject would come up later. This was to ensure a level of conformity in all the interviews as the topics were explored in the same order and to encourage a logical progression through the evolution of the dispute context. The schedule was referenced to ensure all key areas were covered during the interview. The interviews were taped, to be transcribed for analysis. Four topics were considered within the interviews:

1 ***Problem Framing***: As a specific Council project was the focus of conflict, this section sought to canvass participants' understanding of the background to the planning problem/issue and the planning processes employed to develop that project. Analysis of comments focused on identifying perspectives on the history of the project, the sources and causes of conflict and, the issues as seen by participants. Within the analysis this information informed '*the emergence and context of conflict*'.

2 ***Planning Processes***: In this section it was assumed that project, while still an option, had been put 'on hold' with the potential to be retained, altered, or alternatives developed, as a series of processes were initiated to resolve issues and/or develop a 'solution'. This section sought to elicit perspectives, and understanding of public participation and dispute resolution processes as employed to resolve the issues. It considered the features of each of the processes employed to resolve this conflict, Within the analysis this information informed, '*the treatment of conflict in this instance*'.

3 ***Public participation in EDR***: This section asked participants about the roles, rights and responsibilities of different participants in the EDR processes and also about the philosophies and principles informing public participation in planning and EDR processes. Within the analysis this informed, '*perspectives on what the treatment of conflict ought to achieve*'.

4 ***Your Participation in planning and/or decision making***: This section sought to elicit participants' personal experiences and comments about the benefits and strengths, and the problems and limitations of each of the processes they were involved in. Within the analysis this information informed, '*perspectives on what the treatment of conflict did achieve in this instance*'.

This research relied on participants being willing to discuss their perspectives and experiences without fear of repercussions. The "Research Information Sheet" and "Consent Form", describe the rights of research participants and the responsibilities of the researcher with regards to the use of comments made during the course of this research. Participants were able to provide information on the understanding their identity would be confidential to the researcher and that comments would be presented anonymously. This confidentiality clause, was to comply with protocols established by the Massey University Human Research Ethics Committee. The analysis of information provided by research participants

considered a number of related, but also distinct aspects: The substantive content of the comments; an overall 'subjective impression' presented by the nature and tone of the comments; how the different perspectives came together to form a 'big picture' of the conflict and EDR processes employed to resolve it and/or to produce a management response to the planning problem, and; researcher interpretation of the comments, in light of the perspectives presented and theory informing observation. Research information drawn from the interviews included observations made by the research participants themselves and those of the researcher about the participants' perspectives, environmental dispute and issues surrounding EDR processes, during the evolution and resolution of this conflict. In this way, research participants were both informants and research subjects.

FIGURE 1 ***The Case Study Research Strategy***

Part 1	**Theoretical Constructs to Inform Observation.**
Purpose:	Explore theory informing EDR, and the philosophies and principles informing public participation in resource and environmental management, elucidated in the RMA.
Method:	Literature review.
Focus:	The concept of EDR within the context of the RMA.
Results:	*Theoretical constructs informing EDR.*
Part 2	**Background to the Case Study Dispute Context**
Purpose:	Provide an historical account of the case study dispute context.
Method:	Archival search of City Council and newspaper sources.
Focus:	Historical sources and causes, or conception of conflict.
Results:	Chapter 7, Appendix VI & VII, Historical context of the case study.
Part 3	**Consultation / EDR in Practice**
(a)	**The Emergence and Context of Conflict**
Purpose:	Ascertain conflict participants' perspectives on the dispute context; sources and causes of conflict.
Method:	Semi-structured interviews. (Part A of the schedule)
Focus:	Perspectives on the process used to derive the project.
Results:	*'The emergence and context of conflict'*

strategy continued.....

(b)	**The Treatment of Conflict in this Instance**
Purpose:	Describe the processes employed to resolve this dispute and/or to develop a management response to the planning problem.
Method:	Archival search of Council records and semi-structured interviews (Part B of the schedule)
Focus:	EDR processes and their relationship to the RMA.
Results:	'*The treatment of conflict in this instance*'.
Part 4	**The Characteristics of EDR Processes**
Purpose:	Ascertain conflict participants' perspectives on their experiences within each of the EDR processes.
Method:	Semi-structured interviews (Part D of the schedule)
Focus:	Personal observations and explanations for experience?
Results:	'*Perspectives on what the treatment of conflict did achieve in this instance*'.
Part 5	**Synthesis of Findings and Conclusions**
(a)	**Contrasting Theory with Practice**
Purpose:	Consider the characteristics of current practice in relation to theoretical constructs informing EDR processes.
Method:	Analytical evaluation (inductive and deductive analysis) of observed phenomena.
Focus:	The characteristics of current practice contrasted with theory about different EDR processes.
Results:	*Synthesis of Findings*. The characteristics of current EDR practice together with an evaluation of the methodological framework described in the literature review.
(b)	**Evaluating the Effectiveness of Current EDR Practice**
Purpose:	The effectiveness of current practice in manifesting the philosophies and principles underpinning EDR within the context of the RMA.
Method:	Analytical analysis. Compare the findings outlined in Section III to the aims of environmental management outlined in Section II, thereby drawing conclusions as to whether principles and objectives of consultation were given 'effect' in practice.
Focus:	Has the RMA achieved the goals that were initially set?
Results:	*Synthesise Conclusions*. Can the characteristics of consultation/EDR in practice be described as manifesting the 'new era' of public participatory planning, elucidated in the RMA.
(c)	**Observations and Suggestions for EDR**
Purpose:	Determine participants and other evaluators suggestions for EDR.
Method:	Semi-structured interviews (Part C of the schedule) and literature review.
Focus:	Expectations surrounding EDR, and suggestions for improving the practice of EDR in the future.
Results:	*Perspectives on what the treatment of conflict ought to achieve' and on 'how to achieve these characteristics*'.

1.8 THESIS OUTLINE

Section 1	Introduction
Chapter 1	Research problem, approach and methodology.
Section 2	sets the contemporary theoretical context which underpins and informs consultation or public participation in EDR processes.
Chapter 2	considers resource and environmental management law reform issues and identifies the philosophical ideals and principles informing resource and environmental management.
Chapter 3	considers 'public participation' in planning and EDR processes.
Chapter 4	discusses the Resource Management Act, 1991 and its EDR framework.
Chapter 5	outlines theoretical sources and causes and environmental disputes.
Chapter 6	environmental dispute 'resolution' and an introduction to EDR processes.
Section 3	presents the research findings which describe the case study dispute context and the use of different EDR processes.
Chapter 7	provides an historical account of the dispute context and describes the sources and causes of this *public dispute* giving rise to EDR activity.
Chapter 8	examines EDR processes by identifying when and why each process was used, and its intended purpose/s.
Section 4	presents the research findings as to the benefits and strengths, and problems and limitations of different EDR processes, as identified by the observations of participants.
Chapter 9	describes the benefits and strengths of formal EDR processes, together with explanations for these.
Chapter 10	describes the problems and limitations of formal EDR processes.
Chapter 11	describes the benefits and strengths of an (ADR) informal EDR process.
Chapter 12	describes the problems and limitations of an (ADR) informal processes.
Section 5	presents a synthesis of findings, conclusions, observations, and suggestions.
Chapter 13	Synthesis of the findings through comparative analysis between the characteristics of consultation/ EDR processes in practice and those described in theory to inform practice. A synopsis of suggestions for improving planning practice, as provided by research participants, is presented.
Chapter 14	The conclusions examine whether the characteristics of consultation-EDR in practice can be described as manifesting the *new era* of public participatory planning, elucidated in the RMA. Emergent themes are described together with observations about RMA implementation issues, and suggestions for improving planning practice are explored.

SECTION II

SETTING THE CONTEXT FOR EDR

CHAPTER 2 RESOURCE AND ENVIRONMENTAL MANAGEMENT REFORM.

"The hopes and fears for the environment rest on the world's ability to translate principles into policy and effective action", (Blowers, A. 1991).

2.1 RESOURCE AND ENVIRONMENTAL MANAGEMENT LAW REFORM

The premise that there were deficiencies in the system of resource and environmental management led the Labour Government to analyze different perspectives on these deficiencies and consequently deduce the system of agencies, responsibilities and processes designed to overcome past deficiencies that New Zealand has in place currently (PEFWP[10], 1986). This period of resource and environmental management law reform occurred during the 1980's and culminated in the RMA.

The principles and ideals underpinning the characteristics of this legislation can be traced through the reform documents and the discourse on the RMA since its enactment. There was an emphasis on, not only sustainability and what that requires in practice but also, public participation in planning and dispute resolution processes. Consultation has been made central to resource and environmental management, for sustainability, within the RMA (Buhrs, 1993). The concepts underpinning sustainability *and* public participatory planning are inextricably linked within the RMA. Consequently it is frequently suggested by its commentators that a 'new era' of public consultation was initiated with the passing of that Act (Hughes, 1996; Palmer, 1994; Ross, 1992 (b); Bush, 1992(a)).

When Buhrs & Bartlett (1993, p133, MI) wrote of the RMA, "Every part of the Act is linked with its statement of purpose, giving it an impressive integrated coherence directed at a *single notable objective of sustainable environmental quality*", they aptly describe government's intention to succinctly provide direction, an 'umbrella' principle, on which management would focus. However, Buhrs and Bartlett also allow an interpretation to be made, in stating that single notable objective, that this is all that is important. The view taken here is that there are other notable objectives manifest in the RMA.

Legislation is the expression of principles and philosophies which have been debated in political forums (for example, in working parties, Parliament and through public submission processes) and are deemed to be constitutionally important. The philosophical and

[10] **PEFWP is the Post Environmental Forum Working Party.**

ideological ideals of the RMA must be interpreted not simply by reference to its stated 'purpose' and 'principles' but also through understanding the interpretation of concepts underpinning these. Also, analysis of the derivation of the RMA's prescribed *means* indicates a different set of conceptual ideals at work, to those leading to the formalisation of that Act's stated purpose. This set of principles find expression only if given effect through management structures and practices. Therefore, in regards the expression of ideals, the *means* can be seen as *ends* in themselves not simply as implicit in the attainment of sustainable 'environmental' outcomes.[11] Furthermore, the desired *purpose* may be less attainable if these other principles, underpinning certain prescribed means, are not given effect. These two related sets of principles and ideals, those giving rise to a prescribed purpose and, those giving rise to prescribed means, while not always stated or clarified within the RMA, underpin the management framework provided. The framework includes the assignment of authority and power for policy and decision-making, directives for processes to be used and, the promotion of certain methods of planning practice. It is necessary to examine both the 'why' element and resultant 'how' elements underpinning the RMA in order to describe its philosophical and ideological principles. Palmer (1994) observed, "The Resource Management Act 1991 provided direction and a framework for the answer to the choices able to be made."

2.2 THE ENVIRONMENTAL PROBLEMATIQUE

Before addressing the principles underpinning government's response to the questions 'why manage?', and 'how to manage?' resources and the environment, consider the question, 'what to manage?'

> *"One of the key reasons why environmental policies have not been very successful is that often they recognize only inadequately or not at all, the complexity and interrelatedness of the phenomena that constitute the environmental problematique. Inherently, 'the environment' is a broad, potentially all-encompassing concept. Although for analytical and practical reasons it can be treated as having different dimensions, it should be recognized that human activities with regard to one aspect of the environment may have repercussions in many other aspects. Such impacts may not always be direct and immediately visible, and they may be cumulative adding to the complexity of environmental phenomena. There is a growing recognition of the need for integrated or comprehensive environmental policy development to deal with the complexity and interrelatedness of environmental problems."* Buhrs & Bartlett (1993, p9)

[11] Sustainable environmental management, viewed holistically, includes social, cultural, economic, political "sustainability". This view is evident within: the Rio Declaration on Environment and Development (June 1992), the definition of "environment" within s2 of the RMA, 1991, and in its description of "sustainable management" within s5. Refer to Appendix II.

Resource and environmental management is a complex task, potentially seeking to encompass much that has been, is, and could be within its problem-solving/decision-making endeavour. Having conceived of the 'environmental problematique', it was recognised early in the 1980's that New Zealand's planning framework would need to change, to enable comprehensive-integrated planning and decision-making. A change in the scope of planning was required. Concurrent paradigm shifts were questioning the *purpose* of planning and the characteristics of planning processes. Planning was described as needing to have a focus which could cater for daily practical applications while promoting vision[12] and it needed methodologies to promote 'good' planning practice.

2.3. WHY MANAGE RESOURCES AND THE ENVIRONMENT?

2.3.1 'Environmental concern' became a persistent phenomena.

The political impetus for resource and environmental management reform in New Zealand is flagged by a change of leadership from the National Party to the Labour Party, in 1984. However, as Buhrs & Bartlett (1993) and Boer (1994) indicate, internationally, concern for the environment had become a "persistent phenomena" during the preceding two decades. By the 1980's 'environmental problems' were prioritorized on the agenda of numerous international forums.

The 1987 Brundtland Report, "*Our Common Future*", is credited with "popularising the concept of sustainable development" (Boer 1994). However, its definition of sustainable development was criticised in "*Caring for the Earth*"[13] (1991) as ambiguous because it allows interpretations such as sustainable *economic* development. "*Caring for the Earth*" defined sustainable development as: "Improving the quality of human life while living within the carrying capacity of supporting ecosystems."[14] Boer (1994) suggests this definition can also be seen as problematic, however, as it is "anthropocentric and utilitarian", treating the environment simply as a resource for exploitation by humans. The Australian government uses the term *ecologically* sustainable development, which is defined as: "development that

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[12] The terms 'vision' in planning and 'visionary planning' are referred to here as meaning helping a community describe its ambitions in terms of the desirable characteristics of the/their future environment. To that end, an important skill in planning is describing what are the likely and possible 'futures', which requires planners to demonstrate *sagacity* - which is "having or showing *insight* or *good judgement*", (Oxford Dictionary of Current English, 1987, MI) in articulating their 'vision'.

[13] IUCN, UNEP, WWF, Gland, 1991: this report is the successor the *World Conservation Strategy* published by these bodies in 1980.

[14] These definitions are quoted in Boer, B. 1994, p21

improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life defends."[15] In New Zealand the term 'sustainable management' came to the fore.[16]

> "*Sustainable management represents an integration of economic, socio-cultural and ecological concerns... people and communities can provide for their social, economic and cultural wellbeing and for their health and safety only by ensuring that the reasonably foreseeable needs of the future are met, the ecological base for their wellbeing is sustained, and adverse effects of their activities are avoided, remedied or mitigated.*" (Grundy, 1994, p22, ME)

2.3.2 "New" Concepts informing Environmental Management

In addition to these international forums identifying global and local environmental problems, they had succeeded in articulating a vision of a preferred state of affairs for environmental management and for communities. In bringing the concept of 'sustainable management' to definition, along with its attributes, other related principles were also described. Boer (1994) noted that the process of international environmental policy making created *new concepts*. These concepts introduced planners and managers to a compelling array of philosophical principles they ideally seek to give expression through planning practice. While the central concept is sustainability, this broad principle defies description without reference to other fundamental concepts, which Fookes (1994) writes include: intergenerational equity[17], intrinsic value, and the precautionary approach, for example, (this is not an exhaustive list).

Intergenerational equity - "refers to the idea that the present generation should not use resources or degrade the environment so as to leave future generations in a worse position than the present generation." (Boer, 1994, p22).

Intrinsic Value - "is taken to mean the value of ecosystems in their own right, rather than for the utility they provide human beings." (Cronin 1989, p11). Features of the environment have inherent worth and inherent properties including process and linkage relationships with other features, independent of the interests of human evaluators.

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[15] *National Strategy for Ecologically Sustainable Development* (1992), Canberra, Australia.

[16] Resource Management Law Reform Working Paper No. 24 "Sustainability, Intrinsic Values and the Needs of Future Generations", Ministry for the Environment, 1988 provides a thorough analysis of the "sustainability concept".

[17] 'Equity' - "for the layman, the word has a meaning of fairness and abstract justice. To a lawyer equity, in the legal sense, means the rules and principles administered in courts of equity... Equity, in the general sense of ideal justice, must always have a place in law. For one of the attributes of law should be that it is just. The conscious striving after principles of natural fairness has played a supremely important part in legal development." Windeyer, 1974.

The precautionary principle states - "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Rio Declaration Principle 15). In other words, spend the money and the intellectual effort now to avoid the possibility of serious environmental degradation later. Where there is doubt about the consequences of action, a decision should err on the side of caution." (Boer, 1994, p22).[18]

These principles help describe the sustainable management concept, centralised within the RMA as its purpose. However, the RMA does not necessarily mention them explicitly. It does cater for them in Part II, (intergenerational equity), in Part I, s2, (intrinsic value), and via Schedule IV, (the precautionary principle).[19] Similarly, other fundamental concepts, older in their conception, (for example, *intra*generational equity, justice, democracy, economic, cultural and social 'well being', kaitiakitanga) find expression in the RMA. That many of these philosophical and ideological concepts are described rather than named explicitly, and that it is not stipulated whether their measure of attainment should be in relative or absolute terms, does not detract from their representation within the RMA. As compelling as the focus on 'sustainable management' is, it is also important to maintain a focus on the other aspects of planning processes integrated within the RMA.

Consideration of the RMA (discussed in Chapter 4) provides that many of these concepts are to find expression via its prescribed framework for public consultation. Consultation within the RMA is shown, in Chapter 3, to be aimed principally at anticipating, reducing or resolving environmental disputes by seeking to avoid, remedy or mitigate the potential *adverse* effects of activities on the 'environment' (which is described holistically in Part I of the RMA). Inclusivity of an interested public at key stages of planning, from policy formulation through to the resource consent process, is recognition that diverse interests, values and perspectives find expression in the community and that environmental management processes must seek to incorporate and accommodate that diversity. That all citizens have 'rights' in regard to management of the/their environment, along with a need for comprehensive-integrated management, and thus full comprehension of issues, necessitates providing opportunity for citizens to describe their interests and values so that these can be accommodated in planning endeavour. The analysis which follows shows how a selection of philosophical ideals were identified and took shape constitutionally (in

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[18] This principle has already been applied at international level within the 'North Sea Declaration' which states that you cannot discharge substances into the sea unless you can *show that no harm will result*. (Buhrs, 1993).

[19] "This [precautionary] principle challenges unquestioned notions of economic development in ways that we can only imagine. It may well be applied in day to day decision making, and will certainly shift the debate into the realm of public participation, by forcing discussion of what is and what is not acceptable. It will also have the effect of reversing the onus of proof." (Boer, 1994, p22)

legislation). Only by recognising their passage into legislation and having regard to the ideals and principles elucidated or manifest in the RMA, can practitioners aim to give these ideals expression.

2.4 NEW ZEALANDERS INITIATE AND UNDERTAKE REFORM

An early indication of changing paradigms is found in "New Zealand at the Turning Point" (1976) produced by the Task Force on Economic and Social Planning. This report placed *social and environmental objectives* at the centre of any planning process and supported the devolution of responsibility to the regions. Eight years later the pre-election Labour Party stated "the fundamental purpose of a sound environment policy is to ensure the management of the human use of the biosphere to yield the greatest sustainable benefits to present generations while maintaining potential to meet the needs and aspirations of future generations" (quoited in Environmental Task Group, 1984, p36). Such statements were a catalyst for reform. Once initiated the reform process attained its own momentum, as evident in its continuance and implementation, albeit with some change, after the return of the National Party to power in 1990.

Reformers started from the premise that there were deficiencies in the system of environmental administration and deduced from this basis the need for a new system.[20] Two fundamental issues were addressed: 1) What was wrong with management that needed to be changed, including what was considered important that needed to be included when previously it had been omitted,[21] and 2) having established objectives for the new system, what would be its design to achieve these objectives.[22] To pursue these objectives effectively required changes to the *nature* of decision-making at all levels of government and in the private sector. Government's environmental policy entailed widespread consultation[23] which brought together, in some detail, the fundamental

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[20] Post Environmental Forum Working Party (PEFWP), 1986, p5.

[21] "Environment 1986: Report of the Post-Environment Forum Working Party", 1986, describes the perceived problems and shortcomings of the system as it was and suggested solutions.

[22] Key threads of thinking considered in formulating the RMA are articulated in the Post Environmental Forum Working Party Report, "Environment 1986", the Ministry for the Environment, 1988 document "People, Environment and Decision Making", and the "Resource Management Law Reform Working Papers" published in 1988 and 1989.

[23] The Minister for the Environment issued a discussion paper (Nov 1984) which set out options for a new system of environmental administration which attracted almost 500 submissions. A central feature of the consultation process was the Environmental Forum, held from 7-9 March 1985, which provided opportunity for "interaction over ideas, values and concerns reflected in the submissions. It resulted in a large degree of consensus, and clear guidance to the Government on the wishes of the

philosophies and principles New Zealanders believed should be represented in any framework for administration for the environment. Following the initial rounds of consultation the Post Environmental Forum Working Party (PEFWP henceforth)[24] was charged with making recommendations to the Government. That working party...

> *"set itself the aim of describing a coherent system capable of detailed implementation in the next phase; of defining the principles, concerns and objectives which should inform the elaboration of those details; and of identifying a priority for tasks which should be shouldered by the new structures to be established"* (PEFWP, 1985, p16).

The principles guiding the deliberations of the PEFWP, (1985, p5, MI) included :

1) The *ethical shift* from the historic emphasis on development to the integration of conservation and development and protection for the nation's heritage.

2) Environmental administration cannot be based on rigid centralised directives. It *relies on a set of broad principles; public processes* whereby decisions on the use or allocation of resources are made with regard to their *full value* and the *full implications* of their use or allocation; informed, aware and responsible decision-makers at all levels; and adequate policing as well as simple economic and protective mechanisms.

3) The Maori environment, and the relationship of the Maori to it, deserve special recognition.

4) The *process* whereby the Crown or delegated authorities plan or allocate resources must be broadened, to allow all the interested public to participate, streamlined to remove complexities and difficulties to the extent possible, and better aimed at *building consensus* rather than producing adversarial confrontation."

The preferred option, of the PEFWP, was one based on the philosophy of 'environmental management', which would effect change directly in planning processes. The basic change the PEFWP suggested was to bring recognition of the physical, biological *and* social aspects of the built and natural environment into all stages of planning. The 'environmental management' philosophy should underpin the processes of policy formulation and decision making throughout public *and* private sectors. The PEFWP recommendations[25] were intended as a 'blueprint' for the stages which followed, that of deciding and proceeding to

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Forum participants." PEFWP, 1985, p15.

[24] The working party was formally a sub-group of an inter-departmental committee, chaired by the State Services Commission, set up to examine the policy and machinery matters arising from the Labour Party's pre-election policy statement on environmental administration.

[25] The 1985 report of the PEFWP on environmental administration marked the completion of a phase in a process of evolution of ideas and values about the environment. That stage in this evolution began in 1984 with the Labour Party's environmental policy. The policy itself "was drawn from concepts and ideas that reflected the concerns of the electorate" (PEFWP, 1985, p15).

construct a new system of environmental administration. "*Environmental Administration in New Zealand: A Discussion Paper*" (1984) released by the Minister for the Environment, including the Report of the Environment Task Group (ETG henceforth)[26]; the "*Alternative Discussion Paper*" (1985) prepared by a group of six NGO's[27]; "*Environment: 1986*" (EATG 1985) by the PEFWP; and the "*Resource Management Law Reform - working papers*"[28] (1988 & 1989), continually reiterate key themes, whether the focus of a particular section is on reviewing the Town and Country Planning Act, 1977[29] discussing 'environmental' policy, a new Ministry for the Environment and for heritage/conservation, or planning processes. These themes convey what were perceived as the shortcomings of environmental management at the time, observations on what ought to be catered for, and suggestions for a new system for environmental management. The philosophies - principles and rationale that should govern the structures and processes of a system - for New Zealand's current resource and environment management framework can be traced through the documents published during the reform process.[30] Importantly, the PEFWP (1985, p16) noted that their report represented "considerable debate and a high degree of consensus", as can be said of the other reform reports.

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[26] Guy Salmon, convener of the Environmental Task Group in 1984, went on to work with NGO's in preparing the 'Alternative Discussion Paper' published in 1985.

[27] While the official Environmental Task Group was concerned with reforming the planning process another group of six non-governmental environment and recreation organisations (known as the Environmenatal Administration Task Groups - EATG) decided they too would open a dialogue with the public on environmental administration issues. However this group considered their concerns were wider than those of the official task group. They considered there were "two levels of public participation in planning and resource management. The first is the level of general statutory planning, which applies equally to private and public developments. Because of the perceived fundamental nature of rights associated with private property, planning legislation is necessarily limited in its scope in our type of democracy. The second level of participation focuses on public resources and public developments which are managed by agencies of the State. Here the rights of citizen participation are more far-reaching: they are the rights of ownership." Salmon continues... "Because State ownership and development of natural resources is extensive in New Zealand, this level of participation is very important to us" (Salmon, 1985, p4).

[28] The Resource Management Law Reform working papers focused on practical aspects in the design of legislation to achieve the philosophies, ideals, principles, aims, objectives identified during the consultation phases. Consultation continued to help elaborate these fundamentals as well as fine tuning the shape of the legislation. While it would be informative to thoroughly analyze how the directives given in earlier reports were reduced down to more functional points, in debating the proposed legislation, (perhaps for the sake of brevity or perhaps due to a change of government), this thesis is by necessity limited in its observations of any losses or gains in emphatic meaning, as a result of such reductionism.

[29] The Town and Country Planning Act,1977 was the principal co-ordinating legislation for balancing economic, social and environmental considerations.

[30] Reform reports set out to provide the guidance needed by those who undertook the task of building the new system, as to what they should be aiming at. Detailed guidance as to how they should go about it was not provided until later, in the 1988/1999 RMLR working papers.

2.5 COMMON THEMES CONVEYING PROBLEMS AND SHORTCOMINGS OF THE SYSTEM PRIOR TO REFORM.

2.5.1 A lack of clear conservation and development objectives,

"creates uncertainty in regional and local planning and limits its integrative effect on national and sectoral, as well as special purpose authority planning processes." (ETG 1984, p31). The ETG (1984, p23) observed "there existed in the past an artificial distinction in the planning process between 'the environment' and 'the national interest'."

2.5.2 A lack of balance as advice was not well 'integrated'.

The ETG (1984, p37, MI) noted, "present activities tend to focus on single aspects of the environment with less attention to integrated advice." There was also "a greater emphasis on rural environments than on urban environments" and "more emphasis on the physical and biological aspects than on the *equally important* social, cultural and economic aspects of environmental matters".[31]

2.5.3 A failure to incorporate externalities into decision making.

The ETG (1984, p37) suggested that "many environmental problems have been due to our failure to manage properly the residuals and externalities of economic activity." The *full* costs of activities were not evaluated in planning and decision making.

2.5.4 A climate of uncertainty within a fragmented, time consuming and costly process, which was neither comprehensive nor integrated in its approach.

Developers, whose main objective is commercial, lived with uncertainty in developing proposals. Fragmented, time-consuming and costly consents procedures, could be followed by challenges before the Planning Tribunal. The PEFWP, (1985, p16, ME) stated that, "if asked to prepare an Environmental Impact Report, developers may or may not consider it in their interests to take full account of the environmental impacts of their proposals and community values at stake... Other groups in the community found themselves in an adversarial relationship to the developer. Unaware of development proposals until a very late stage and with inadequate information the only way they could influence proposals was by appealing to the Planning Tribunal."

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[31] The PEFWP, (1985, p6, MI) saw that there was no single strong advocate for care of the environment and *balance* in the way the nation uses the totality of its resources, and for the preservation of what is naturally or historically important.

"When (the public) are consulted or have opportunity to comment at an earlier stage, the process may prove unsatisfactory because not all substantive concerns are taken into account, or wider issues are not considered (e.g. the desirability of exploiting one particular resource as against another or at all, or in one area as opposed to another). Community views may be given no support in the weight of scientific, technical or commercial evidence produced by the developer. The failures of the system from the community viewpoint relate to resource use or development proposals put forward by the Crown, local government and private sector alike." (PEFWP, 1985, p16).

"At present, hearings and deliberations...can be conducted in variable, and sometimes inconsistent ways. New resource management law could prescribe procedures for the conduct of hearings and discussions." (RMLR, W.P. No17, 1988, p5, ME).

The PEFWP (1985, p16, MI) suggested that "good environmental management should *take full and balanced account of the impact on the community* of developing or conserving natural resources. The chief shortcoming of environmental management today is that it too often fails to do so. The problem lies not so much in the unwillingness of those interested in resource management to improve it, or in any inherent incompatibility between conservation and development, but in the *deficiencies of the systems and processes* used to plan and allocate resources."

2.5.5 A tendency to foster adversarial relationships

The PEFWP (1985, p7) stated "there is a tendency of the present system to produce adversarial confrontations at a late stage in the elaboration of development proposals." The ETG had earlier (1984, p17, MI) noted that "the present structure would not be able to contribute adequately to the *consensus-building process implicit in the philosophy of balancing development and conservation*", while Fookes (1988, p5, ME) indicated "A major change... would be to introduce and encourage less adversarial processes such as mediation and arbitration."

2.5.6 An inability to monitor and consequently influence future performance.

Many of the reform reports identified an inability to influence future performance through input into policy and rule making, and decision making. The Environmental Council (1987, p14) also described this issue in terms of monitoring performance when writing "many individuals, groups, and even local government organisations, have felt frustrated in their attempts to convey their concerns on environmental issues to those who make decisions. There is a need for the public to be able to monitor the performance of environmental agencies, both in terms of administrative performance and changes in environmental quality. Procedural and environmental outcomes should then be fed back into policy and decision making."

2.6 PRINCIPLES INFORMING PUBLIC PARTICIPATION IN EDR PROCESSES.

Reformers sought to define concepts, ideals and principles explicitly, in order to apply them directly, and also sought to conceptualize these to clarify their implicit nature.

2.6.1 Environmental thinking or management views the *'environment' concept* as all encompassing and dynamic.

> *"It was impossible to put the environment in a conceptual box round which a circle of defence could be placed. The environment is a dynamic thing, involving the evolution and interaction of people and all that surrounds them, both in terms of natural resources and what they make from them. The environment is in a constant process of change. The challenge for the nation is to manage that process in a balanced way, so that it creates wealth efficiently; distributes it fairly; keeps the country, its fauna and flora clean, healthy and beautiful; preserves what should be preserved for cultural, spiritual, historic, aesthetic or recreational reasons; and keeps aside enough raw material for the needs of tomorrow."* (PEFWP, 1985, P5)

The ETG (1984, p20, MI) wrote "environmental thinking is concerned with horizontal cross-linkages and longer term goals rather than with achieving narrow objectives. It is not opposed to development and change but tries to minimise harmful consequences and meet other desirable objectives at the same time." It therefore determined the conservation or resource management strategy "will bring to the decision-making process something much more important than incorporation of conservation values; it will also introduce environmental concepts. The most importance of these is *the need to see all elements of the physical, biological and social environment as components in an* ***integrated*** *system.*[32] This *holistic approach* is central to environmental administration and it is also becoming the dominant view in attempts to tackle the social and intersectoral planning issues of our age."

2.6.2 Comprehensive-integrated planning requires an anticipatory approach.

The ETG (1984 p40, ME, MI) observed, "World trends in environmental management are toward anticipatory approaches which involve an integration of environmental, economic, social and cultural issues... Environmental issues are *multi-dimensional* and cannot be divorced from economic, social, cultural, physical and biological issues." It provided an analogy "It is recognised that 'eggs need to be broken to make omelets', but before the order is placed questions should be asked as to whether the omelette is needed, what the owners of the eggs have to say, whether the eggs would be better put to another use, and

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[32] "It needs to be more widely understood that 'environment' includes social, cultural and economic aspects as well as the physical." Marshall (1984, p29). The characteristics of 'integrated' planning and resource management are discussed fully in Chapter 14.

how the shells are to be disposed of. This questioning need not slow decision making, nor does it mean we must go without, but it will assist us to arrive at the best choice" (*ibid*).

2.6.3 'Sustainability' incorporates: inclusivity (of public / local / indigenous knowledge, intrinsic values, and externalities), 'wise' use, diversity, and balance, equity issues.

The ETG (1984, p37, ME) observed, "Environmental issues are directly related to notions of sustainability, sustainable economy and the wise use of resources... Environmental improvement and economic activity are essential, compatible and inter-related policy objectives... There is an intricate link between social needs, resource use and the way in which the country's economy is managed".[33]

2.6.4 Redefine the problem so as to see the solution as much in terms of planning mechanisms as of "environmental management".

Preparation for the journey is as important as having a destination. The PEFWP (1985, P7) suggested that the success of the process will be closely tied to the success in coordinating and balancing resource planning, and in managing the environmental planning procedures. The PEFWP, envisaged a process whereby:

a) *Early certainty about resource decisions is promoted;*
b) *All relevant options, concerns and aspirations are canvassed and given full and balanced consideration as early as possible;*
c) *Clear guidance is provided to all sectors of the community about national policies;*
d) *Local concerns are acknowledged and provided for at the central government level;*
e) *Support and assistance is provided to all relevant sectors of the community to enable them to take full and balanced account of the various interests involved in resource plans and decisions."* (PEFWP, 1985, p20)

2.6.5 The place of planning and decision making is at the community or local level.

The ETG (1984, p11, MI) noted that "the objectives could only be pursued by making changes to the *nature of decision-making at all levels of government and in the private sector.*" While the PEFWP (1985, p8, MI, ME) stated, "[e]nvironmental administration cannot be based on rigid, centralist directives... The single most important factor in the success or otherwise of the new system will remain, as in the past, *the attitude of all groups in the community* to care for the environment, balanced resource use and conservation." It was observed that the concept of environmental management,

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[33] "A Conservation Strategy cannot be developed if the environment is viewed as something divorced from economics. It should be stressed that a Conservation Strategy is not a strategy for 'locking up' resources, but rather a plan for sustainable use, in order to maintain diversity and also to enhance the longer-term stability of the economy. It should more appropriately be called a 'Resource Management' Strategy." (ETG, 1984, p14)

"gives priority to interactions and locational effects as distinct from the administration of separate activities... It is the effects which actions have on the attributes or resources of localities or of surrounding areas or regions which often escape attention. The response of town and country planning is evolving away form concern solely with regulation land uses, towards adequately meeting the demand for a full examination of the local and regional implications of proposals as an aid to decision-making... The answer to this situation must be found in part by changes to the statutes to reflect the environmental management concept." (ETG, 1984, p21,ME)

2.6.6 The 'user pays principle' and public access to information and government are at odds; careful consideration of responsibility for cost burdens is needed.

The ETG (1984, p29) indicated that "timely access to relevant information is a prerequisite for effective participation by the public and by non-government bodies on the development of environment policy and the assessment of the environmental implications of proposed policies and projects." However, as the Environmental Council (1987, p14) stated "the trend towards user pays has made information less accessible because of greater costs to the general public for the acquisition of such information." Fookes, (1988, p4) suggested "it should be possible for people to participate without facing financial costs which could be a disincentive for them to use the opportunities provided by the law. However, it also recognises there should be disincentives for people to participate irresponsibly, meaning they are behaving in a frivolous or vexatious way".[34]

"The challenge is to achieve a balance between public participation and undue costs and delays." (RMLR Directions for Change, in Fookes, 1988, p15)

In addition the PEFWP (1985, p42, MI) asked for "a system of environmental funding aimed at financing, in whole or in part, remedial action necessitated by resource development or use and at ensuring that the *full cost of resource use or development proposals is calculated and justly distributed.*"

2.6.7 The 'public' must be included early and effectively in planning processes.

The ETG (1984, p11) observed "It is probably not an exaggeration to say that all New Zealanders feel they have a stake in the management of 'their' environment." It determined that, *"the planning process* is more than a form of words adopted in a document. It *is a progressive encounter among different groups in the community, each with different interests and skills. The facilitation and management of this encounter, the supply of*

[34] The RMA does stipulate that the burden of cost is on the developer of proposals, and the relevant government agencies with responsibilities to provide consultation processes in regard to proposals, or while developing plans and strategies. However there are also allowances for the recovery of costs incurred by 'vexatious' use of public consultation processes.

relevant information and the recording of any points of agreement or disagreement - all add up to the nuts and bolts of planning" (ETG, 1984, p21, MI). In addition the ETG (1984, p13) provides an example of inclusivity's benefits, "It was thought that [the strategy] was more likely to find general acceptance within the community if it was seen to be based on a consensus of various sector interests."

These comments with regard public participation issues help illustrate two aspects of concern to reformers. First, that when discussing philosophies underpinning environmental management, a variety of perspectives can be adopted. Responses to the question 'why include the public?', could be because: if you do 'they' may like your proposal more, to; if you do you will comprehend all the relevant 'issues' prior to making decisions, to; the public have a right to a say in their civil affairs and have their concerns and values accommodated within planning and decision-making. These responses may reflect the level of philosophical thought on the issue - from the practical to the abstract, or simply an individual's personal motives - from parochial to an altruistic pursuit of ideals for a 'common good'.[35] In addressing each of the issues during the reform process, reformers had to identify and sift the variety of perspectives and decide which were important enough to be given the support and weight of constitutional mandate.

Secondly, as Fookes (1988, p5) observed, when discussing public participation, it is difficult to maintain the distinction of 'ends' and 'means' because "answering the question 'what public participation?' raises the 'how?' issues". Efforts to maintain the distinction between ends and means are common within reform reports, regardless of the environmental management issue being addressed. Therefore, it was also important for reformers to be sure which issue was being addressed during each deliberation. It follows that, just as the question, 'what should we be aiming at?' is different to, 'how do we take aim?', the identification of philosophical ideals is not automatically subsumed by difficulties in identifying how or whether they can be realised in practice. As indicated earlier, when it came time to describe how best to aim for preferred fundamental ideals, a different (though related) set of principles also came to be recognised as important, and were chosen to be catered for (these are discussed in Chapter 3).

[35] The concept of 'common good' or 'public interest' provides scope for intense philosophical debate. The concept will be referenced when pertinent to the findings of this research. For instance, consideration of participants' motivations may be important in the final determination of the quality of the encounters examined in Section 4.

2.7 INITIAL PROPOSALS FOR CONSTITUTIONAL REFORM FOR ENVIRONMENTAL MANAGEMENT INDICATED THAT THE NEW FRAMEWORK OUGHT TO AIM TO ACHIEVE THE FOLLOWING:

2.7.1 Meet the ends of economic development, social equity, balanced and sustainable resource use; to reflect social, cultural and spiritual values, and preserve the qualities of the landscape; and to provide for the needs of future generations.

ETG (1984, p11) recommended change to the nature of decision making at all levels of government, "to bring the key aspects of the environment - physical, biological and social - to bear on all stages of planning," in order to "ensure that planning and decisions on natural and physical resource allocation are nationally correct and *take full and balanced account of the value of those resources, economic and non-economic, to the community*" (PEFWP, 1985 p42, MI). The 'mission statement' for the proposed new Ministry for the Environment was,

> *"to ensure that the management of the nation's natural and physical resources... improves the quality of New Zealand's environment by taking full and balanced account of the value of these resources to all groups in the community so as to meet the ends of economic development, social justice and balanced and sustainable resource use; to reflect social, cultural and spiritual values, and preserve the qualities of the landscape; and to provide for the needs of future generations."* (PEFWP, 1985, p45, ME)[36]

2.7.2 Consider all the impacts (or effects) of proposals on the environment.

Taking full and balanced account of the value of resources, to all groups within the community, in a way that reflects the past, present and future significance of those resources, comes form "considering the *impact* of its preservation, use or conservation on economic development, social justice, other resources, social and cultural values, and future generations" PEFWP (1985, p17). Wells & Fookes (1988, p3) recommended that clearly defining the role of impact assessment within statutory planning procedures was a way to provide better integration, avoid duplication, and enable impact information to influence the outcome of that process. Principles were put up as guidelines for determining how the objectives of impact assessments could best be achieved and indicated how explicit the (new) requirements needed to be..

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[36] PEFWP (1985, p45) recommended that Cabinet establish by statute a 'Ministry for the Environment' (the PEFWP's mission statement for that Ministry was precursor to the long title of the Environment Act, 1986) and a department, 'Heritage New Zealand', (which became the Department of Conservation) according to the mission, functions and resources set out by PEFWP. It stipulated that in doing so all relevant legislation would need to be amended and streamlined to establish the agencies and processes as they recommended. Refer to page 47.

"EIA is needed to evaluate the consequences of proposals whether they are policy, rule setting or project proposals, impact information will help make the tradeoffs between objectives explicit.

EIA is a shared responsibility. The proponent in the first instance should provide the initial assessment, this is supplemented by the response from the public and consent agencies.

EIA should be integrated into statutory planning process. The information must not be treated separately but should be fed directly into the decision making process." (Wells & Fookes, 1988, p8)

2.7.3 Advance effectiveness and efficiency by introducing integrated and explicit objectives and procedures.

A more *integrated* and *explicit* environmental management approach necessitates an *alignment* of statutes and statutory procedures, as parallel or integrated principles and procedures "would bring about a major advance in *effectiveness* and *efficiency*" (ETG 1984, p31, MI). A government strategy to integrate conservation and development was also seen to be needed to fill more effectively the "policy making gap between central and local government" (ETG 1984, p21). To these ends, there was a need, first of all, for a Ministry for the Environment (PEFWP, 1985, P20), then for reform of all "legislation dealing with the planning and management of natural and physical resources and environmental values, to make them *better tools of integrated environmental management*" (PEFWP, 1988, p42, MI). Wells & Fookes (1988, p5, MI) recommended that "'requirements' (for impact assessment) should be explicit in resource management law, so that *the principles can be seen, rather than assumed, to be applied*".

2.7.4 Provide simplified and streamlined resource allocation procedures to avoid complications and difficulties, and to reduce uncertainties.

The PEFWP (1985, p18) recognised that "investment plans require quick, certain and adaptive methods of resource planning and allocation."

2.7.5 Promote public participation and improve local decision making.

The PEFWP (1985, p45) recommended Government "promote public participation in the planning and policy formation processes and improve local decision-making", as "environmental considerations require early consideration of all the options and impacts, and opportunities at an early stage for public and community participation when resource planning and allocation decisions are being made" (PEFWP, 1985, p18). To this end the PEFWP (1985, p42) recommended a set of "Environmental Planning Procedures" be provided to allow full public involvement in the formulation of strategies for resource

allocation and in the review of significant resource use and development projects.

> *"From the outset... style should reflect the fact that the approach to policy and planning has changed, that the social effects of resource use decisions are to be given greater emphasis and that the Government wishes the regional planning process to be used to greater advantage in implementing these changes... The process of decentralisation should therefore be initiated at the very first stage... Regional locations could provide an umbrella for the reaction of multi-disciplinary groups."* (ETG, 1984, p23, ME)

2.7.6 Promote consensus building through early consultation, and achieve balance by taking full account of all environmental values.

The PEFWP (1985, P7, MI) envisaged that "adversarial confrontations at a late stage in the elaboration of development proposals is reversed so that relevant concerns tend to be canvassed early through 'Environmental Planning Procedures' and *result in positive inputs into proposal elaboration*".

> "*There would be a greater need for* ***active and effective co-operation by central government agencies in consensus building*** *at regional and local levels.... There must be* ***an active planning process which precedes the statutory phase. There is no way in which legislation, regulation or directive, can force participants in the process to adopt an integrated or holistic view. This must come from the style which is adopted by the planners, from the lead which is given by the politicians and from the culture in the broader sense*** *(Maori tradition, for example, brings an integrated view of decision-making to all community discussions). To be effective this approach must be adopted* ***early*** *enough to influence the hard decisions, it must be* ***inspired*** *by a conscious* ***commitment to plan for the broader goals of society and cover issues of equity and social justice before the problem is created. It must also be backed up by competent, cross-sectoral analysis and evaluation.***" (ETG, 1984. p32, ME, bold added).[37]

2.7.7 Give greater effect to democratic principles.

Non-government organisations (NGO's) sought a restructuring of the State's environmental administration "to make it more responsive to the wishes of the owners, the public" (Salmon, in EATG 1985, p4). NGO's linked 'responsiveness' with public participation in planning and decision-making processes and therefore sought greater public participation. With the privatization of State assets and the rationalising or corporatising of State Owned Enterprises, the claim to 'ownership rights' may hold less influence than it has in the past (Salmon, in EATG, 1985). However, a declining public influence as 'owners' in economic terms, may be counterbalanced by the ascendency of philosophies underpinning 'resource

[37] The process described, whereby the planning and allocation of resources takes place is a reflection of the fifth principle quiding the PEFWP's deliberations (PEFWP, 1985, p7) - noted as point 4, p22 of this thesis.

and environmental management'. These include principles for sustainable management and contain a different bundle of associated 'public rights' in relation to resources and the environment, and to the 'management' of these. Public participation described as "a process for making wise decisions on resources with respect to clearly expressed societal goals [which] would involve better channels for communicating individual and collective values", (Fookes, 1988, p17), reflects the ethos of 'democracy'. In discussing options for legislation, *criteria were presented for assessing public participation processes*, which refer more explicitly to a democratic philosophy. The criteria were intended for,

> "*checking whether the processes: are consistent with commitments in the Treaty of Waitangi; mean people have equal and effective access to decision making processes; provide for a range of points of view; are not written so as to impede participation; require adequate information to be supplied, and; recognise the role of key people in the community*" (*ibid*, p3, bold added).

Reformers supported a process which provides for,

> *"timely and informed involvement in decision making. All people and bodies interested in the issues should be free to take part, with no test for standing. In return, there should be incentives so people will participate in a responsible way*" (*ibid*, p3).

Salmon (1985, p3) "hoped and believed an era of 'confrontation politics' was at an end". He also suggested that the possibly related phenomena of New Zealanders responsive to confrontation politics and the resistance of big State agencies efforts to subject them to greater democratic process and guidance would need to be tackled together.

2.8 CONCLUSIONS FROM THE REFORM PROCESS.

The objectives for resource management included in the government's proposals for resource management law reform released as "People, Environment, and Decision Making (Ministry for the Environment, 1988, p5, MI) began "as the basis for further investigation and consultation the government has:

i) agreed that the general purpose and objectives of the Resource Management Planning Act must take into account the Treaty of Waitangi and recognise that *costs as well as benefits should be considered and that no one value should be over-riding* in the planning process;

ii) agreed that the general purpose and objectives should cover matters and values such as: 1) *balancing individual rights and public welfare*; 2) *eliminating or minimizing conflicts between uses*; 3) *environmental quality*; 4) ecosystem values; 5) needs of future generations; 6) economic *and* social factors;

iii) agreed that these matters or values should include reference to the notion of

sustainable development."[38]

These ideas were instrumental in the establishment of the Ministry for the Environment in 1986 and the Department of Conservation in 1987. While it was judged essential to create those distinctive agencies, it was judged equally important not to try to confine all the nation's responsibility for care of the environment, resource use planning and protection of its natural and historic heritage within the two agencies. The identified principles and ideals were therefore, also fundamental in formulating the RMA, 1991. The PEFWP (1985, p6, ME, MI) had earlier concluded that "*all groups in the nation share these responsibilities, and it is the role of each... to help the nation to meet them*", and that "the proposed system is aimed at encouraging positive concern about the environment to guide the decisions and actions of *all individuals* in the community."

In terms of the government's strategy the whole planning process is clearly important and was to be modified to reflect and give effect to the prevailing philosophies: "sustainable environmental management", "social justice[39]", and "public participatory planning" (ETG, 1984, p32) in policy and decision making.

A repercussion in implementing change is the need to educate, train and appoint skilled people and provide other resources as appropriate to the new aims and tasks (ETG, 1984, p21). As the PEFWP (1985, p18) indicated, "The education of resource managers and users is necessary to ensure that all resource values are considered. Such education needs to be backed up by appropriate legal sanctions and controls."

> "*The government needs to be able to provide the necessary environmental management skills to assist planning bodies in the preparation of regional planning schemes and with the identification of and responses to, the environmental aspects of development issues. It must also provide the analytical and evaluative skills to give substance to these efforts, bringing physical, social and ecological considerations into focus with economic and commercial factors.*" (ETG, 1984, p21)

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[38] Importantly the 'notion of sustainable *development*' became 'sustainable *management*'. Refer to (Fookes, 1988) for a discussion on important differences between emphasis in the two terms.

[39] The concept of 'social justice' is referred to in this report. However later in the reform process, with a change of Government, this concept attained a low profile as sustainable management focused more on 'environmental' concerns and less on 'social and economic' concerns (which had been more evident within the 'sustainable development' concept). In this thesis the term social 'equity' is preferred to social 'justice' as it does not have connotations of (government) intervention in the 'social order', which came to be attached to the notion of social 'justice'. Social 'equity', refers to issues of 'fairness' with regards to the rights of all citizens to participate and influence government decision-making in relation to the/their resources and environment, within the New Zealand context (given our form of public and private rights and responsibilities, 'public' ownership, communal 'property' rights and democracy).

Salmon (1985, p3) noted that, "the great question at this point is whether the powerful bureaucratic agencies of government, with their well-established attitudes and habits, are really able and willing to give effect to this whole range of new policies", which is a question as searching today as it was prior to reform. Salmon (1985) also suggested that there is "evidence that new policies in some areas are either not understood, or not accepted". Diack (1992, p9, MI) has since observed that "while the operational and administrative requirements of the [local government] reforms have been put into effect, a change in decision-making *culture* which was seen by many as the most desirable outcome of the changes has not been achieved", thus indicating that realising the full 'intent' of reformed processes may have been hindered by management clinging to past styles.

The RMA intended to bring to the decision-making process something much more important than incorporation of 'conservation values' *per se*. It introduced environmental concepts, the most important of which, as identified by the ETG (1984) is: *an holistic approach*. A need to see all elements of the physical, biological and social environment as components in an *integrated system*. Through the reform process, 'new' *values* were articulated with the recognition that public participation was required at a range of levels and at a number of different stages of planning. It was also recognised that a cultural shift in attitude and thinking was required by management authorities, as new processes that focused on EDR were considered not only 'appropriate' but *essential* for the achievement of 'sustainable' management, given an holistic environment and a democratic society.

Performance monitoring and an ability to influence future plans and strategies in response to monitored findings, as well as an ability to select and set directions for the future, are considered essential elements of planning. A focus on 'accountability' and 'transparency', as well as 'effectiveness', 'efficiency', and 'streamlining' are intended to improve performance monitoring of government agencies and to enable more rapid responses in order to enhance future events and outcomes. These mechanisms provide ways for 'the public' to monitor and then to influence their representatives at all levels of government. It is therefore important, to monitor the effectiveness of the new system, as it seeks to implement the 'new' era of consultative planning and decision-making in practice.

CHAPTER 3 CONSULTATION AND PUBLIC PARTICIPATORY PLANNING

3.1 GENERIC PURPOSES OF PUBLIC CONSULTATION

In considering consultation the relevant questions are, 'why public participatory planning?'; 'who to involve?'; 'what is consultation/public participatory planning?', and; 'what are the basic principles informing public participation in EDR?'

Fookes (1988) identified the key types of resource and environmental decision making which require public consultation as: policy and rule-formulation, applying rules, and checking for compliance. Therefore public consultation essentially has two generic purposes, depending on the phase of the planning process when it is undertaken.

Firstly, it is an effort to *avoid policy issues being debated* when a consent is being applied for (Fookes, 1988). This consultation helps planning authorities identify and describe the concerns, priorities and ambitions of the community in relation to management of resources and the environment in the future, as it seeks to determine the views, interests, and values within a community and considers the likely effects of policy or rules on people and the/their environment. This consultation aims to identify and thence maintain or enhance important positive values, and to protect the 'environment' (and people) from the adverse effects of activities in advance, so that the likelihood of future 'environmental' disputes is lessened. This phase of consultation is anticipatory and speculative as to what possible threats could be posed to the/peoples environment, and establishes a means to guide and/or direct decision making on specific proposals. Similarly it is anticipated that resource consent applicants will canvass community interests, values and views, through their 'assessment of environmental effects' (as required under s88 and Schedule IV of the RMA), and take these into account in formulating a proposal requiring consent.

Public participation at this stage of planning may be described as 'conflict *management*', as it is anticipated to occur *prior* to an actual dispute about a specific proposed activity.[40] However, it does also fall within the bounds of the term 'dispute *resolution*' processes as

[40] The PCE's Office (1996) provides a different interpretation of '*conflict management*' that includes pre-application consultation, pre-hearing meetings and ADR processes, its reasoning being that, in these processes the authority to take the 'final' decisions rests outside the process with a judicial body (which may or may not endorse agreements made by the parties).

conflict can arise, and 'resolution' is played out, within these processes,[41] as diverse perspectives debate the level of importance to attach to different interests and values, and hence the need for specific mechanisms (the level of, if any, policy/regulatory activity), to establish within the formal management framework. Later EDR processes are guided by and rely on the mechanisms so derived, so these forums are essential for identifying interests and values and establishing ('resolving') priorities for the community.

Secondly, consultation aims to *aid the resolution of disputes* when these do arise. At this stage, consultation falls into 'applying rules' and 'checking for compliance', as later phases of the planning process (Allan, 1988). This consultation typically occurs when a resource consent application is notified, which proposes some resource use or environmental change, to which others in the community may object or wish to comment in order to have their views, interests and values taken into account. As this consultation occurs prior to decision making, it is further opportunity for citizens to describe their interests and how a particular proposal may affect them and the/their environment. As such, alterations or 'conditions' to proposals may be required to avoid, remedy or mitigate adverse effects on people and the/their environment, or alternative means for conducting the activity may have to be found. Public participation at this stage of planning may be described overtly as '*dispute resolution*' as it is anticipated to occur in the event a specific conflict has arisen (or is expected to arise once people are made aware of a proposal). [42]

Public consultation *per se* can be said to have always had these aims, (refer Debnam, 1979; Neill, 1977; Ministry of Works, 1978), therefore prophetic statements about a 'new era' were based on recognition that certain philosophical principles and ideals now have constitutional recognition in legislation, when previously they may have been omitted or were less well provided for. It is pertinent to consider the principles and objectives of public consultation, in order to describe the current philosophy underpinning public participation, within the RMA. It has been noted that these are distinctive, but complementary to the

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[41] This is illustrated in Chapter 8, where the processes employed to resolve a dispute are examined.

[42] The term 'dispute resolution' is defined in PCE (1996, MI) as: "the generic term for *all methods of attempting to resolve disputes* from consultation to litigation, whether or not *resolution* is actually achieved". A semantic problem is evident in this and other definitions of 'dispute *resolution*'. In this thesis, the term "dispute resolution *process*", is used to describe all the *methods/means/forums* which have the purpose of making a decision to end the dispute, and which do result in a 'determination' (a *resolution*) In this thesis, the term '*dispute resolution*' therefore applies to the *act of decision-taking* - the making of a *determination* which aims to end or settle the dispute - regardless of whether all the parties are happy with that decision (*resolution*). It is noted that if any party is unhappy with a decision, further dispute 'resolution' processes may be initiated in an attempt to elicit a different decision. Terminologies and characteristics of different EDR processes are discussed further in Chapter 6.

other principles elucidated in that Act, as described in Chapter 2. The effectiveness of legislation in manifesting this new era hinges on these principles and objectives being given effect through practice. As Tremaine (1994, p8, MI) observes "*effective* consultation is a critical component in helping to achieve the broad ideals of this new statute."

3.2 THE QUESTION OF 'WHY PUBLIC PARTICIPATORY PLANNING?'

> *"In this increasingly difficult political environment, solutions to environmental quality problems have to be found which inspire public confidence. Administrators need a fresh management ideology: they need to accept an holistic approach to environmental health - one which recognises not just the absence of medically recognised human diseases, but also the effects of environmental quality on the human spirit and on psychological and cultural well-being; and one which considers the well-being of the non-human environment as well. More than a knowledge of medicine and sanitary engineering is needed for this management task. What is particularly required is* ***a sympathetic understanding of the values and perceptions of the diverse human constituency, which can only be obtained by receptive involvement in a wide-ranging public participation process****. It is contended on the basis of experience that* ***major changes of ideology and of attitude toward the public*** *are likely to occur only slowly and painfully"* (ETG, 1985, p19, bold added).

The ideal of sustainable development described in "Our Common Future" (1987) saw democratic power at the community level as an essential element for the success of planning for sustainability. It was suggested that inclusivity of indigenous or local knowledge is crucial. Likewise, the decentralization of core roles and responsibilities is evidence of the place of planning at the community level, as centralised agencies "suffer from a lack of local knowledge and *the network of local relationships which is essential for an effective influence on local and regional government*" (EATG, 1985, p12, MI). A reformed and strengthened system of regional government was designed to improve that situation. The Audit Office, director in charge of local government, Kevin Brady, observed "[the public] are certainly interested in having their say in things now. With the public consultation process, they expect to be consulted before councils do something that is major" (in Ross, 1993, p19). The RMA encapsulated and extended the traditions and rights of consultation established under the Town and Country Planning Act, 1953 and 1977. The PCE (1996) wrote that, environmental legislation in New Zealand "embodies the philosophy of considering all values before a decision is made. A broad range of matters and interests should therefore be understood by the decision makers, and this is, in part, why public participation is provided for by the RMA." The RMA seeks to ensure all values are considered in environmental management processes in a number of ways. For example, by providing for open standing in consultation processes. The RMA also states explicitly, in Part II, s8, that in achieving the purpose of this Act, all persons exercising functions and

powers under it... shall take into account the principles of the Treaty of Waitangi,[43] indicating Maori values must be integrated into considerations within planning processes.

When Fookes (1988) identified the types of decision making which required public participation, he indicated it would help an understanding of public participation if these were confirmed in the legislation, with sections and clauses to enable the appropriate approach be followed for each type.[44] A central feature of the RMA's approach is the emphasis placed on public participation in policy and rule-making at all government levels, in an effort to avoid policy issues being debated when a consent is being applied for. There is an explicit role for impact assessment within policy and rule-making, intended to enhance the quality of policy and rule-making decisions, while providing a foundation of sound information to be used in the subsequent rule applying and monitoring stages. Equally, however, as Dadelszen & Fookes (1988, p13) suggest "if resource and environmental management is to be seen as credible activities by the community then improved requirements and procedures for checking compliance and enforcement are key elements." Commentators on public participation note that many people lack the motivation, time or resources to be involved at the policy and rule- making stage, preferring to become active when they learn of a particular development proposal (PCE, 1996). That is, there is a tendency to react to specific projects rather than seeking to have input into the policies that will guide and control planning and decision-making in relation to specific project proposals. As this is the case, the RMA along with attendant territorial plans, provides policies and rules which cater for consultation in the planning of specific development proposals. Even though consent applications, in the wider management framework, fall into the compliance and enforcement stage, public participation at that time, is a means of providing 'late starters' with access to ensure full account is taken of their values and concerns. In addition, the policy and rule-making phase of planning can only deal with general guidelines as they can not anticipate all that will be of relevance to the resolution of issues surrounding future project proposals. The specific detailed evaluation of a proposal is required to fully explore all the relevant considerations and therefore, further opportunity for public comment in relation to effects on the environment is also required at that stage.

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[43] Understanding of the principles of the Treaty of Waitangi requires more than a literal reading of the Treaty itself. When referring to such principles the terms "partnership" , "respect" and "power sharing" are frequently referred to, along with, for example "sovereignty", "kawanatanga" and "tino rangatiratanga", which do appear in the Treaty. For a discussion on the Treaty itself refer, for instance, to Mulgan, 1994 "*Politics in New Zealand*", or to Kawharu, 1989 "*Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi*".

[44] When specifying the key types of decision making requiring public participation it was also accepted that there are other types of resource management decision making which could be added to the list (Fookes, 1988, p13).

Consultation rights are clearly specified in the statute. However, "what can never be specified apart from in general terms is how these rights should *be applied* in any particular situation" (Tremaine, 1994, p2, MI). It is often discretionary how, when and to what level the public will be consulted, and consequently have any influence, in planning and decision making processes.[45] In using their discretion planners and decision makers need to reflect on the intent of the RMA and consider ideas expressed in the decade preceding 1991. Citizen involvement in planning is underpinned by a number of different ideals (wants), associated with but distinct from motivational (need) factors; They are, a desire for:

a) greater democracy or, the right of citizens to participate in their civil affairs;
b) seeking to ascertain and/or recognise the interests and values of/in the community so that a full and proper account can be taken of these, in considering the values of resources and the environment and hence also to enable comprehension of *all* the effects and outcomes of activities;
c) inter and intragenerational equity,[46] social equity;
d) inclusivity (implying respect) of local and indigenous knowledge;
e) balancing the wants and needs of diverse perspectives (interests and values) in the relation to resources and the environment;
f) inclusivity of externalities;
g) greater accountability by conducting transparent processes;
h) a 'sustainable' future.

Consultation in the RMA is more than planning to achieve a greater measure of accountability, or the 'sustainable' management of resources and the environment. While being key to current thinking of 'good' planning practice, statutorily required consultation, or public participatory planning mechanisms, is constitutional recognition that greater democracy and social equity for citizens at the community level, so that diverse interests and values are accommodated within our society, are also ideals that ought to be pursued.

3.3 THE QUESTION OF 'WHO?' IN PUBLIC PARTICIPATORY PLANNING?

The question of 'who should be allowed to be involved in resource management decision making processes?' revolved around the resolution of issues on 'standing'. Issues impinging on the arguments for limited participation and for an open process with no standing at all, were both practical and philosophical.

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[45] The report of a survey conducted by the Local Government Business Group of the Department of Internal Affairs, *"Public Consultation in the Local Authority Annual Planning Process"* noted, "[l]ocal authorities consulting with the public prior to the preparation of the draft plan was identified as an increasing trend... This is encouraging as it suggests that many authorities are extending accountability and consultation processes into all aspects of their operations" (in Ross, 1993, p19 ME)

[46] Intragenerational equity - "refers to the idea that people within the present generation have the right to benefit equally from the exploitation of resources, and that they have an equal right to a clean and healthy environment" (Boer, B. 1994, p22).

On the practical level the relevant questions included admissibility, credibility, relative weight and eligibility, and also a control of vexatious and frivolous, ("mischievous or irrelevant", Allen, 1988) actions, through mechanisms like, for example, awarding costs and setting time frames so there is no value to delaying actions by an objector.

At the philosophical level the relevant issue is one of social equity. That is, if someone believes they have an interest in the outcome of a resource management decision then there should not be any legal impediment for them to use all available avenues for them to express that point of view.[47] The argument set out by Dadelszen & Fookes (1988) suggested specifying eligibility to participate, or 'standing' would be inappropriate in the RMA, provided other aspects (e.g. relevance and credibility) are covered in an explicit way. The principle was accepted that "participation is open with no standing limitations," (Dadelszen & Fookes, 1988) as compulsory pre-hearing meetings and/or mediation may be used to "weed out" inappropriate objections, or settling disagreements prior to any formal hearing (Allen, 1988).

3.4 THE QUESTION OF 'WHAT IS CONSULTATION / PUBLIC PARTICIPATION?'

Consultation is defined in "*The Oxford Dictionary of Current English*" (1987) as meaning, "the act or process of consulting, deliberation, conference". While 'consult' means "seek information or advice from... take counsel [advice formally given] with, take [advice] into consideration". These definitions indicate that 'consultation' is an activity undertaken during deliberations prior to making a determination on an issue, as it is a means for gathering 'advice', or by way of assembling all the information necessary to inform making decisions. Justice McGechan[48] (1992) noted that "consultation should be a reality not a charade", implying that those undertaking consultation ought to be open to information (advice) and not be committed to a predetermined position. Consulting must be a legitimate effort to gather all the relevant information (interests, values, perspectives and other information offered by those consulted) and to incorporate that information into decision making. McGechan (1992) provided the following definition of consultation:

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[47] "Eligibility criteria reflected in the (Planning) Tribunal or Court decisions appear (a) to favour people with a pecuniary interest because this (direct) affect is most easily demonstrated, and (b) disadvantage people where the effect is less tangible (eg emotional, personal discomfort). And that, since *being personally affected* is often a question of personal perception and knowledge, individuals are best able to decide whether they have an interest or not." Fookes *et al*, "*RMLR Working Paper No. 17*", 1988, p18.

[48] *Air New Zealand v Wellington International Airport Ltd*, High Court, Wellington Registry, CP No. 403/91, McGechan, J. 6 January 1992, p8.

"Consultation involves a statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done."

Although there appear to be no universal requirements as to form, McGechan (1992) found that the essential elements of genuine consultation should include:

a) "Sufficient information provided to the consulted party in order that they can make intelligent and informed decisions;
b) Sufficient time for both the participation of the consulted and the consideration of the advice given;
c) Genuine consideration of the advice, including an open mind and a willingness to change."

The Ministry for the Environment (1994, MfE) described the "essential ingredients of good consultation" as, "honesty of intention, certainty of purpose, clarity of information, statement of what is required and provision of resources." These definitions and 'essential ingredients' of good consultation along with the breakdown, presented in Table 1, (provided largely by Tremaine, 1994, p5) give a useful background for understanding 'consultation'.

TABLE 1 DESCRIBING "CONSULTATION"

"What consultation is: Consultation if properly applied in the RMA context can be...

* a powerful tool for obtaining genuine input into policy formulation,
* a barometer for uncovering both the community value and issues,
* a means of promoting understanding of what you are trying to achieve i.e. winning acceptance,
* a way of sharing power in decision making,
* an important base line monitoring tool" (Tremaine, 1994, p5).

What Consultation Isn't...

* A means of avoiding/buying-off/reducing the level of submissions likely to be received on an issue. It may have the opposite effect by raising awareness.
* A means of automatically reaching the views of all your resource management publics particularly during plan making.
* A way of avoiding taking the hard decisions by those elected to govern. Elected members still have to weigh the responses and apply their own judgement.
* A particularly good tool for getting clear answers to contentious issues. We have all seen situations where consultation has degenerated into a lottery or numbers game on the actual number of submissions for and against an issue which does little more than confuse the process.
* A public relations exercise. In a property rights statute such as the RMA the checks and balances are weighted against an authority which attempts this approach. Also the number of opportunities for participation in the Act show how open the system is.
* An opportunity for Councillors and staff to brow beat opponents." (*ibid*)
* "Merely telling or presenting; or intended to be a charade or; the same as negotiation although a result could be an agreement to negotiate" (MfE1994, p7).

3.5 BASIC PRINCIPLES AND OBJECTIVES OF PUBLIC PARTICIPATION

The character of 'good' consultation is discussed extensively in planning literature. Fookes, (1988, MI, ME) identified "principles" which focus on *ends* to provide a clearer specification of the *objectives* of public participation, and the PCE's Office (1996) provides "Basic principles of Public Participation". These are combined in Table 2.

TABLE 2 THE PRINCIPLES AND OBJECTIVES OF CONSULTATION

* Adherence to the McGechan principles of consultation;
* "Consultation is an essential component in giving effect to the principles of the Treaty [of Waitangi] rather than an accepted principle of the Treaty itself... Two strong themes have emerged in [Waitangi Tribunal] expressions of Treaty principles: partnership and active protection of resources of importance to Maori in accord with Maori cultural and spiritual values." (PCE, 1996, A15, ME);
* Informed participation - as "for public participation to be most effective, it must be informed. Interested parties... need access to key documents and data in enough time to prepare submissions to decision-makers."(*ibid*)
* Efficiency - "Public participation may not be seen as the quickest and most 'efficient' path to follow, but it must be remembered that '*efficiency' involves not only speed, but also direction*. It is false economy to rush off in one direction only to have to later reverse the decision, or discover too late that there are unexpected, significant and costly effects.Public participation can assist with choosing the best direction at the outset, by providing fuller information on likely implications of decision" options." (PCE, 1996, A16, MI);
* Timing - involve interested parties early, "so that planning can include their concerns, and cooperative management can be designed. Early involvement also allows for a process of regular *checking to ensure that the design of the proposal is appropriate* and that communication is clear." (*ibid*);
* Transparency and Accountability - "Decision-makers should make their reasoning clear and public, including the reasons why they have rejected the views of any interested party. Public participation enhances accountability by reminding decision-makers of the potential impacts of decisions, and testing decision processes and the outcomes for appropriateness." (*ibid*)
* Equitable Access to Appeal and Redress - "Inclusive methods of decision-making are preferred to address concerns in the design of decisions and preclude the need for appeals. However, for alternative conflict resolution methods to work there must be an agreement among the parties to cooperate, which some parties may find difficult. Even where some agreement has been reached there may not be a full consensus. In the final analysis a decision will be required by statutory authorities, and the option of appeal to the courts will need to be retained for aggrieved parties." (*ibid*)
* Implementation (Monitoring and Enforcement) - "Once a decision has been made, it is important to check to make sure it has the desired effect. Predictions of environmental effect may prove in practice to be inaccurate, and resource consent decisions that are not enforced may produce unwanted effects and reduce public faith in the system." (*ibid*)

Table 2 Continues.....

Table 2 continued....

* Sustainable conflict resolution is "Decision-making affecting the environment [that] usually involves resources held in common, and concerns many interested parties. The risk of conflict is high where these decisions relate to resources valued in different ways by different parties. If conflict is not resolved in the decision-making process it will remain, manifesting in such forms as perennial relitigation of issues, public distrust, anger and cynicism, civil disobedience, and political instability. Generally communities are more supportive of programmes and decisions that they have been involved in developing than those they feel have been imposed without consideration of their concerns. Community 'ownership' of environmental problems also helps ensure sustainable solutions"(PCE, 1996)
* A bi-cultural approach (Fookes, 1988);
* Legal standing - right of standing to *any* interested person; (*ibid*)
* Public interest - that "recognises the intrinsic tension between individual interests and collective interests, with the latter, as the collective welfare of the individuals and groups, establishing the 'public interest'... It should be possible for the diversity of perspectives held within the community - reflecting people's culture, values, expectations and aspirations - to be accepted as part of the record, without prejudice to any further assessment of their merits" (*ibid*, ME)
* "the intended outcome... should be clearly stated so that people can have realistic and unambiguous expectations" (*ibid*, ME);
* Statutory and non-statutory procedures - "provide for informal as well as formal (i.e. statutory), ways and means" (*ibid*);
* Independent reviews - "Where it would be helpful to peoples understanding of an issue for there to be a formal independent review or assessment prepared and publicly available, the procedure should enable this to be prepared and included in the decision making process. Where an independent review or assessment is to be undertaken a public scoping exercise should precede it to ascertain the relevant significant issues, with the resulting issues publicly available" (*ibid*).

These lists of 'principles' demonstrate that sustainable management applies ideals for the *cultural* or social environment as well as for the ecological or natural environment. The promoted view is of an holistic environment and of decision making that seeks to cater for a diversity of peoples views, values and interests, in order to achieve a more equitable and thus harmonious, happy and stable society. The PCE's Office (1996, A17, MI) explain, "Democratic societies have mechanisms for allowing citizens' opinions to be heard prior to some decisions being made, but tend to produce decisions that favour the majority or well resourced parties. *For decisions to be sustainable and not worsen inequities or resentments, methods need to be found for addressing the concerns of all interested parties."* The PCE (1996, A17) suggests that ADR processes offer a way towards achieving this. "While environmental issues often focus on differences, common ground can be found in many cases. Inclusive decision-making methods (eg negotiation, mediation, pre-hearing meetings, community planning initiatives, joint management, liaison committees) can be

more effective in this regard than winner-loser methods (eg formal hearings, litigation)."

Whether current EDR processes, *in practice*, are giving greater effect to these principles and objectives (summarised in Appendix II) is evaluated through consideration of participant perspectives, in Section 4. It is assumed that each of these concerns and ambitions have been addressed by current legislation and therefore, it is pertinent to consider these in relation to current practice. However, while they underpin the legislative and institutional framework provided, they may not be referred to explicitly. It is therefore necessary to consider more directly the character of the RMA. While the first step in any practical test must be to make reference to the resultant legislation itself, as this provides the 'starting block' from which practitioners set off and necessarily refer, this referencing of the RMA (provided in Chapter 4) is not a critique of it s expression of ideals. Rather, it is provided as it is taken to be the basis from which the community proceeds to enact ideals and continues to interpret their application in day to day situations.

3.6 MEASURING THE 'EFFECTIVENESS' OF *CONSULTATION* IN ACHIEVING ITS PRINCIPLES AND OBJECTIVES (EXPECTATIONS AND INTENTIONS).

Consideration of the principles informing public participation in EDR indicates that indeed a 'new era' was anticipated with the passage of the RMA. As indicated earlier, there is an important distinction between means and ends and while, at times, means ought not to be seen as ends in themselves, it is evident that in planning, consultation does have objectives which are separate and complimentary to sustainable management.

The PEFWP (1985, MI) called for "a review of the effectiveness of *all the elements of the proposed new system* of environmental administration after five years of operation." Chart (1988, MI) observed "In practice, the extent to which mediation can offer the benefits suggested is likely to depend on *public perceptions of the legitimacy and fairness* of the process." Similarly the theoretical assumptions surrounding EDR processes, as well as whether practice is *effective* in giving expression to the principles underpinning, and objectives of, public participation in environmental management, must be evaluated by reference to the perceptions of participants. A measure of success of any EDR process must be the level of satisfaction both in the experience of participating in that process and in the results or outcomes of the process (Chart, 1988; Carpenter and Kennedy, 1988). Therefore, any review seeking to evaluate the efficacy of public participation in EDR processes, must ask participants in these processes about their level of satisfaction in the process and in the terms of the resolution of the dispute.

While this research was being undertaken, the PCE's Office, released a discussion document, "*Public Participation in Environmental Decision Making*" (PCE, Feb, 1996). That document had objectives similar to those of this research as it sought comments from participants in planning processes, in order to clarify "the nature and extent of problems faced by the tangata whenua and the public in participating in environmental decision-making" (PCE, 1996), among other things. That investigation concluded with the publication of "*Public Participation Under the RMA,1991: The Management of Conflict*". The findings of that investigation complement this research and provide opportunity for comparison as both studies are concerned with the efficacy of current practice in giving expression to expectations of public participation in planning. However, the focus of the two studies differ.

This research focuses specifically on the expression of ideals and principles associated with 'EDR' within sustainable management, as observed in practice.[49] Also, it intends not only to identify participants' perspectives on problems and limitations within different consultation processes, but also to identify perspectives on the benefits and strengths associated with the different EDR processes, as well as ascertaining participants views on the outcomes of their participation. This research also seeks to provide some explanation for the benefits and problems described by participants in EDR processes, as well as for the strengths and limitations of the different processes employed to resolve a particular dispute. It therefore provides an analysis of the features of conflict and characteristics of EDR processes as observed in practice. Consequently this approach considers the evolutionary 'dispute context', the perspectives of all participants and, theory informing the characteristics of different EDR processes and forums.

[49] It considers processes not formally required by the RMA, although they may be encouraged by the intent of that Act, for instance the use of a working party consensual approach, an example of which is given by PCE within a section on pre-application consultation.

CHAPTER 4 THE RESOURCE MANAGEMENT ACT, 1991

4.1 INSTITUTIONAL CONTEXT OF THE RMA, 1991.

Resource and environmental law reform involved: national environmental administration (State Owned Enterprises Act 1986, Environment Act, 1986, Conservation Act 1987, and the Resource Management Act 1991[50]); the creation of a Ministry for the Environment in 1988 and a Department of Conservation in 1989, and; local government reorganisation (Local Government Amendment Acts 1988 and 1989). Consequently it has provided "a comprehensive and integrated legislative and organisational framework for resource management" (Javison, 1994). With this framework in place "there is a continued need for oversight to ensure that *practice follows policies and plans; and to identify any failures in the system that require correction*" (PEFWP, 1985, p19, MI).

The passage of the RMA, in 1991, marked the beginning of a 'new' phase in resource and environmental management, that of implementation to give expression to those features and characteristics considered important in the earlier reform phase. The RMA is the focus of public participation in resource and environmental planning, management, and dispute 'resolution'. Within that Act are found prescriptions on when it is appropriate to seek public comment on management issues, in a formal sense, as well as some directives for consultation processes. It also 'describes' concepts to which planning and management must subscribe, in seeking to achieve the principles and ideals articulated throughout the reform process. Giving effect to the philosophies and principles (outlined in Chapter 3) is to be achieved primarily by interpretation and implementation of the RMA.

4.2 'SUSTAINABLE MANAGEMENT' OF THE ENVIRONMENT IN THE RMA.

In the RMA Part II, s5(ss1) the *purpose* of resource management is stated and 'environment' is interpreted in Part I, s2. These and other sections, informing public participation in EDR are reproduced in Appendix III. The RMA essentially provides a starting point for a new phase of discourse about concepts informing EDR, as practitioners seek to implement that Act, especially with its wide definition of the term *environment* as being both a natural phenomenon and the *integration* of ecosystems and social, economic and cultural factors, and given the RMA's equally wide description of what constitutes an

[50] "The RMA, 1991 alone repealed 59 statutes and 19 regulations/orders, and amended a further 54 statutes and 2 regulations", (Javison, 1994). Refer to the RMA's Sixth, Seventh and Eight Schedules.

effect. The PCE (1996, p7, ME) states "The definition of 'environment' in s2 of the RMA is very broad... thus, environmental disputes in New Zealand can include disputes relating to a range of environments, including the built and urban environment, and both public and private disputes." In defining environment in an all-encompassing way, that recognises the mutuality of environmental relationships and by further stipulating that sustainable management is to be achieved by, avoiding, remedying, or mitigating adverse effects of activities on the environment, (as well as s5(a) and (b)), Buhrs & Bartlett (1993, p133) state that government has "established a succinct and compelling purpose" for planning. Since the enactment of the RMA, a dialectic has been undertaken on the meaning of its purpose, as stated in Section 5. It is not the purpose here to describe that dialectic or to define precisely the meaning of 'sustainable management', this issue will be considered in Chapter 14. However, it is necessary to set the context in which the case study can be considered.

In Chapter 2 it was shown that 'sustainable management' sets out ideals for the 'cultural' environment as well as for the built, natural and physical environment. This recognition of cultural values is elucidated within the s6 of the RMA, which states, "In achieving the purpose of this Act, all persons exercising functions and powers under it... *shall recognise and provide for*... (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga" (RMA, 1991, MI, ME). This prescription indicates that it is a matter of *national importance* that Maori cultural relationships with the environment find expression. Section 6(e) is clearly a prescription relating to the cultural environment. The RMA also tells resource and environment managers they shall take into account the principles of the Treaty of Waitangi (in s8). Duties to consult tangata whenua reflect Maori rights with regard to environment qualities and also those arising from the distinctive and unique relationship between Maori and government, as described by the Treaty of Waitangi.

The RMA also highlights certain other features of the cultural environment. For example, in s6 (ME, MI) managers "shall recognise and provide for... the preservation of 'outstanding... *landscapes*', which is not a criteria for ecological sustainability of the natural and physical environment, as aren't some of the features that appear in s7 to which managers "shall have particular regard to", for instance "amenity values", and "heritage values or sites". Duties to consult the general public reflect ubiquitous citizens rights in regard 'the/their' environment and also those arising form the relationship between citizens

and their government agencies.[51] Beyond highlighting some specific concerns, the RMA makes no attempt to list every conceivable resource, interest, value, or feature of either the physical, natural, built or cultural environment. However, it does direct planning and management authorities that they must give citizens frequent opportunities to articulate these and also describes for planners and managers the approach to use in carrying out their task, and in reconciling diverse perspectives.

'The environment' concept within the RMA integrates 'culture' as described by humanistic worldviews. It is an holistic consideration of 'environment', which necessitates a comprehensive-integrated approach must be taken to considerations of the effects of activities on 'the/peoples *environment*'. The philosophy promoted in the RMA also acknowledges *diverse relationships* between citizens and the/their environment, and describes that the community has an important role in describing its diverse interests and values, as well as its 'common interests', and thus also in helping to set the goals, objectives and priorities for local government management practice during the formulation of its local resource and environmental management framework. The community also has a role in formulating management responses to specific planning issues as these arise, not only for the pursuit of those things thought in the 'public interest', but for the pursuit of sectoral or 'group' interests, with no reference to the size of the constituency or the sector.[52] This rationale was shown to be rooted not only in the concept of 'sustainable management', but also in the concept of democracy.[53] If proposed activities have the capacity to have adverse effects on the cultural environment, as told by participants in democratic processes (both required and informal consultation exercises) efforts are to be taken to avoid, remedy or mitigate these, just as is required in regard to potential adverse effects on ecological values. If that can't be done alternative means of conducting the activity may have to be found, thereby promoting 'social sustainability'.[54]

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[51] The RMA makes it clear that, in regard to local government activities surrounding resource and environmental planning and decision making, citizens can have much greater influence than voting in triennial elections, and local government must provide the opportunities for that influence to occur.

[52] The meaning of 'effect' in the RMA, Part I describes that every conceivable consequence of activities must be considered "regardless of the scale, intensity, duration, or frequency of the effect..."

[53] A potential spin-off of allowing cultural diversity to persist bears a resemblance to an often cited argument for bio-diversity. Resource and environmental managers may find in the future that they want to adopt some 'less than mainstream' perspectives and practices, if these demonstrate an ability to conduct economically, socially and ecologically sustainable activities, given that there is always a potential for 'mainstream' philosophies to fail to provide 'sustainability' and a secure future.

[54] How the 'social sustainability' thread of the RMA's purpose has been applied in practice are found for example, in *Cook Islands Community Centre Soc. Inc against Hasting District Council*, 1994, NZRMA 375 and in *Te Runanga o Tama Rere against Northland Regional Council*, 1996, NZRMA 77. Both of

4.3 PRINCIPLES STATED WITHIN PART II OF THE RMA.

The RMA also lists a cogent set of principles to be applied to management of all resources (excluding minerals) in achieving its purpose. Since 1991 the RMA's stated purpose and principles have been further interpreted, as necessary for implementation, for example the term 'while' in the Part II, S5(1) gave rise to conflicting views and needed clarification.[55] The RMA stated that, in achieving its purpose of sustainable management, *all* persons exercising functions and powers under the Act, (resource managers, developers and 'protectors') shall recognise and provide for certain matters. Within Part II, s6(a)-(e) appear the concepts: "preservation" and "protection", "inappropriate: subdivision, use, and development", "maintenance", and, "enhancement". Furthermore, all persons shall have particular regard to certain matters. Within Part II, s7(a)-(h). appear, as well as those listed above, the concepts: "kaitiakitanga", "efficient use and development", and "intrinsic value" of ecosystems. Each of these concepts require interpretation by those working within the Act, arguably anyone undertaking an activity in New Zealand, but in terms of EDR particularly those charged with consulting, making 'resolutions' and determining outcomes. The Act does not provide interpretations of most of these terms. Those with personal or professional interests in any planning or judicial enforcement, or in an activity and its effects, are to determine how these concepts will be interpreted. The exceptions are kaitiakitanga and intrinsic value of ecosystems for which interpretations are provided in Part I, of the RMA.

In order to "recognise and provide for" and "have particular regard to" the matters required by Part II, planners, among others, are developing a toolkit of planning approaches focusing on the impacts or effects of proposals, as well as the potential wider or long-range' consequences of proposals, and are attempting to practice a more comprehensive, integrated and insightful approach to planning. Consultation is integral to impact assessment and 'anticipatory' (and 'visionary') planning. However, "Councils and the Environment Court are the final decision makers on applications for resource consents and appeals respectively. As 'persons exercising functions and powers' under the RMA, *they* are charged with achieving the purpose of the Act... Councils are not restricted to

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these cases found that severe adverse effects on the 'cultural' environment, according to the cultural perspectives of some people, were sufficient to deny resource consent for activities proposed by others who did not share that cultural perspective, and whose proposed activity was otherwise considered ecologically and economically sustainable.

[55] Refer, Upton, 1994; Grundy, 1994, and; Upton, 1995 as an example of interpretative debate over the purpose of the RMA. Also, "*Have the Strands of the Section 5 been Brought Together*", New Zealand Planning Institute Conference, 1997.

considering only the matters and evidence put before them by applicants and submittors; they may call for further information and commission reports in order to *ensure that they have all the necessary information before making a decision*" (PCE, 1996, p9, ME, MI). Therefore, there is an important role for professional planners, as advisors working within government agencies (and in private agencies) to fully inform and 'educate' elected and appointed decision makers as to the concepts informing, and objectives of environmental management activities. Given the characteristics of 'consultation' described in Chapter 3, the emphasis for those who 'govern', in terms of resource and environmental management, is implied to be that they are appointed by their community as representatives to "be in charge or command of conducting" the processes for EDR and to achieve sustainable management, and "to influence or determine the course of action" to take in particular instances (having considered the views of those they have consulted with), rather than an emphasis on to 'govern' as meaning to "rule or control with authority" (definitions of 'govern' are from "*The Oxford Dictionary of Current English*", 1987).

4.4 OPPORTUNITIES FOR PUBLIC PARTICIPATION WITHIN THE RMA.

The integration of conservation and development, involved three essential elements:

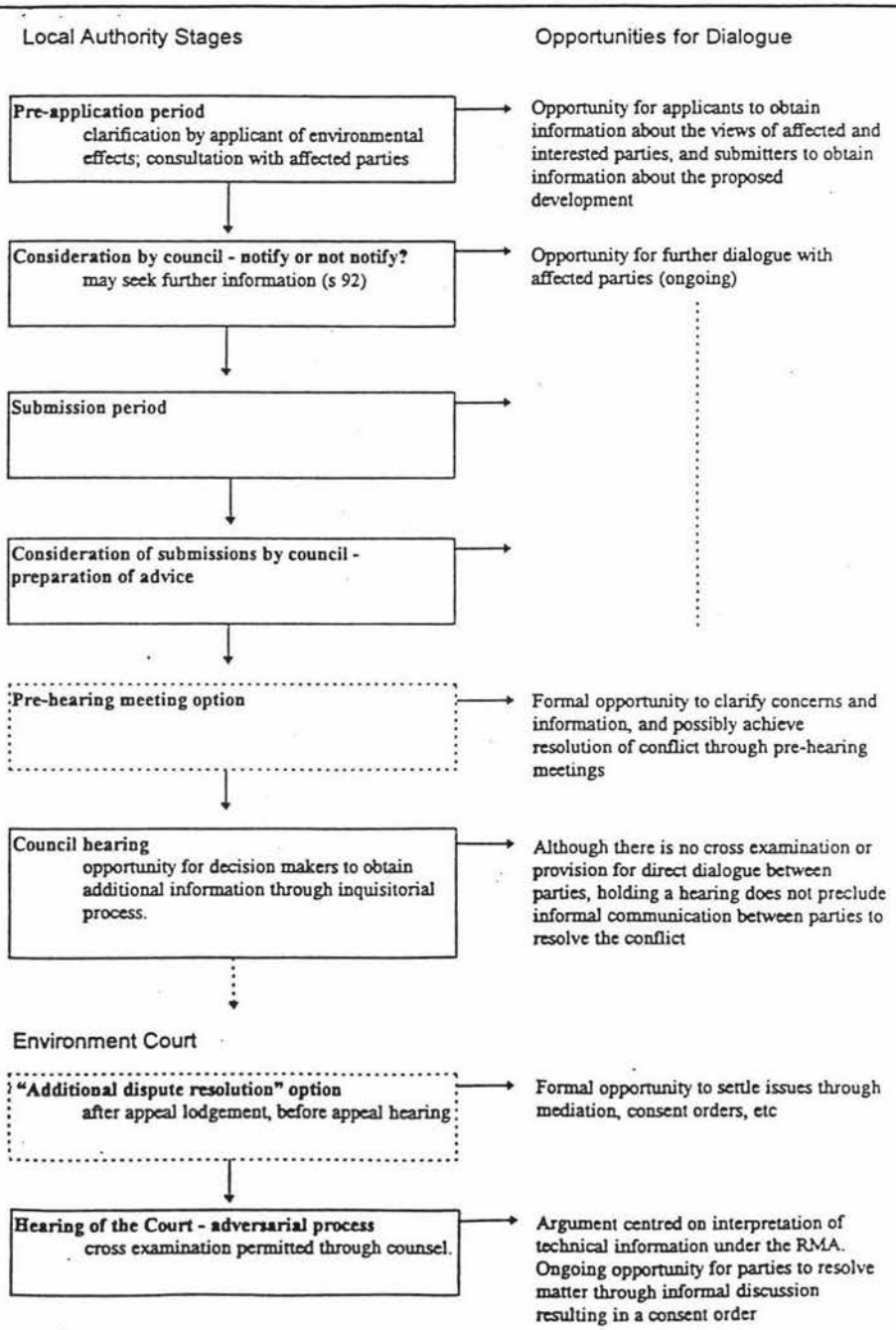
1) putting in place procedures that ensure the physical *and* social environment can be fully considered as part of the generation of all policies, plans and projects;
2) applying professional and technical resources to the task of defining environmental qualities, resources and limits, and ensuring the resulting information and advice is considered in an integrated framework by managers and policy makers;
3) making value judgement which involve balance - e.g. between present and future generations, between use or protection of resources, between use of renewable or of non-renewable resources etc. (adapted from EATG, 1986, p6).

While expertise and the plurality of advice that flows to decision-makers as a consequence of integration has been maintained, as the PEFWP, (1985, p19) noted such "specialisation cuts across the need for an holistic view of resource use which is essential for sustainable management". Therefore each of the three essential elements for integrated planning, necessitate consultation. The public are therefore provided opportunities to participate in planning and decision making processes. Furthermore, consultation with and between the 'community', specialists, regulatory authorities, developers, has been seen as not only appropriate, but most effectively employed, particularly for dispute resolution, when undertaken during the assessment of environmental effects (AEE henceforth) stage in formulating a proposal or in a pre-resource consent application phase of planning.

Tremaine (1994) provides a list of RMA sections prescribing or relevant to consultation

which are reproduced in Appendix III. This list comprehensively identifies all opportunities for inclusivity of public comment and concerns, either directly or by way of a 'taking into account' the information provided by public participants. As there is a tendency for most members of a community to become involved in planning processes only when a dispute emerges, as a proposal is seem to affect their interests, the opportunities for dialogue in the consent decision process are reproduced here in Figure 2.

FIGURE 2 OPPORTUNITIES FOR DIALOGUE IN THE RESOURCE CONSENT DECISION PROCESS



Source: Parliamentary Commissioner for the Environment, 1996, p3

4.5 ASSESSMENT OF EFFECTS AS A VEHICLE FOR PUBLIC PARTICIPATION.

The elements of AEE prescribed within the RMA outline both 'principles of', and the 'process for', providing impact assessment information. AEE are part of: 'policy formulation' and 'rule making' (through the definition of resource uses allowed as of right or as activities that require consent); 'applying rules' (when consents are needed AEE must be provided to assist with consent decisions); and, monitoring for compliance (to ensure an adequate examination of the anticipated consequences of the proposed action).

The RMA, also outlines the process in terms of outcomes (e.g. allow for public input at a formative stage) and in detail - Schedule IV of the RMA contains the basic impact information requirements (refer to Appendix IV). Wells and Fookes (1988, p6) provided a definition of "environmental impact assessment" which sees EIA as...

> *"a process by which the impacts of a proposal (whether as a policy, management plan, or intended development) are identified early on in the decision-making process, so that these considerations can be taken into account in the design and approval of the proposal."*

The framework provided within the RMA intended EIA's to be "comprehensively and consistently applied as part of the statutory process, so that it would have a clear role in the formulation of policies and definition of resource management criteria, as well as a place in project planning and monitoring for compliance" (Wells & Fookes, 1988, p5). Furthermore,

> *"EIA would have direct input into the proponent's selection of project design and into the consideration of the application by the consent authority."* (Wells & Fookes 1988, p6)

The model developed for decision making saw AEE drawn more closely into the whole planning process, for all stages and all situations. "No longer would it stand as an adjunct to other processes" (Dadelszen & Fookes, 1988, p13.) As such, an adequate assessment of consequences is intended to cover all the major issues arising from a proposal (for policy, rule setting or consent application).[56]

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[56] **Wells & Fookes argued that the need to resolve the argument over the definition of 'environment', and inclusion of social and economic impacts can be avoided, as *"whether the major issues arising from a proposal are classed as 'environmental', 'social', 'economic', 'cultural', or whatever, is immaterial to the over-riding consideration that the assessment of consequences address the major issues of concern to the interested parties."* It could also eliminate use of the term 'environmental assessment' and replace it with the broader term 'impact assessment' (in RMLR, WP No. 20, 1988, p13).**

"The key... is to bring conflicts out as early as possible and to use various techniques - including environmental assessment - to test the scope for resolving them outside the legal (adversary) process." (PEFWP, 1985, p19)

Sustainable management of the environment is to be tackled using several complementary, organisational and planning tools. One of the principle means is the explicit assessment of likely consequences of policies and related rules within regional and territorial plans. This means a simplified approval process is possible as a clearer "envelope of opportunity is defined for developers" (Dadelszen & Fookes, 1988, p9). Anyone choosing to pursue a proposal that contravenes the standards set in the plan would do so knowing that non-compliance carries with it major investigations and public consultation. While consents are very important, as they are the bases for resource uses which fall outside a pre-determined framework such as "permitted activities", applying for consents comes towards the end of the resource management and planning process (Allen, 1988, p29). Anticipating that the public *will* have concerns once a consent application is notified, and that the statutory process encourages pre-hearing meetings for inter-party dispute resolution, should encourage astute developers to establish a dialogue with the public earlier than formally required. Such an approach enables the taking account and incorporating community views and values, (canvassed as part of impact assessment during the process of developing proposals) by ultimately acting to avoid, remedy or mitigate any adverse effects or addressing the concerns of the community. Furthermore, implementing the "precautionary principle", whereby any uncertainty about adverse impacts results in a curtailing of the cause of the impact (Argyman & Evans, 1993) can be enhanced via AEE, if community concerns along with other specialist experts, are taken into account early in proposal development.

Avoiding, remedying or mitigating adverse environmental effects is a pervasive obligation within the RMA. All resource consent applications must include an AEE, the detail of which must correspond to the scale, scope and significance of the anticipated effects. Sadler & Ward (1995, p24-25, ME) observe "in New Zealand, the outlines of EIA practice under the RMA are now beginning to emerge... while there is little doubt that the RMA has provided better integrated and more effectively applied EIA, questions remain about the quality of the inputs to the process and, as a consequence, the quality of the product. The adequacy of data submitted by applicants to consent authorities has been the question to arise most often".[57]

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[57] Martin Ward, is the N.Z. Coordinator of the "International Study of the Effectiveness of Environmental Assessment", which distributed a questionnaire to survey the status of EIA, under four main headings - adequacy of the institutional framework: scientific and methodological basis, identifying

A number of articles have been written on the pros and cons of recent EIA practice in New Zealand. In these, practitioners and administrators have expressed concern that the AEE demands of the RMA may have "outreached the skills and experience of many who are required to use them" (Sadler & Ward, 1995, p24). Such observations again highlight the importance of reskilling and educating planners and managers to enable them to carry out their tasks, so that they are able to effectively give expression to the principles and objectives of environmental management.

AEE require resource managers to broaden the scope of considerations in planning and decision making. This is not to say resource managers are to become 'all knowing'. They are, however, expected to consult with experts, including the community of interested parties, (who are able to provide their own perspectives and values in relation to resources, their environment and how particular proposals will effect them), and to take full and balanced account of the value of resources, to all groups within the community, in a way that reflects the past, present and future significance of those resources. Meaningful consideration of the impact of preservation, use or conservation on economic development, social equity (justice), other resources, social and cultural values, and future generations (PEFWP, 1985, p17) can only occur if these aspects have been thoroughly explored during AEE research and analysis. Therefore, such an exercise must entail public consultation. There are benefits to both the developer and the community by including the public early during a 'scoping of effects' exercise or AEE analysis.

> *"Developers require a means of determining quickly and at an early stage of the proposed development whether it meets the criteria of the environmental management system (as well as commercial criteria), and if not, what changes are necessary. This needs to be achieved before substantial time, effort and money costs are incurred. Once this is determined a simple, speedy and inexpensive means of obtaining the necessary consents is also required... Other community groups require a means of ensuring that their real concerns about resource development or management are articulated, heard and influence decisions about resource allocation and use in such a way as to meet those concerns to the extent compatible with the need for balance in resource decisions. The community too requires early certainty in the sense that once decisions are made, balanced resource management can only function effectively in an atmosphere of community trust, acceptance and cooperation. Community groups often have more limited support resources than developers. They too would benefit from a simplified and streamlined process for obtaining consents."* (PEFWP, 1985, p18, ME)

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the strengths and limitations of "state of the art" practice: how well EIA is conducted at the main stages of the process and for key areas of concern: and the overall performance of EIA in meeting key objectives, influencing decision making and so on. The results and analysis of this study are not yet available.

Regional and territorial policy statements and plans have an important role to play in establishing a framework for the assessment of environmental effects of future proposals. "As these proposals come forward, their AEE and consent process in turn will challenge the policies and plans, possibly leading to changes" (Sadler & Ward, 1995).

4.6 ALTERNATIVE DISPUTE RESOLUTION WITHIN THE RMA, 1991.

The RMA's 'EDR' framework establishes specific outlines for both formal administrative processes and judicial processes to be used. However, it also provides for alternative approaches and forums to be used as an adjunct to those processes prescribed.[58] Both s99 Pre-hearing meetings and s268 Additional dispute resolution (refer to Appendix V) allow for an invitation to disputants to "meet", along with any appointed mediator/facilitator and those with statutory authority (as individuals these participants are not automatically disqualified from later proceedings), "for the purpose of clarifying, mediating or facilitating resolution on any matter or issue" (s99) or "for the purpose of encouraging settlement" (s268). In both cases an invitation is extended, participation is voluntary, the process used to 'resolve' the dispute is discretionary (as there are no guides as to how to go about settling disputes within pre-hearing meetings or ADR meetings), and, authority remains with the planning or judicial body to make final determinations in consideration of the outcomes of these meetings. Council is not obliged to hold a hearing, under s100 (refer to Appendix V), given circumstances indicating a lack of conflict, presumably as issues have been successfully resolved. Therefore, if Council is satisfied with outcomes as designed by others, they can endorse those and cancel the hearing. However, as the PCE (1996) observes "the opportunities for addressing conflict will not always result in the resolution of a dispute, because the Council, not the parties, has responsibility for deciding the outcome of a consent application and must take into account the matters set out in Part II and have regard to those set out in s104 of the Act." Thus Council must always play a role in overseeing and monitoring ADR processes and outcomes as they have final responsibility for environmental outcomes.

The RMA clearly intends to provide frequent opportunity for environmental disputes to be resolved outside of the formal and judicial processes. The options provided by the RMA "do not preclude other initiatives by councils or others to forestall confrontation over a proposal, such as wide consultation with public groups before or after an application is lodged" (PCE, 1996, p10). There is considerable scope for territorial authorities to provide for, or indeed

[58] EDR and ADR are discussed thoroughly in Chapter 6.

to require, ADR meetings prior to applicants lodging resource consent applications, even though this possibility is not specifically mentioned in the RMA.[59] Dadelszen & Fookes (1988, p11) also expressed a preference that decision makers employ mediation opportunities, to help improve conflict resolution and decision making, *early* in the (approval) process rather than just prior to a hearing. The requirement then, to conduct an AEE of activities, to be included with applications for approval of resource consents under 'plans', provides an opportunity for the interested parties to become involved in actively seeking solutions to disputes at the time a potential for conflict becomes evident, as well as checking compliance and enforcement needs. Pre-hearing meetings are increasingly used successfully for such a purpose.[60] However, these take place after consent applications in relation to a 'fully developed' proposal, have been lodged with regulatory authorities, or after what appear as 'fully developed' policies and rules are notified and public submissions called on 'draft' or 'proposed' plans. The PCE (1996, p10) states "the good sense of an applicant consulting with potentially affected parties before lodging an application for consent has become well-recognised and such consultation now forms part of the strategy of many large organisations which apply for consents on a regular basis." Such initiatives in pre-application consultation are able to address "disputes which arise due to misunderstandings or misinformation... which may account for 60-70% of environmental conflict" (PCE, 1996, p10, ME). While the RMA does not expressly *require* applicants to consult, it is "a wise step, as where an applicant fails to consult adequately, the council may delay dealing with the application until it is satisfied that it has the information it requires (s92(3)). Under s92(2)(a)(ii) a council may require an applicant to explain the consultation undertaken where the council is of the opinion that significant adverse effects on the environment may result from the activity for which the consent is sought" (PCE, 1996, p11). It is important, in consultation and AEE, particularly in terms of EDR, that the identification of value judgements is necessary if balance is to be sought.

> *"Conflicts between conservation and development occur deep within the bureaucracy so that elected political leaders rarely have to turn their minds to exercising value judgements on the issues, except on a one-off basis on occasions when political crises develop. The result is firstly, a loss of political accountability; second the dominance of narrow professional ideologies (of*

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[59] The PCE's (1996), study found "all councils [that they consulted] stated that, when the opportunity arises, they encourage applicants to consult before lodging an application, in order to identify issues and potential environmental effects, and to avoid delay once consent has been lodged. While the approaches are largely informal and ad hoc, staff generally use these opportunities to resolve issues before a hearing is held." Furthermore, it found Taranaki Regional Council has a performance objective for its officers to "resolve 90% of all submissions received through the pre-hearing process."

[60] Refer to Sands, F. 1993: *"Environmental Dispute Resolution Under the Resource Management Act: Should Planners Be Mediators?"*

engineers, foresters, doctors) over the decisions made in the bureaucracies they firmly control; third, an inconsistent trial of decisions when issues are forced up to the political level for resolution." (EATG, 1985, p10)[61]

While private resolution may be inappropriate for some disputes under the RMA, ADR forums may assist in identifying and narrowing the issues in dispute, may resolve some of the concerns of objectors and help to achieve agreement on certain undisputed facts (PCE, 1996) and may encourage the formulation of grass-root solutions which address the issues and concerns of each of the interested parties directly.

"The key to change still lies in the motto, 'think globally, act locally'... In the end it is what occurs at the 'grass-roots' level that makes or breaks policy." (Buhrs & Bartlett, 1993, p2)

4.7 CONCLUSIONS ON THE RMA'S CONTEXT FOR PUBLIC PARTICIPATION.

The RMA provides an open and inclusive planning system intended to facilitate anticipatory, integrated planning and decision-making, in order to achieve 'sustainable' resource and environmental outcomes. Consultation is also underpinned by esoteric philosophies, given constitutional priority, as planning and decision-making processes are to give effect to principles and objectives thought desirable ends in themselves, as they describe a 'sustainable' socio-political context. 'Consultation' is therefore underpinned by two streams of thinking. One describing practical needs, the other describing philosophical needs. While consultation 'rights' are specified in the statute, it is often discretionary when and how the public will be consulted, (in choosing what planning mechanisms to use and which of the consultative processes to apply), and discretionary elements as to the characteristics within each of the possible consultation processes. 'Discretion' enables flexibility in designing an appropriate mechanism to apply in a particular instance. In using their discretion planners and decision makers need to consider ideas described during the RMA's formulation, as citizen involvement in planning is more than adherence to procedures, as it is underpinned by a number of different ideals, associated with but distinct from motivational factors.

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[61] EATG (1985, p11) indicated "a Ministry for the Environment, backed by statutory procedures, would improve the situation because (among other things) such a Ministry would: facilitate the provision and coordination of standardized, simplified and effective procedures for integrating conservation and development; bring decisions requiring value judgements into the open and ensure they are properly made, i.e. by the elected government or in clear accordance with recognised criteria established by the elected government, after due public process." The EATG (1985, p10) also envisaged a need to "change attitudes throughout the public service by making it clear that environmental planning, and management activities are no longer to be seen as subordinate to the main thrust of traditionally dominant management activities."

CHAPTER 5 CHARACTERISING ENVIRONMENTAL DISPUTES

5.1 SOURCES OF RESOURCE AND ENVIRONMENTAL CONFLICT.

Changing social values and attitudes, increased concern about environmental problems and competition for resources and over environmental values are typically described as the sources of environmental conflict (e.g. Blackford, 1992(a); Chart, 1988; Kolb, 1983). Others consider these symptomatic of fundamental aspects of human nature (e.g. Sands, 1993). Theoretical perspectives found in "Needs Theory", "Conflict Theory', and "Interpretive Humanism Theory" examine the root sources of the existence of environmental disputes.

5.1.1 Human nature and social contexts which increase the level of interaction and competition as the root of conflict.

Needs theory asserts conflict between values arise from the differing experiences, world views and consequent needs and wants of individuals and groups (Carpenter and Kennedy, 1988; Sands, 1993). Conflict theory takes the view that "conflict is inherent and innate in human nature and relationships" (as proposed by Adler, 1990; Laue 1990; and Wehr, 1979 in Sands, 1993), suggesting that escalated natural competition leads to conflict, while 'interpretive humanism' theory highlights the participants as the creative force in any conflict and its resolution. These views emphasises a need to see action, meaning and purpose as intertwined in a conflict; that is, the context is crucial to the analysis of conflict.

The notions that conflict is derived from: the existence of different perceptions of needs and wants in relation to resources and the environment; escalated competition, (a natural consequence of human interaction when diverse demands on resources and the environment are inevitable), and; the socio-political-humanist context, which attempts to cater for diverse perspectives in providing opportunities for democratic, equitable participation, suggests one ought to anticipate a positive correlation between an increasing number of people (or groups) with diverse perspectives interacting within a finite resource and environmental domain, and the frequency and/or intensity of conflicts likely to arise. Consequently there is a corresponding need to provide mechanisms to effectively and satisfactorily resolve those conflicts, if a purpose in consulting the interested parties is not only to identify diverse views, interests and values but indeed, to take these into account by attempting to accommodate them. Local government authorities have a responsibility to resolve these conflicts by managing the social contexts (forums) in which they are articulated and the processes by which they are resolved, as is stipulated in the RMA.

5.1.2 Changing social values and attitudes to development and the environment .

Economic development has generally been taken to indicate "social progress, as it was the means by which the lives of all members of society would constantly improve" (Bacow and Wheeler, 1984, in Blackford, 1992(a)). Concerns about the environment assumed not only a need for continued development, but for *planned* development and a need to strike a *balance* between development and conservation in order to maintain or improve 'quality of life'. In the past, "overall, the 'balancing' factor for uncontrolled development was almost exclusively seen in terms of human needs... Very little attention was given to the preservation of flora or fauna for their own sake. The prevailing view of the environment was clearly 'anthropocentric' in the sense that nature was almost exclusively seen as a pool of resources for the satisfaction of human needs, to be exploited almost with impunity" (Buhrs, 1991, ME). The approach of environmental managers prior to the 1970's was also 'technocratic' in that the key elements in the approach to the environment were:

a "A belief in the possibility of continued economic growth for human purposes;
b A belief that difficulties arising from economic growth can be solved by scientific and technological means; related to this is an emphasis on rationality and expertise in the formulation of solutions and avoidance of debate about values and principles;
c Suspicion towards greater public participation;
d A belief that the environmental problems can be 'managed' within the context of existing political and societal order." (Buhrs, 1991, p73)

Blackford (1992, ME) suggests the basis of environmental conflict "can be traced to the emergence of an environmental paradigm in the 1960's... as impacts of development were questioned and the pressure on finite resources increased." An ever growing awareness of the negative consequences of economic development led gradually to a *change in people's attitudes* to development and also to the environment itself, while increasing pressure on finite resources from a range of potential users contributed to resource management problems and environmental conflict. While such concerns arose in the public arena, Maori had renewed demands for recognition of their rights to own and manage natural resources, in accordance with 'rangatiratanga', under the Treaty of Waitangi.

The environmental policy making equation gradually became very complex and conflict is a characteristic of this complexity. An "ecocentric approach" did take shape, as new groups emerged to express alternative views based on an "environmentalist" rather than "anthropocentric" or "technocentric" paradigms (Buhrs, 1991). Environmental concerns are raised (which may still be grounded in anthropocentric or ecocentric motives and, whose 'legitimacy' and relative levels of importance is individually perceived), are now able to be

variously addressed, (from humanistically to technically), so that environmental conflict and "debate has became a priority as well as a political reality" (ibid).

The emergence of new political movements in the 1960's and 70's demonstrated a fundamental change in social values and attitudes to the environment (Blackford, 1992(a)). This shift in public opinion is reflected in the growth of political and legal institutions that are concerned with environmental protection (Bacow and Wheeler, 1984), for example the passing of the "Environment Act, 1986" and the "Conservation Act, 1987". Resource management law reform is further evidence of a shift in social values and attitudes, not only to the management of the environment, but also in respect to the rights of the public in planning and decision making, as indicated by the principles informing, and objectives of, public participation in EDR processes.

5.2 CAUSES OF ENVIRONMENTAL DISPUTE

Causes of environmental dispute include: "irreversible ecological impacts" (Susskind and Weinstein, 1980, in PCE, 1996), "differing attitudes towards risk and uncertainty, indeterminate time-horizons, cultural values, disagreements over costs and benefits, the use of fixed resources, appropriate levels of protection from environmental and health harms and relevant weights given to competing policies and values" (Blackford, 1992 (a) p12). The PCE (1996) states that in its experience, disputes arise when all or some of the parties involved in a decision making situation, "do not trust each other; do not have access to the fullest possible information about the decision-making process [or], the implications and detail of proposals; perceive significance and/or conclusiveness of the information differently [or]; do not share the same views as to what should be done as a result of the information. These views may be based upon different beliefs and values." To further complicate disputes, "one or more of the parties may claim to represent the broader public interest [and]... the nature boundaries, participants and costs are often indeterminate" (Susskind and Weinstein, 1980, in PCE, 1996).

5.2.1 Diverse perceptions and attitudes to risk and uncertainty.

It is an axiom that people perceive and respond to risk and uncertainty to different degrees and in different ways. It is therefore evident that attempting to resolve these differences, when making decisions regarding an activity which has potential to pose some risk, or which involves uncertain outcomes, will lead to conflict. The basis for individual perceptions and attitudes to risk and uncertainty is found in variance in how people receive, interpret

or process and retain information from past experiences as well as that presented to inform a current issue (Kolb, 1983).

* **Information uncertainty and an inability to accurately predict risk and outcomes.**

> "*The complex nature of the natural environment and our lack of precise scientific information causes problems in identifying the causal factors of environmental degradation. Because it is difficult to establish links between cause and effect we are not able to predict accurately the outcomes of our actions. Scientists can 'explain' some phenomena but there is no common agreement amongst 'experts' as to the proper course of action*" (Blackford, 1992, p5).

Any measure of potential risk associated with an activity thus carries some degree of uncertainty and gives rise to variable degrees of alarm, anxiety or precaution among citizens. While a lack of consensus amongst experts adds to the climate of uncertainty and to distrust in predictions, 'guarantees' or measures of risk. 'Uncertainty' is threatening, in that an inability to predict with accuracy and assurity, gives rise to perceptions of greater potential risk; a 'fear of the unknown'. It is preferable to have accurate assessments of risk to reduce fear and perceptions of risk, than it is to be unsure.

* ***Conflict arises when available information does not address the concerns of the community***

Husser (1982, in Blackford, 1992, p6) suggests that conflict arises when communication is at cross purposes because of the different underlying motivation or outlook of those involved. He suggests "invariably the reasons people propose projects are technical, and economic, and the reason people oppose projects are social [cultural] and environmental. The proponents continue to generate technical information which does not answer the concerns of the opponents".

5.2.2 Different perceptions of, and about, 'environmental quality'.

* **"*Disagreement over the relevant weights granted to competing policies and values* [interests]" arising from "*different perceptions of needs*" and wants.** (Sullivan, 1984 in Blackford 1996)

That the unique qualities of the environment are 'valued' differently can cause competition between values, particularly if these are pitted against each other in a mutually exclusive way, which causes conflict. Unique qualities arise out of the complexity of the environment and importantly, also diverse human responses to it. Complexity is due to: the irreversibility of some impacts, indeterminate time horizons, where the costs might fall, problems in identifying the 'public interest' (Susskind & Weinstein, 1980), differing assessments of

probabilities, differing attitudes towards risk and the fact that impacts are not necessarily restricted to national boundaries (Bacow & Wheeler, 1984), or physical boundaries. For example, water may be clean by statutory quality classification standards but may not be clean by Maori spiritual standards (Blackford, 1992). As human perspectives are important in 'assessing' environmental values, it is problematic to develop an agreed, common ranking for such values. Only the righteous or dogmatic could insist there are right and wrong perspectives as to how to rank all environmental values. Allowing one set of value to prevail over others is interpreted as inequitable and thus causes conflict.

* ***"Disagreements over the new distribution of costs and benefits that arise from a project"*** (Sullivan 1984, in Blackford, 1992).

It is generally considered 'unfair' to impose heavier costs (adverse effects) on people who may not benefit or benefit no more than others who bare lighter costs, and to take from one (so depriving them) in order to give to another (so advantaging them). However, exceptions arise if the costs on the few are counterbalanced by benefits to the many, in which case 'in the public interest' or 'for the common good' may be brought to bear and takes precedence over the rights of the individual. Disputes arise from issues of competing interests/values and differential costs/benefits so perceived, even when the assertion of 'for the common good' may be argued. A reason for that is that value judgements are brought to bare in considerations of 'the' public interest, as a position heralded as 'the public interest' may compete with other 'public *interests*'.

A common response to differentials in, or a changed nature of costs and benefits is found in the NIMBY (Not In My Back Yard) syndrome. The NIMBY phenomena, as a cause of environmental conflict, is rarely mentioned in EDR literature although it is a problematic feature in the siting of many facilities desired by a community (for example, licensed premises, night-lit stadiums, half way houses). Opponents invariably present their interests in terms of the other causes of conflict presented here. Parochial versus 'common good' interests are an important cause of conflict.

5.2.3 Different perceptions as to appropriate measures of degree.

* ***"Disagreements over the appropriate level of protection from adverse environmental and health effects"*** **(ibid).**

Defining and setting limits to adverse effects may require selection of a fixed range, point, or some quantifiable value and therefore tends to rely on technical/scientific measurement and analysis of effects. Variable perceptions of the acceptability of such measures arise

and as some values (and thus also effects on these) are difficult to define and quantify. Humanist perspectives can form a contrast to technical/scientific reason. At the root of these causes of conflict (outlined above) is an inability to quantify all the values related to the environment, no universal agreement as to how to rank or weight values in relation to each other (and hence about how to fairly represent all interests and values),[62] or to accurately predict, and thus avoid, all adverse effects with a high degree of certainty. There is an implied need for improving information to better describe and explain: different values; variable but perhaps equally valid perceptions of these values, as well as; a process which can accommodate the comparative evaluation of quantifiable and unquantifiable values and facilitate better communication of, and taking into account diverse concerns.

5.3 A NEED TO IDENTIFY THE SOURCES AND CAUSES OF DISPUTE.

Identifying the sources of conflict is recognised as a crucial step in dispute resolution (Ury, 1993; Fisher, 1983; Carpenter and Kennedy, 1988). Each of the sources of dispute provide a way towards resolving issues and thus the dispute. For example, if there is disagreement over the relevant weights granted to competing policies and interests arising from different perceptions of needs and wants, attempting to persuade people to change their values perceptions may have limited success, as these may be fixed in their 'worldview'. Rather, in resolving such conflict it is more pertinent to attempt to cater for each of the values to a level which satisfies those who hold them to be important. Similarly, disenchantment over the new distribution of costs and benefits arising from a project may require attempts to avoid, remedy or mitigate adverse effects, as well as compensate or replace losses, or relocate either the activity or individuals baring unfair costs. Within the RMA, the key to dispute resolution is to focus on the effects of activities, as the PCE (1996) observe.

> "*The nature of disputes relating to the RMA reflects the effects-based approach used in that Act. 'Effects-based' means that activities themselves are not regulated but, rather, provision is made for policy makers to set limits on, or prohibit, adverse environmental effects. In principle, any activity could be allowed provided certain limits are not exceeded or particular effects do not result. The RMA differentiates between activities with minor effects and those with effects that are more than minor. This distinction affects whether or not an application for resource consent is publicly notified or not, and therefore whether or not interested parties have an opportunity to make submissions.*" (PCE 1996, p8)

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[62] Refer to Greenbaum *et al*, (1993), "*Social Conflict and Environmental Law, Ethics, Economics and Equity*" Chapter 3, "Facts, Values and Assessment"

5.4 RECOGNISING THE CHARACTERISTICS OF PUBLIC DISPUTES.

The sources and causes of environmental conflict give rise to the characteristics of *public* disputes, "those that effect members of the public beyond the primary negotiators" (Carpenter and Kennedy, 1988, p6), which "are different from other disputes in their complexity and uncertainty." Carpenter and Kennedy's 'characteristics of public disputes' are summarised in Table 3. PCE (1996) describe similar characteristics for 'environmental disputes' generally, (and quote Harashina, 1995 and Susskind and Weinstein, 1980).

TABLE 3 THE CHARACTERISTICS OF PUBLIC DISPUTES

A complicated network of interests. Many groups with diverse and competing interests are represented by individuals who are responsible to others not present at negotiations. New parties and issues emerge as the process unfolds.

Varying levels of expertise are evident and an imbalance of power is implied by a lack of scientific knowledge or by an 'information gap' between protagonists. Different forms of power are evident, e.g. financial resources, legal authority, knowledge or skills, size of 'constituencies', personal respect, 'political' power or influence on 'decision' makers.

A lack of continuing relationships. People behave differently when they have a prior relationship and understand the history of the other organisations, their problems and sensitivities, and when they know they have to temper their actions because they will have to see each other once this dispute is over.

Differing decision-making procedures and organisational structures of the various groups involved in public disputes give rise to: different levels of autonomy of representatives at negotiations. Splinter groups may arise if representatives have not achieved an internal consensus, and; unequal accountability depending on the type of organisation. The reliability of commitments made by representatives therefore varies.

Procedures are not standardised. There is considerable discretion for the conduct of EDR processes required by the RMA, and no formal guidelines for conducting ADR processes. Government rules and regulations have an influence, however "government is rarely seen as a disinterested third party by business or the public" (Carpenter and Kennedy, 1988, p9). While rules and regulations governing decisions exist to protect the public interest, unfortunately "they can also *constrain* discussions and restrict a search for new options and quite often, it is not the laws as much as their interpretation and administration that determine whether government is a help or hindrance" (*ibid*, MI).

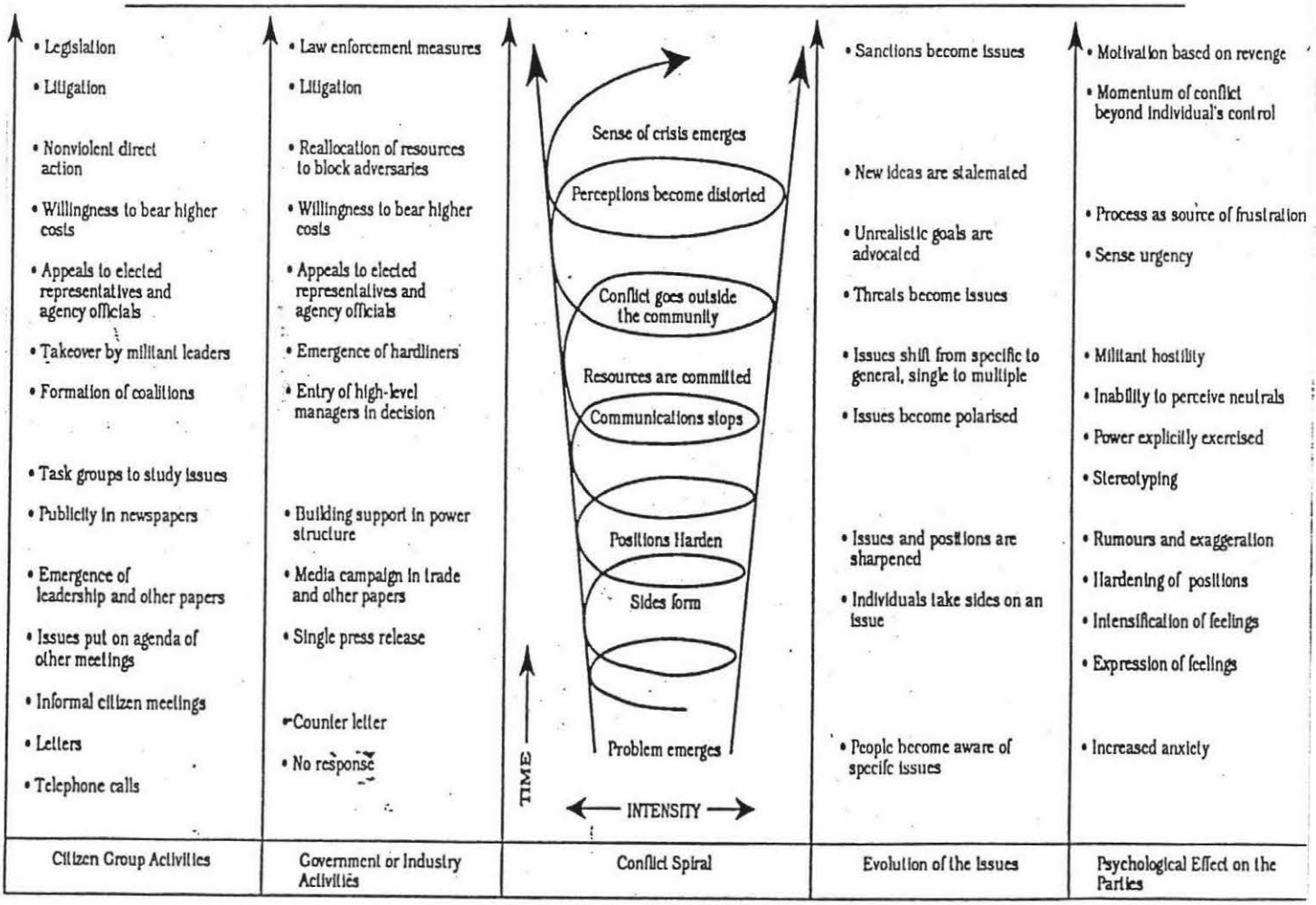
The importance of technical information in understanding the nature of the problem and in finding alternatives. There are often complex scientific/technical issues involved, and uncertainties surrounding the effects of proposals. Each party brings its own facts and figures to the table. However, all sides must agree on a common data base before solutions can be developed. Parties rarely have equal access to all information or equal ability to understand or use the figures. Necessary information may not be available to any of the parties as it has not been analyzed in ways that address specific concerns.

Strongly held values. There are divergent beliefs about what is 'right' and what is 'wrong', what is 'just' and 'unjust'. Many policy decisions are essentially choices among competing values. "The most heated controversies result when someone's fundamental beliefs about what is important are threatened" (*ibid*).

5.5 THE "SPIRAL OF UNMANAGED CONFLICT."

As a general consideration of conflict behaviour, Carpenter and Kennedy (1988) have provided an illustration of the emergence, development, and possible points for intervention and resolution of conflict. They propose a sequence typical of public disputes, which they call the "spiral of unmanaged conflict", presented in Figure 3 (below). Rummel (1976, in Sands, 1993) also sees conflict developing as a spiral. The spiral depicts that *changes* in activities, issues, and psychological perceptions occur as a conflict evolves. The spiral also shows that as a conflict evolves it *intensifies* and *escalates*; deteriorating relationships between the disputing parties become as great a source of conflict as the issues which originally divided them. Such illustrations describe the 'evolutionary' nature of *conflict behaviour* which is an important consideration, as, in a given dispute context, disputants behaviour (and their perceptions of their opponents behaviour) may overshadow the identification and analysis of root sources and causes of conflict, thereby creating a different set of problems in resolving the issues.

FIGURE 3 THE SPIRAL OF UNMANAGED CONFLICT



Source: Carpenter and Kennedy, 1988, p12

This depiction of a spiral, is supported by Carpenter and Kennedy citing a number of steps in the development of conflict, provided in Table 4. Both models can inform, and be compared with, observations of conflict in a specific context.

TABLE 4 STEPS IN THE DEVELOPMENT OF CONFLICT

1) *A Conflict Emerges*: A proposed environmental 'change' is announced. Citizens become worried, try to find out more and get unsatisfactory responses, as the project is at an early stage.

2) *Sides Form*. Reluctance to discuss absolutes is seen as deliberate stonewalling. Caution is interpreted as deceit. People move to take sides, form opinions and feel the need to group with others of similar views. They lobby officials and try to persuade the media that their position is the only correct one. The conflict expands as more people learn about it.

3) *Positions Harden.* People talk more with others of similar views and less with people with whom they disagree and become rigid in their definitions of the problem and their opponents. A 'common language' develops within the groups of protagonists.

4) *Communication Stops.* Information exchange between parties is haphazard and often conducted in public through the media. *Misunderstandings* and an increasingly *adversarial tone* develops. The *timing and methods* used by officials to involve the public may be *out of phase* with what is happening in the developing conflict. Public hearings can be too late and too adversarial to have a positive influence. People are frustrated by the situation, angry at each other, *intolerant* of other points of view, and loose interest in talking about perspectives other than their own. *Information is used as a weapon to promote a position* or win a point. Information that would lead to a solution no longer flows between the parties.

5) *Resources Are Committed*. Most citizens have been dismayed by the growing controversy. Outspoken leaders have been seen as trouble makers. From now on moderates will be given less attention and militants become more influential. As *positions become more narrow and more rigid*, they also become clearer. *Questions of fairness, shades of right and wrong are asked less*. People gain personal power in being part of a group and begin to commit resources.

6) *Conflict Goes Outside the Community.* The conflict expands into a wider arena as groups search for support and power, and appeal to political figures and established organisations. In forming coalitions with outsiders, local groups acquire additional resources or services and expert knowledge about ways to carry on a fight. Professional hired guns come between the parties and prevent personal negotiation. Relationships become hostile. Threats exchanged become issues.

7) *Perceptions Become Distorted*. *Parties lose objectivity in their perceptions of the character/motives of their adversaries*. Black and white appears. 'Our' side is honest, 'theirs' malevolent. Neutrals are seen as enemies as they are not on our side. People narrow focus and become less capable of generating strategies for solving the problem.

8) *Sense of Crisis Emerges*. The community is split. The initiating organisation realises its project is threatened. The media reports the rhetoric, highlights arguments between community leaders and ignores positive efforts towards resolution. Higher costs are born than considered reasonable earlier. The 'goal' becomes to 'win at any cost'. Clashes over peripheral questions and personal vendettas assume their own momentum.

9) *Outcomes Vary*. The next step may be litigation or the 'government' may make the final decision. Government agencies prefer to cooperate with the parties, but they may be *"forced to assume" the role of regulator as all chance for direct negotiations between the parties is gone. Flexibility in the choice of options and the manner in which regulations are administered is lost as an agency becomes the enforcer.*

Source: Adapted from Carpenter & Kennedy (1988, MI)

The concepts of the 'spiral' and 'steps' in the development of conflict emphasise points about how conflict evolves and also indicate opportunities and strategies for intervening to manage and/or resolve the conflict.[63]

> "*The lesson of the conflict spiral is not that its progress is inevitable but that it is predictable when nothing is done to manage the conflict...* ***Many conflicts start with a resolvable problem and grow beyond hope of resolution because they were not dealt with early****... Unmanaged conflicts tend to become more serious because the people involved are anxious, fearful and suspicious of the other side... They progressively raise the stakes without knowing what the consequences will be...* ***They don't take notice of how their perceptions are changing*** *and that they slowly increase the risks and costs to themselves beyond what would have been tolerable to begin with.*" (Carpenter and Kennedy, 1988, ME, bold added).

The value of considering where a dispute is in its evolution is that those with responsibilities for attempting to 'resolve' conflict can then choose an interim strategy, that will slow down or stop the conflicts expansion, while efforts are made to resolve issues. The purpose of conflict *management* activities, (establishing communication, defining issues and facilitating effective meetings), is to *interrupt* the spiral of conflict.

Lax and Sebenius (1986) suggest that a problem situation needs to "ripen" or polarise before attempting to handle it. However, Carpenter & Kennedy (1988) suggest "ripening is like a Doctor waiting for a cold to turn into pneumonia before treating it" and indicate the costs of allowing conflict to escalate include: damaged reputations, fractured personal relationships, community disruption, increasing money and personal time spent, delay and revenue losses. The framework established within the RMA, implies that it is preferable to seek to avoid public conflict, or interrupt any that does arise as early as possible. The strong inference is that consultation and 'alternative' processes ought to be anticipated, planned for and deployed promptly and efficiently, when the opportunity, (*likelihood* of conflict) or necessity arises, in order to increase 'effectiveness' in seeking to attain the ideals and principles underpinning EDR.

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[63] Violence is another possibility recognised by Moore 1986, and; Nagler 1982 (in Carpenter and Kennedy, 1988) as vindictiveness and a desire for revenge may be present. Violent actions have occurred in situations in which the effects of an action seemed irrevocable and catastrophic.

CHAPTER 6 ENVIRONMENTAL DISPUTE RESOLUTION.

6.1 ARTISTRY IN DISPUTE RESOLUTION

That there are numerous sources and causes giving rise to environmental disputes,[64] it follows that the 'nature' of disputes is also varied.[65] Given this diversity it also follows that resolution processes require different issues to be addressed and different information processing techniques and decision making approaches, in order to be resolved. This gives rise to the claim of "artistry in dispute resolution" (Kolb, 1983).

> *"Each dispute that comes to mediation has something of its own unique character, stemming from such factors as the personalities and backgrounds of the participants, the nature of the issues over which they disagree, and the political and economic backgrounds to the negotiations. This open-ended potential for diversity, mediators argue, means that, beyond the most rudimentary procedural principles, no book of rules can prepare a mediator"* (Kolb,1983, p3).

6.2 PATTERNS OF BEHAVIOUR RELATED TO CONFLICT.

In suggesting there is diversity in conflict situations, studies undertaken to describe and explain behaviours associated with conflict show that patterns do exist (for example, Carpenter & Kennedy, 1988; Kolb, 1993; Schelling, 1960; Kressel & Pruit *et al*, 1989). Schelling (1960, p3) explains that,

> *"such studies can be divided into those that examine the participants in a conflict in all their complexity - with regard to both 'rational' and 'irrational' behaviour, conscious and unconscious, and to motivations as well as to calculations (these treat conflict as a pathological state and seek its causes and treatment) - and those that focus on the more rational, conscious, artful kind of behaviour (these take conflict for granted and study the behaviour associated with it). Crudely speaking, the latter treat conflict as a kind of contest, in which the participants are trying to 'win'. A study of conscious, intelligent, sophisticated conflict behaviour - of successful behaviour - is like a search for rules of 'correct' behaviour in a contest-winning sense."*

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[64] Burton (1988, p11, ME) distinguishes between 'problems', 'disputes' and 'conflicts'. His definitions provide a useful backdrop to the following Chapter. "A problem can be resolved by management, by agreement on how something can or should be done... A dispute arises when two (or more) people (or groups) perceive that their interests, needs or goals are incompatible and seek to maximise fulfilment of their own interests, or needs, or achievement of their own goals (often at the expense of others)... Conflict arises when two (or more) people (or groups) perceive their values as being incompatible... Thus conflict is 'a relationship' in which each party perceives the other's goals, values, interests or behaviour as antithetical to its own."

[65] Never-the-less, some theorists (eg Carpenter & Kennedy, 1988) have provided generalised descriptions of the "character of *public* disputes", a type of which includes 'environmental' disputes.

Schelling (1960, ME, MI) calls this latter field of study the "strategy of conflict[66]... The term is intended to focus on the *interdependence* of the adversaries' decisions and on their *expectations about each other's behaviour*". The interest in interpreting conflict behaviour is that potential facilitators/participants/users of EDR processes may wish to understand how participants conduct themselves in conflict situations, as they may wish to control or influence the behaviour of themselves and others during a conflict and its resolution process. Therefore, it is pertinent to know how the variables that are subject to mediators/participants control can affect other participants' behaviour. It is not possible to describe the specific findings of these 'conflict behaviour' studies in detail here, and the intention is merely to provide an introduction to them. Certain observations are drawn from these studies, by way of explanation, during the analysis of participant perspectives and the observations of practice in Sections III and IV. Some conflict behaviours have been noted previously, in Chapter 5, with regard: the "characteristics of public disputes"; the "spiral of unmanaged conflict", and; the "steps in the development of conflict", provided by Carpenter and Kennedy (1988). These are generalized observations which provide a useful background to observation and understanding of a dispute context.

6.3 CATEGORISING ENVIRONMENTAL DISPUTES AND RESOLUTION FORUMS

A number of people have developed means for categorising disputes. Sheppard (1988) categorises environmental issues that come before the courts as: "general primary issues", "particular primary issues", and "secondary issues". This classification is similar to that of Susskind and Cruikshank (1987) which identifies "constitutional disputes" or "distributional disputes", while Carpenter and Kennedy (1988) define "public disputes" in order to differentiate these from other disputes. Such distinctions complement those made in Chapter 5, with regard to the sources and causes of environmental dispute, as they begin to show the way theorists design appropriate resolution processes to address different types of dispute. It may be that consideration of the type of the dispute is as crucial to determining an appropriate process, as the causes of conflict. It is therefore useful to distinguish further between certain characteristics of environmental disputes, while recognising such categorisations are limited (as none of the classification systems considered include all of the potential *variable* characteristics of disputes), prior to considering another branch of EDR theory which distinguishes between approaches to resolving disputes or the 'types of EDR processes'.

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[66] Schelling (1960) explains the term is taken from "Game Theory", which distinguishes between games of chance and games of *strategy*, in which the best course of action for each player depends on what the other players do.

6.3.1 General Primary (Constitutional Disputes), Particular Primary (Distributional Disputes) and Secondary Issues.

General primary issues "are not bound to a particular proposal, although controversy about them may be stimulated by particular proposals. Rather, general issues question whether a particular activity should be permitted at all, anyway" (Sheppard, 1988). These issues are based on "social equity or philosophical issues, or matters that call for what are essentially value judgements" (*ibid*). Such issues therefore are 'political' and so require consideration and resolution by governing representatives at the level significant to the scope/scale of the issue. Susskind and Cruikshank (1987, p18) refer to such issues as *constitutional disputes*, which in New Zealand means that the basic legal rule of our constitution, that Parliament is supreme (Palmer, 1979 in Blackford, 1992, p7), applies and decisions over policy matters, are made by government (National policies are made by Parliament).

Particular primary issues "arise from a specific proposal, with its own site and neighbourhood, structures, inputs, operating methods, and impacts" (Sheppard, 1988). Questions arise as to whether the impacts likely to be generated are acceptable. Susskind and Cruikshank (1987) refer to such disputes as *distributional disputes* as they focus on the allocation of funds, the setting of standards, or the siting of facilities. Decision making is usually at the local or regional level. Importantly Blackford (1992, p8, MI) makes the observation that the distinction between general and particular primary issues is not always clear, "If the *fundamental philosophical issues* have not been previously debated it will have to be resolved before the site specific issues can be addressed". Also in the early stages of a controversial policy issue there may be disagreement over the nature of the problem and whether a problem exists at all.

Secondary issues "are about effects which do not directly and obviously result from the proposed activity, but which occur as a consequence of it" (Sheppard, 1988). These disputes may be about indirect social impacts or additive effects or where a synergism may occur, where one impact may aggravate the effect of another.

6.4 FORUMS FOR UNDERTAKING AN EDR PROCESS

6.4.1 The Judicial approach to EDR

Any person or body can object to a proposed plan or resource consent application, and can obtain a review through *judicial* processes. Consultation processes are formally 'required' by statute so that the public can contribute to planning and decision making processes.

Planning 'hearings' are the responsibility of local government agencies, with further recourse to the Environment Court, by any party dissatisfied with the results of a local hearing. As 'statutory' requirements (including the management framework established within local government plans developed under the RMA) prescribe when these processes are used, they are often referred to as 'formal' processes. The judiciary (and local government acting in the capacity of judicially delegated 'authority') is "responsible for ensuring that the *will* of the legislature is *fairly and justly* interpreted" (Palmer, 1988, MI). The Court is "charged with interpreting legislation and provisions of planning schemes and management plans... the Court has repeatedly emphasised that its role is not policy making but interpretation" (Williams, 1985, in Blackford, 1992). Hearings undertaken by local government as statutorily *required* consultation processes, are key political forums to help formulate policies applicable at the local level of environmental management.

The major strengths of the 'judicial approach', reported in the literature, include that a "high level of integrity is maintained through the process of taking evidence under oath and the cross-examination of witnesses" (Blackford, 1992, p12) and "a judgement is made on the basis of facts presented, guided by legislation. This decision is transparent [and can therefore]... be judged by the criteria set out in the legislation. Each decision is published and the reasons given. These decisions are open to peer review. This does not happen with ministerial [political] decisions" (Ministry for the Environment, 1988 (a), ME).

These comments illustrate that the term 'judicial approach' usually applies to processes undertaken in the 'Court' forum. However, 'required' processes (under the RMA) undertaken by local government authorities, are also 'judicial' processes in the sense that they are prescribed by statute. However the 'resolutions', adjudicated by decision makers at the local level, are not considered 'binding', only those made by the Environmental Court are. There are other differences between the two forums, for example 'hearings' undertaken by a local government authority do not allow 'cross-examination' of witnesses, and evidence is usually not given 'under oath'. The RMA does not prescribe many of the characteristics of planning hearings conducted by territorial authorities, so discretion is possible in how to conduct these consultation forums and processes. Given that, however, many similarities do exist between local planning hearings and Court hearings, for example resolutions tend to be adjudicated and many of the characteristics associated with 'formality' and the 'judicial approach' are evident in local hearings, perhaps as these seek to emulate the Court forum in following similar protocols for 'hearing' and evaluating evidence and in applying legal principles to making determinations, as the 'judicial approach' is applied. "Adjudication involves (generally) a public hearing of a dispute before one or more judges with a view

to a final enforceable decision made in accordance with relevant case and statute law, being imposed on the parties" (Chart, 1988, p3).

While the importance and relevancy of the role of the judicial approach can not be overemphasised, a number of problems and limitations in using the approach have been identified, in relation to both Court and local authority hearings, as summarised in Table 5.

TABLE 5 PROBLEMS IN, AND LIMITATIONS OF FORMAL/JUDICIAL PROCESSES.

1) The judicial approach is consistently referred to as applying an adversarial model (Moore, 1986; Chart, 1988; Ury, 1988; Blackford, 1992, Sands, 1993, Scott, 1993) in which an independent third party considers the (legal) arguments and/or 'facts' presented by opponents, decides which side should prevail and so 'hands down' or 'imposes' a resolution.

2) Judicial findings tend to result in 'winners' and 'losers' (Moore, 1986; Ury, 1988; Blackford, 1992, Sands, 1993, Scott, 1993). Formal processes do not necessarily *convert discord into concord* or an accord.

3) The hearing is conducted according to formal rules (eg defining parties and procedures), these along with a focus on legal provisions means the "underlying interests of the parties might not be relevant in a judicial situation" and "third party interests may not be represented in the proceedings" (Blackford, 1992, p12).

4) The need to 'fit' disputes into a legal framework is said to distort the issues or to 'constrain' them. Concerns that really matter to those affected by the decision may not be *legally* relevant and may necessarily be excluded from consideration (*ibid*).

5) There is little opportunity for consideration of underlying interests of opponents and therefore for negotiation, compromise or the development of alternative solutions. If these do occur it is because the risks associated with losing are high for all sides and the pressure of presenting their case encourages a settlement out of court. In this latter case, the court makes no *resolution* as the case is simply taken off its agenda. Or in the case of territorial 'hearings', the authority still has to consider any 'out of court' settlement and endorse or reject it, so formally resolving on the issue (*ibid*).

6) "Even when parties have standing, the interposition of lawyers is said to reduce the parties' own sense of control, or even of participation" (*ibid*). Limited personal involvement leads to a lack of ownership in the result.

7) Seeking a determination that is 'black and whit(', (the case either is correct or stronger with reference to law or plans and prevails, or is incorrect or weaker and loses), is further complicated as "the various Acts give little specific direction on the criteria to be used by the Court [or decision maker] in its determinations" and as some guidelines and policies found in legislation and plans "are so general that they are not capable of interpretation in specific determinations" (Williams, in Blackford, 1992).

Table 5 continues....

Table 5 continued...

8) Furthermore, in practice the guidelines may conflict with one another. Consideration of legal arguments becomes a grey area if legislation and official policy documents are open to personal or subjective interpretations.

9) "The ultimate decision may not in fact meet the demands of the situation" (Chart, 1988, p5).

10) The 'contest' between adversaries reinforces the attachment of each 'side' to fixed solutions. "The polarization of parties can narrow the focus of debate and foster divisions in the wider community which must live with the outcome. The emotional and financial investment in each party's entrenched position blocks off the exploration of underlying needs and concerns which could lead to accommodation and joint gain" (*ibid*).

11) Disputants sometimes expect the courts to make "value judgements", which places the court in a difficult position (Palmer, 1988). Principal Planning Judge Sheppard (1988, p10) writes "where questions of social equity, philosophical issues, or matters which call for what are essentially value judgements predominate, they cannot be satisfactorily made by a rational process following objective evaluation and sifting of the evidence. They are really policy decision which ought to be made by a body which is politically responsible."

12) Costs, length of time till the case is heard, damage to ongoing relationships and uncertainty of the outcome can make judicial processes prohibitive to disputants, despite a real desire to have their views considered seriously.

6.4.2 Alternative Approaches to EDR

Alternative dispute resolution (ADR henceforth) grew out of a need to address limitations in using the judicial approach to resolve certain types of dispute, (Sands, 1993; Bevan, 1992; Brown & Mariott, 1993; Palmer, 1988; Chart, 1988; Kolb, 1983), and in 'required' planning and decision making processes. While the judicial approach has strengths and continues to be well suited to its purpose, there was recognition that something else was needed -[67] approaches which may: resolve disputes at a lower cost; be initiated more rapidly; address the underlying issues causing disputes; preserve on-going relationships; more directly involve those affected and hence their sense of participation; be more appropriate to resolving disputes surrounding questions of social equity, philosophical issues, or matters which call for what are essentially value judgements, (as the participants

[67] Palmer (1988) discusses the reform of the judicial system that was being undertaken concurrent to other reform processes discussed in Chapter 2 and noted that the key motivating factor was "rationalisation" rather than an overhaul of the fundamental philosophies and approach used within the judicial system.

decide which issues are important for consideration); generate options for mutual gain, that is, which are fairer or more 'just', and; be 'owned' by the participants rather than imposed upon them.[68]

ADR then, is a collective term that refers to a number of approaches ex-situ of the 'required' decision making processes, in which the power to adjudicate a resolution is exercised. Such approaches are often referred to as 'informal' processes. ADR approaches fall into four categories: arbitration[69], negotiation (bargaining), facilitation and mediation. There are types distinguished within each category: binding or non-binding and compulsory[70] or voluntary participation; negotiation conducted by the parties directly or through their representatives; self-mediation or third party mediation, and; in a multi-party conflict, is the result decided by majority or consensus decision? These approaches can be used consecutively, (for example, negotiation may be aided by a third party, who, if no conclusion is reached, could be asked to arbitrate a resolution), or concurrently, (for example, mediation and facilitation frequently occur together although they can also be distinct and both are likely to contain elements of compromise or making tradeoffs).

Chart (1988, p1, MI) makes an important observation in noting that "mediation is not an *alternative* to judicial determination of disputes, rather its potential is in providing *an adjunct to the judicial process*; access to judicial determination must still be available." The RMA, contains enabling provisions for ADR, to be used in a voluntary and discretionary manner, as a supplement or extension to the resource consent hearing and appeal process (s99

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[68] Of interest to this research is whether 'alternative' approaches, while providing informal forums to address the limitations of the judicial approach, are able to also maintain the strengths of that approach. For example, can ADR processes maintain the high level of integrity achieved through the judicial requirements of taking of evidence 'under oath' and the 'cross-examination' of witnesses and is there any test of whether the will of the legislature is fairly and justly interpreted within ADR processes? Is the reasoning behind a decision as transparent as that achieved in adjudication?

[69] Voluntary arbitration shares similarities with the judicial approach and is therefore frequently excluded, by theorists, as an ADR process, (for example Sands, 1993). The main reason for exclusion is that arbitration is, in effect, a mini-trial or test-trial designed to achieve a similar outcome as a court, but without the time delay and high costs. Chart (1993, p3) states "Arbitration involves a *private* judicial hearing of a dispute by an independent arbitrator (or panel), usually agreed to by the parties, with a view to a final *enforceable* decision being *imposed* on the parties." However, arbitration can also be non-binding. Therefore, as an alternative to court, when disputants require a quicker and cheaper indication of how certain types of (legal) conflict are likely to be received and responded to by the court, arbitration continues to be a valuable choice for disputants attempting to avoid formal (judicial) hearings to resolving certain types of dispute. Theorists of ADR writing from a lawyer perspective, (for example Bevan, 1992) are those most likely to promote the strengths of arbitration (binding and non-binding). There is an implied desire to avoid 'hearings' unless the case is well suited to the judicial approach or is likely to be precedent setting.

[70] Compulsory ADR processes have been attempted in the USA and have been shown to fail to achieve the intended purposes or ADR, (Chart, 1988).

pre-hearing meetings, s267 conferences, s268 additional dispute resolution and s356 matters to be determined by arbitration - Refer to Appendix V). "The intention is to provide opportunities for reducing or potentially avoiding unnecessary litigation" (Blackford, 1992, p13) and also by extension ADR may help avoid 'unnecessary' local hearings.

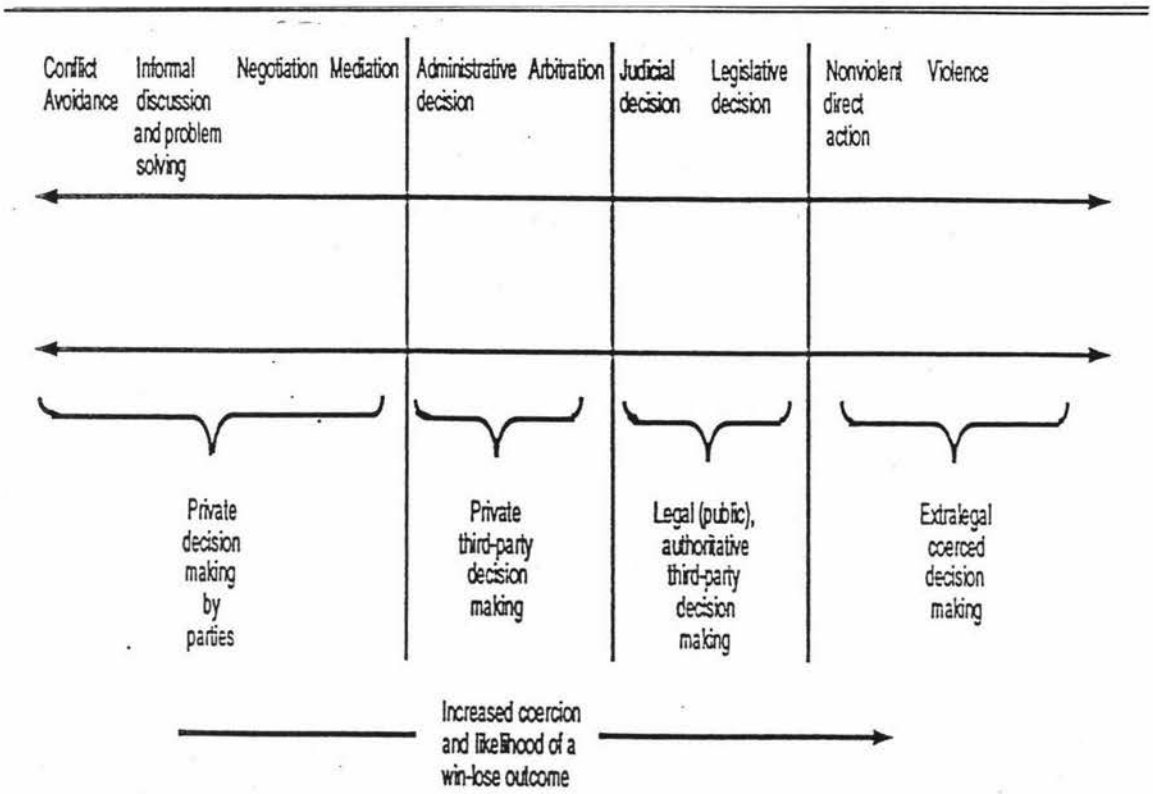
6.5 DEFINING ENVIRONMENTAL DISPUTE '*RESOLUTION*'

The literature contains a variety of definitions of EDR as some theorists have chosen to deviate from familiar interpretations provided in general English language usage and have defined 'resolution' depending on particular purposes. Consequently, consideration of theory reveals diverse descriptions of the scope and character of *'EDR'* and the emergence of competing jargons, so that EDR is in danger of 'semantics' discord, before even the 'old' alternative, let alone any "new, different and deviant from the norm" (Sands, 1993) *alternative* processes have been mastered by practitioners.

6.5.1 Variation in describing the scope of EDR.

By way of example, compare Moore's (1986) "Continuum of Conflict Management and Resolution Approaches" in Figure 4 and Bingham's definition of EDR, which follows.

FIGURE 4 CONFLICT MANAGEMENT AND RESOLUTION APPROACHES



Source: Moore, C. 1986: *The Mediation Process: Practical Strategies for Resolving Conflict.*

Bingham (1986, ME) asserts "EDR approaches... allow the parties to meet face to face to reach a mutually acceptable resolution of the issues in a dispute or potentially controversial situation... Litigation, administrative procedures, and arbitration are not included in the definition because the objective in these processes is not a consensus among the parties." Clearly these two authors see the scope of EDR approaches differently, in that Moore's EDR continuum ranges from resolving conflict by acquiescing to the will of others (avoidance) to taking up arms to subjugate the opponent (violence), while Bingham sees EDR as a self-represented, face to face process aimed at achieving consensus decisions. Bingham's definition places EDR only in the far left quarter of Moore's EDR continuum and also, as it carries a number of riders, he closes from consideration numerous consultative mechanisms and public participation approaches, which seek to resolve environmental disputes, ideally even before they spiral into a major debate in the public arena.

6.5.2 Variation in Defining the Nature of ***Resolution***

Moore's continuum accommodates the range in forms of *resolution* as implied in the English language.[71] An official decision maker, arbitrator or adjudicator who considers issues and hands down a decision, is attempting to 'resolve' the dispute and does make a resolution, by way of a determination. There is no requirement, within the term *resolution*, that all the disputants have to be pleased with the decision. In fact, it is anticipated in judicial EDR approaches that there will be a 'winner' and a 'loser'. However, within EDR literature the meaning of resolution is frequently considered, more narrowly, to imply that conflict has dissipated, been ameliorated, or that the disputing parties come to agree with each other (resolved the substantive conflict) or at least have agreed on a settlement (resolved a way to manage their substantive conflict). This requires a process to specifically '*pass discord into concord*' or to convert discord into another form which is agreed upon (an accord). Therefore, some theorists prefer to apply the term 'conflict resolution' as meaning: "terminating conflict by methods that are analytical and get to the root of the problem. Conflict resolution, as opposed to mere management or 'settlement', points to an outcome that, in the view of the parties involved, is a *permanent solution to the problem*" (Burton, 1988, p2, MI). This is a useful definition as it indicates that an ultimate aim of *dispute resolution* processes is that decisions can enable the parties to willingly end the

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[71] The "*Oxford Dictionary of Current English*" (1987) provides the following definitions. To *resolve* an issue is "to make up one's mind, decide firmly, settle". It is also to "solve or explain or settle (doubt, argument etc)" and, it is to "convert (discord) or be converted into concord". Resolve is a "firm mental decision or intention; determination", while resolution means "resolute (determined, bold, not vacillating or shrinking) temper or character; thing resolved on, intention; formal expression of opinion by legislative body or public meeting; solving *of* doubt or problem or question; separation of components; conversion *into* other form; causing discord to pass into concord."

dispute. That is a reason for the underpinning guiding principle, asserted by some theorists, that 'resolution' requires that some form of *consensus* must be reached.

That all ADR processes attempt to achieve consensus between the disputing parties (Bingham, 1986) rather than having a resolution imposed by decision makers or 'by the will of the majority', is not universally asserted. Hollands (personal comment, 1995) for example, indicates he makes no such assumption when he suggests "that in multi-party conflict resolution processes, a clarification must be made within the group as to whether it intends to use majority rule procedures or consensual approaches to decision making." Hollands is specific in his use of the term "consensual approaches" within ADR. Therefore it must be clarified that while most ADR approaches may aim at achieving consensus there are exceptions in practice, and certainly not all 'EDR' processes either aim for consensus and, because of constraints on some processes, (for example, as described in Table 5) they are unable to work for consensus.

Allen, S. (personal comment, 1995) observes that, in practice some conflicts may be/become "unresolveable" using ADR approaches. This does not mean a proposal will be abandoned simply because conflict remains, (in effect, the 'do nothing' option can be seen as a resolution against the proposal), rather the dispute will move into formal EDR processes. Chart (1988, p7) also notes that "mediation is not a panacea" as "some interests and values are NOT, or are not widely perceived to be negotiable. Some disputes are only amenable to win-lose procedures." In that event, the terms of the resolution may not be thought of as having resolved the dispute to the minds of *all* the participants.

ADR then, presents a better opportunity (than formal processes) for disputants to resolve issues by achieving an agreement between all the interested parties, in the *terms* of any resolutions, 'solutions', or settlements to their differences. The 'problem' may be resolved by: agreeing to disagree and providing ways to cater for the different views/values/interest; by passing substantive discord into substantive concord, or; by achieving a mutual settlement, agreement or accord between the parties, which implies they are all satisfied with the solution or resolutions made. ADR processes therefore attempt to generate '*win/win*' or '*all-gain*' resolutions.[72] Presumably if all the parties to a dispute have reached

[72] As implied previously, the term EDR is frequently used as synonymous with ADR, thereby excluding any resolution by a formal decision-maker/adjudicator and by a third party (arbitrator). The points of departure, in defining 'EDR', 'ADR' and 'consensual approaches', depend on whether the user is making an assumption of consensus as a requirement underpinning all 'EDR' processes (synonymous), as a/the condition distinguishing formal/judicial approaches from 'ADR' approaches within the field of EDR, or as a condition only in certain 'consensual' ADR approaches.

an agreement to resolve the problem and their conflict, it would seem likely that any further (required) formal processes would endorse that accord, unless there were compelling reasons not to. The RMA does provide that this can occur, in s100, in relation to resource consent applications.

In theory, an ADR approach is only initiated if all the parties *voluntarily agree* to use such an approach. As Johnston (1989, in Blackford, 1992, p2, ME) indicates, "private dispute resolution, as contrasted to the public court system, is the consensual attempt[73] by disputing parties to resolve their conflict outside of the public system... Rules of procedure, the binding or nonbinding nature of the result, the role, if any, of the law, and other designed features are subject to the mutual agreement or acceptance of the parties to the dispute". Chart (1988, p3, MI) observes of her definitions, "they suffice to indicate that both negotiation and mediation *require the cooperation* of the disputants, whereas in arbitration and adjudication a decision is made by a third party and is enforceable irrespective of the disputants."

Voluntary participation in ADR approaches "implies recognition of the legitimacy of the demands of other parties and of the parties themselves" (Bacow and Wheeler, 1984, p53). Having achieved agreement to proceed to use an ADR approach, however, consensus may not play a role in any resultant process and outcomes of the ADR approach. Such observations probably contributed to the PCE's Office (1996) choosing to apply the term 'conflict *management*' to all processes in which any outcome requires the further endorsement of judicial authorities.[74] In that light, the term 'conflict *resolution*' is seen to apply only to determinations which achieve 'closure' in a formal sense, as those with delegated and/or judicial authority have made their decisions on the issue, and have thus described the legal parameters pertinent to the dispute. The PCE's distinction also confirms the observation that 'dissatisfaction' or *conflict* may continue following formal 'resolution' processes, but as the formal process has made its determination, the issue is closed *to that venue*. Dissatisfied parities may then consider if there are any means to initiate other formal or judicial processes in which they can try to get a more favourable resolution, to their minds. These conceptual problems in defining 'resolution' do not detract from the

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[73] Johnston (1989)is using the term *consensual* to mean 'consenting' or the voluntary agreement of parties to participate in an ADR process.

[74] The PCE's term is based on Roberts (1993) who argues that environmental mediation is not dispute 'resolution', but dispute management since, regardless of agreement reached by the parties, the resolution of a dispute, as to the effects of an activity on the natural environment, *is not a private issue* in many cases and therefore not open to resolution by private agreement. "This conflict management approach is in keeping with the philosophy of the RMA". (PCE, 1996, p9).

principles underpinning conflict management and resolution elucidated within the RMA. In fact, such discourse, enlightens how the underpinning principles and objectives of consultation and EDR might be aimed to be given effect in practice.

6.6 'RESOLUTION' WITHIN ADR APPROACHES

Sands (1993) provides two perspectives within 'conflict theory', on how conflict could be resolved within ADR processes. These are '*consensual*' and '*coercion*' methods[75]. Coercion theory sees conflict as a result of stratified class relations.[76] The implication is that while inequalities remain in society these will be reflected in ADR processes. Therefore, any settlement or agreement may be achieved by coercion, rather than by consensus. Consensual theory, on the other hand, sees the basis of society existing around normative consensus (Parsons, 1991; Smelser, 1962; Weir, 1979, in Sands, 1993; Mulgan, 1989). This view sees opportunities for conflict to be interrupted before crisis emerges. Van der Merwe *et al* (1990, in Sands, 1993) suggests that, because of this, the processes and methods of ADR reflect the 'consensual theory of conflict', as the use of an ADR approach is seen as a means to settle conflicts over basic needs. Consensual theory sees no need for 'revolutionary social change' in society at large, to allow that some processes might redress unequal power bases. It was noted previously that ADR *processes* seek to 'redress' power imbalances between disputing parties by providing more equitable forums and approaches for dispute resolution than judicial processes are able to provide. The challenge presented by 'coercion theory' as to whether a 'balance of power' can ever be achieved within any EDR process, is thus countered by concepts which support notions that a 'balance of influence' may be possible within a process overtly seeking to achieve such a state between the disputing parties. This contrast highlights the relevance of discretion and flexibility in undertaking an ADR approach, as such issues need to be addressed within the particular dispute context.

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[75] Theory provides divergent views on the nature of power relationships in society, which are reflected in divergent perspectives on how 'resolution' may be achieved within EDR processes. For example, Etzioni-Halevy (1993) presents a 'democratic-elite theory of power', while Mulgan (1989) presents the 'pluralist theory of state'. These different perspectives of 'society' provide contrasting arguments which support 'coercion' and 'consensual' methods, respectively.

[76] "Social stratification originates from capitalism,... which is based on the individual and the accumulation of wealth... The competitive base of capitalism results in win-lose outcomes, as some people gain more than others" (Weir, 1979 in Sands, 1993, ME). Hence, coercionists believe that the development of conflict is inevitable in a capitalist society that is based on competition. "Coercion theory implies that a conflict of interests within society is not permanent and that a consensual model of a classless society emerges from *revolutionary social conflict*", (*ibid*, MI), therefore it is only when the fundamental political basis has changed to a consensual system that root sources of conflict can be interrupted.

6.7 VARIATION IN DESCRIPTIONS OF TYPES OF ADR PROCESSES

In addition to variance in describing the scope of EDR approaches and what these do in terms of *resolution*, there is also variation in defining types of ADR approaches. There are different descriptions for 'negotiation' (for example between Chart, 1988 and Symes & Stewart, 1989 given below) and for 'mediation'. Some see negotiation and bargaining as the same process (Ury, 1993; Moore, 1986), while others separate them into two approaches, based on the level of formality (Blackford, 1992). Similarly some see a distinction between mediation and facilitation while others see them as synonymous, (for example Chart, 1988, p4). Furthermore, some seek to limit any 'go-between' role of a facilitator/mediator and the voluntary use of a third party acting on one's behalf (an appointed negotiator), by insisting that parties meet face to face, within negotiation (Chart, 1988) or within mediation (Bingham, 1986).

Never-the-less, consideration of ADR approaches reveals many possibilities for avoiding an escalation in conflict and attempting to keep disputants from embarking on an adversarial process, which may be limited in its ability to satisfactorily and fairly resolve all the issues surrounding a particular dispute. The RMA is unambiguous in its encouragement of ADR for EDR and in its omission of directives on precisely when and how to employ ADR approaches. The RMA leaves disputing parties considerable choice as to whether or not they will voluntarily agree to design an approach suitable for their circumstances, that is, to use their own discretion in designing the approach to engage in for EDR, and iterates that ADR approaches that fail to resolve the dispute can still end up in formal hearings and achieve EDR using a judicial approach.

6.7.1 Negotiation

Chart (1988, p3, MI) writes that "negotiation is a process in which two or more parties, *without* the assistance of any intermediary(ies) discuss/assess whether some settlement or resolution of issues of concern to them is possible." Parties meet in person and alone to work out an agreement.[77] In contrast, Jacobs and Rubino (1987, in Blackford, 1992) state that "negotiation is a process similar to mediation but it occurs without the use of a neutral third party mediator. Bargaining is the least formal of the three processes and is a component of the negotiation and mediation processes." This definition also indicates that parties meet alone, but doesn't state whether they have to negotiate in person. Also, it

[77] Chart (1988, p3) notes that definitions she provided "are only intended as broad guidelines to these terms: they omit many significant aspects of the processes."

implies bargaining can occur within mediation, but negotiation can not, and while bargaining is deemed least formal, it is unclear which of negotiation or mediation is considered most formal. The distinction between negotiation and mediation as being due to the absence or presence of an intermediary(ies) is repeatedly made by theorists, however, when discussing 'mediated settlements' reference is also often made to the 'negotiated agreement'. Also, the terms bargaining and negotiation are used interchangeably to describe a process in which parties, *who have a preferred position* compete to gain advantage or to get more of what they want. In negotiation and bargaining parties compromise, trade, exchange or deal, with a view to reaching an agreed settlement.

Mediators reveal that negotiation can be a component in mediated agreements (Kolb, 1983; Hollands, personal comment, 1995). It is a function of ADR processes that they contain discussion over the terms of agreement, which may, at times, be a form of bargaining as they attempt to form an agreement. It is evident that a more accurate distinction, in ADR, between negotiation and mediation, is not the absence or presence of third parties but the level of involvement of those in 'striking the deal' or in describing the terms of the agreement. Negotiators are party to agreements and decisions, mediators are not, they are aids to the process. In judicial processes by contrast, the independent 'third party' (intermediary) makes the decision, not the disputing parties, who in effect are aids to the decision makers task.

In ADR, whether the negotiators are the disputing parties themselves or their representatives may not be a crucial condition. What is crucial is that any representative fully comprehends and has their constituents/clients interests at heart, the full support of these as their representative, and therefore the ability and mandate to make agreements on their behalf, otherwise the result will be disowned by the negotiators constituency/client and will not be ratified by them. The dispute will not have been resolved. Frequently 'interest groups' are represented by one individual, and interest groups might not represent themselves at all, but the interests of 'others', (e.g. the 'RSPCA' represents the welfare 'interests' of all animals and the Royal Forest and Bird Protection Society represents the 'interests' of indigenous flora and fauna).

Symes & Stewart (1990) describe several important features of negotiation when they write,

> "*Transferable property rights (TPR) is one technique which can be used in the broader technique of negotiation.* ***Negotiation recognises a tradeoff between values and is in this respect a "more market" technique.*** *In the same way that TPR's involve an exchange of property rights* ***negotiation involves trading***

private and publicly held property rights (or environmental values) to achieve an outcome from which there is a net benefit. The rules governing property rights over a resource may be altered to allow a developer more opportunities to use the resource in exchange for forfeiting other opportunities. Once again ***negotiation can be seen as a compensation tool or as a way of recognising tradeoffs***" (Symes & Stewart 1990, p29, MI).

This description allows negotiation to be seen as a process involving compromise, trade and exchange, bargaining, ranking, weighting and determining priorities between competing interests/values and views. The result is a negotiated agreement. The use of the term 'tradeoff' often appears in descriptions of negotiation and is important as a consideration within EDR. 'Tradingoff' implies giving something up in order to get/keep something else, replacing this with that, giving more here to get more there, receiving less of this to also get less of that, to the mutual benefit and agreement between trading partners. Such trading between competing environmental values/views/interests/needs/ wants in multi-party environmental conflicts is complicated and begs questions of 'rationality' and 'sustainability' as some interests and values are not seen as 'tradeable'.[78] ADR theorists address this issue by pointing to the fact that decisions taken within these processes do not have to be either/or determinations. In addition, the interests and values themselves are not seen as tradeable; it is the relative levels and means of their attainment, expression or 'satisfaction' that may be negotiated in seeking to appropriately and effectively cater for diverse interests/values, as relevant to the issues causing conflict.

6.7.2 Mediation and Facilitation.

Chart (1988, p3) states "mediation is a process in which an impartial intermediary(ies) facilitate(s) negotiation between disputing parties." Jacobs and Rubino (1987, in Blackford, 1992, p2) also sees mediation as an aid to negotiation, stating "environmental mediation is a process whereby existing or potentially conflicting parties concerned with an environmental and/or land resource get together with a neutral third party to discuss their positions with regard to the resource. It involves bargaining, sharing information, and ultimately compromising on original positions so as to achieve a solution 'acceptable' to all parties involved". Mediation is frequently distinguished from negotiation processes primarily by the presence of a neutral third party facilitator, 'intermediary' (Chart, 1988) or 'mediator' (Blackford, 1992), without reference to their role or level of involvement.

It is important to distinguish a mediated ADR approach, not by the fact that it involves a

[78] It is of interest to this research to observe if and how such 'trading-off' negotiations occur in EDR approaches, and whether the results are acclaimed as 'win-win', 'all-gain' solutions or something else.

neutral third party intervention, but by its conceptual approach to an aided "agreement-making process" (Simkin & Fidandis, 1986) or *reconciliation*. As noted earlier, Bacow and Wheeler (1984, p53) suggested that voluntary participation in ADR "implies recognition of the legitimacy of the demands of other parties and of the parties themselves." Employing a mediated dispute resolution process suggests a higher order of recognition of 'others' rights than the use of negotiation would suggest. The reason for this assertion is that mediation attempts to reduce the level of competition and thus conflict, by improving communications about issues and between disputants during a shared undertaking to develop responses to the problem and/or conflict. Therefore mediation is likely to have been preceded by a recognition of both dysfunctional communications *and* the legitimacy of the rights/interests/values of other parties. It is a constructive, problem solving, reconciliation enterprise, rather than a competitive (if not always 'confrontational') assertion of wills/wants, that typify other EDR approaches and some ADR approaches. Rather than 'beating' or 'buying off' the opposition, mediation brings parties together in order to accommodate all involved, hence a requirement that mediators be neutral.[79]

These characteristics of mediation suggest a 'state of impasse' may have become evident in the dispute, as the use of a third party implies the protagonists may not consider that they could successfully achieve resolution without some facilitatory intervention. In turn, impasse implies that a balance of power exists, as neither side (for whatever reason) is capable of acting alone or despite the other parties. However, it is apparent that the use of a mediator may also occur in the event of an extreme imbalance of power, when issues of dominance and subjugation are anticipated to cause continuing conflict. These contrasts serve to indicate that 'assumptions' about power dynamics and relationships can not be made on the basis that a mediator is brought into an EDR process. It is necessary to determine these characteristics within a particular context and to take steps as required to manage the process accordingly. This affirms the claim to 'artistry' in dispute resolution.

There is an oft cited anecdote about two siblings, who, having unsuccessfully attempted to resolve their dispute over who would have the use of an orange, appealed to a mediator (Sands, 1993(a); Ury, 1993; Susskind & Cruikshank, 1987). The mediator enquired as to why each wanted the orange and thence resolved the dispute, having found one wanted the juice to drink and the other the pith for marmalade. This is a resolution described as a 'win/win' as both parties interests were fully satisfied. As an analogy for environmental

[79] **Theory on the role of mediator suggests that 'neutrality' does not imply 'impotence'. A mediator may have to intercede, or even act as an advocate, in order to help to redress any imbalances in power within an ADR process.**

disputes in the public arena it shows that disputes can be due to 'communication breakdown' between disputants. The protagonists had focused on their competing positions, while a solution lay in clarifying the diverse nature of underlying interests, that could each be catered for. This dispute then, has the appearance of interests being mutually exclusive as positions were, but in fact is not based on a direct *conflict between interests*. Mediation identified, in this anecdote, that there was no substantive conflict between interests to resolve and found an alternative solution, to those promoted by the protagonists.[80]

Ury (1993, p159) provides an anecdote which suggests that when conflict seems intractable, what is needed is a standing back from the conflict and looking at the issues from fresh angles in order to seek solutions. The story goes... A man left seventeen camels to his sons, half to the eldest, a third to the middle son and a ninth to the youngest. The sons were unable to negotiate a solution because seventeen could not be divided by two or three or nine. They approached a wise old women for advice. After pondering the problem, she said, 'see what happens if you take my camel'. So the eldest son took his half (9 camels), the middle son took his third (6) and the youngest took his ninth (2). Nine and six and two made seventeen. They had one camel left over which they gave back to the wise old lady. This story describes a conflict between interests that could be resolved by 'expanding the pie', through lateral thinking. Mediation identified that competing interests could be catered for with a "reframing" (Ury, 1993) of the problem.

These two anecdotes, while not describing all the characteristics of mediation, serve to demonstrate a (perhaps the) key feature of mediation. It is characterised by adaptable *problem solving*, and not by 'decision taking'. The approach aims to generate solutions which accommodate or cater for all interests and values to the satisfaction of those involved, in order to limit any need to see these as tradeable.[81] Therefore, within such a process, negotiation is frequently bounded by a desire not to trade in values themselves, but to trade on the levels to which they will be accommodated, enhanced, impacted upon, compensated, replaced, relocated and so on. As such mediation seeks to reframe the problem, in a way which takes into account all the interests and values arising from the

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[80] If the dispute had been taken to court, would a judge be asked to decide to give the orange to one or the other or would they too, like the mediator be in a position to design a response according to underlying needs?

[81] An economist might insist the term 'value' implies the feature is tradeable, otherwise it has no 'value'. The use of the term value here is taken to mean any worth or quality associated with the feature, and as such is not simply a measure of its marketable quality.

protagonists' perspectives. Mediated problem solving processes dismantle (or de-construct) conflicting *positions* to address the root interests and then seeks to rebuild proposals which (defuse or) resolve issues. Decision taking (resolution) is based on whether 'the problem' is solved *and* the dispute settled. The focus is not on trying to decide between conflicting positions but on generating the best possible 'reconciliation' or accommodation of interests. As van der Merwe *et al* (1990, in Sands, 1993, ME) writes, "the use of [ADR] enables the needs of all parties to be taken into account when possible solutions to resource conflicts are being drafted... Concentrating on these needs... will assist the mediator in finding creative alternatives. This is so, since conflict over social needs are not of zero-sum nature: for example the increase of security of one party will not automatically lead to an equal decrease in the security of other parties. Thus it is the universal nature of needs and the independence of their fulfilment on limited resources, that makes conflict resolution with win-win outcomes possible." Mediation aims to develop an optimal solution/response, in that it seeks to optimize how well all the interests will be catered for, relative to each other. This involves negotiating acceptable terms and conditions, but in light of a need to accommodate every participants' perspective to a degree acceptable to the parties.

6.7.3 Mediation as a reflection of a philosophical approach.

Simkin and Fidandis (1986, ME) describe underlying principles informing mediation approaches when they write, "A free society is founded upon the conviction that its internal conflicts can be resolved by an acceptable accommodation of diverse interests. Ours is an agreement making society... By reasoning together, under our man-made systems of persuasion, people are willing and able to accommodate as between the duties which alone hold a society together and the freedom to enhance self-serving objectives by whatever means." Mediation is an approach which searches for agreeable solutions and resolution to the primary problem, which is 'how to accommodate diverse and possibly competing interests and views'. Negotiation within mediated disputes recognises that "tradeoffs may be made in a mutually advantageous way and that private tradeable property rights are not a prerequisite for this to occur" (Stewart & Symes p29).

Chart (1988) suggests that "theory and practice indicate that mediation has the potential to address many of the concerns voiced in relation to the adversarial process."

> *"Whatever is seen by all/any of the parties as of concern in a dispute is relevant to its mediation. Parties negotiate "in the shadow of the law", but they decide what issues should be on the agenda. The legal framework is still significant, but need not control the flow of information or decision making; a mediator can assist the disputants to explore the range of needs and*

concerns each has, to move (in a face-saving way) beyond narrow, polarised positions, and to generate options for mutual gain; the flexibility of mediation permits, and arguably requires, the involvement of all those who see themselves as affected by the outcome of decision-making; mediation encourages direct participation of parties in a dispute, it seeks to educate disputants about each other's perceptions and concerns. This can significantly improve relationships between disputants even when no agreement is reached, mediation encourages disputants to take responsibility for developing their own agreement. Parties' commitment to the outcome is likely to be stronger where they feel it is "theirs" than if a decision is imposed upon them. This, in turn, is likely to smooth the path of implementation; even when mediation does not finally resolve the dispute, it may substantially narrow down the issues requiring judicial attention." (Chart, 1988, p6)

It is the shared undertaking of problem framing and solving that gives mediation its distinctive purpose and therefore a different emphasis to negotiations within a mediated process. This approach in turn gives rise to a distinctive facilitating and mediating role. "Mediation encourages a search for shared and compatible interests behind opposed positions and not just conflicting ones" (Blackford, 1992, p14). Mediation theory reveals, that in achieving that purpose, there is variance in descriptions of the 'role', the 'level of involvement' and 'modus operandi' of 'mediators'.

6.7.4 The Working Party[82] Consensual Approach

Although unlikely given the above descriptions of mediation, it is feasible that a mediated EDR process may not actually bring the parties together, as a mediator may act as a 'go between'. The term 'working party consensual approach' specifies the bringing together of all the interested parties, in one place, to work together with the help of a mediator, rather than *through* a mediator. Similarly the term consensual is used here to specify that this process intends to reach an agreement between *all* the parties, leaving no doubt that the will of the majority is not the decision making authority. The 'working party consensual approach' is an extension of mediation in that it is specific about the approach to mediation. Hollands (1994, ME) describes that the "consensual process is a form of public participation in which all interested parties commit themselves to working together, in seeking to reach agreement to an outcome they can all accept... Hence, the consensual

[82] A working party, in this instance, is the informal bringing together of an 'ad hoc group' of people who have been selected to represent different interested parties to a resource and/or environmental issue. Interested parties may or may not have been active in any dispute relating to the issue prior to the setting up the group and participation is voluntary. Each person represents a constituency which may be few or many, a formal agency or community group. Their interest may be altruistic or parochial. A working party can be quite 'formal' in character through the use of a more structured process or an institutional service. A working party is convened (or sponsored) by one of the interest groups, typically the one with a particular proposal (causing conflict) needing resolution or problem needing a response. As such, a mediator is appointed to facilitate and manage the process.

process involves all affected parties in cooperating, as joint problem solvers, to: define and understand the issues, engage in joint fact finding, maintain communications, develop options and criteria, reconcile their differences, negotiate a mutually acceptable outcome."

6.8 DISCRETION, FLEXIBILITY, *AND* ARTISTRY IN ADR PROCESSES

It remains discretionary which ADR process to use and whether combinations can be used concurrently or consecutively. "There are no rules for ADR" (Carpenter & Kennedy, 1988) for example, that parties *must* meet face to face, or that people *must* represent themselves, that negotiation *must not* occur within mediation, or that facilitators *can not* meet individuals separately, that meetings be formal or informal, open or closed, etc. The key to ADR's success may be in its flexibility as it is not restrained by formal rules of procedure and legislated mandates on how to go about the task. Disputing parties can choose to adapt their resolution process according to the needs of the situation. It is evident that any ADR forum must consider and be guided by the formal policy and regulatory framework provided by resource and environment management authorities and by legislation, as participants can only act in accordance with those. This suggests that there is a role for an informed representative of such authorities to participate in ADR forums.

6.9 CHARACTERISTICS OF ADR: FOCUSING ON THE MEDIATED APPROACH.

Reference to the limitations of the judicial approach provide the antithesis to the theoretical characteristics of ADR processes. These can be read as theoretical assumptions of ADR approaches that can be tested by examination of ADR in practice.

6.9.1 Consensual resolution of disputes

Many ADR processes aim to achieve consensus[83], taken to mean a voluntary agreement between all participants. Converting discord into concord or an accord and reaching agreement (or deference to an agreement) must be achieved for a decision/resolution/solution to be claimed. Dissenters must be acknowledged, as this is not consensus. Majority rule has no authority in consensual decision making.

6.9.2 Power relationships are put aside and power is balanced.

Within ADR individual participants have equal standing within the process. Power

[83] Consensus is an "*agreement* of opinion". But in consensus government, it is the "majority view" (Oxford Dictionary of Current English, 1987, MI).

relationships outside the process are 'redressed' and individuals are provided an equitable opportunity to influence the decisions. Theoretically, as 'coercion' is not a noted tactic in mediation literature, it is a defunct tactic, presumably as mediators intercede on behalf of the less powerful or the coerced. Power is balanced within the process as protagonists 'share' the dispute resolution undertaking. The implication is, therefore, that interests and values are also able to achieve an equitable consideration or balance within the forum.

6.9.3 Voluntary participation

An agreement found in EDR literature, is that participation in ADR ought to be voluntary. ADR within the RMA, can be suggested by a planning authority or the Environment Court, by its own motion, or at the request of a party, but ADR processes are not statutorily required and interested parties can choose whether or not to participate. The reasoning behind this is discussed by Chart (1988, p11) who reviewed American experience with compulsory mediation and found that such an approach,

> *"is neither efficient nor desirable in terms of legitimacy and fairness of objectives...* [as while] *one can compel people to attend mediation sessions. Compelling them to mediate - in the sense of engaging in negotiation with each other and working on an agreement - is another matter. Even if the mediator succeeds in 'pushing' disputants into an agreement, 'settlements' which are not genuinely entered into often do not work over the medium or long-term. At best, failed imposed 'agreements' can mean wasted resources for parties and mediators; at worst they can generate renewed or increased hostilities...* [Furthermore], *power asymmetries can be heightened where mediation is inappropriately foisted on the parties. Distrust of the process is likely to harden with successive mediation efforts*" (Chart, 1988, p12).

"It is in the interests of all parties to the dispute that all those who believe they might be affected by a decision should participate; a party that has been excluded has the potential to undermine the implementation of any agreement reached" (Blackford, 1992, p13). An implication of the voluntary nature of ADR processes is that agreements or resolutions made are at risk of being overturned, altered or reinterpreted if those with statutory responsibility and authority for decision making choose to impose their own will, or have other considerations which compel them to reject the result of an ADR process. Those with authority must also then, voluntarily ratify an accord achieved in ADR forums.

6.9.4 An ability to incorporate all the issues of interest to the parties and achieve a better balance between different types of considerations as diverse 'values' are considered.

Flexible and adaptable ADR processes are able to accommodate the consideration of: underlying interests of the parties; third party interests; unquantifiable values; a variety of

individual perspectives based on (and of) the humanist environment (emotional, cultural, spiritual interests e.g. aesthetics and historical values); a variety of perspectives of the natural environment; as well as the rational, scientific, technical considerations and; the legal and policy framework, relevant to resolution of the dispute. Such inclusivity in the information base is purported to be able to achieve less 'distortion' of issues, a better balance in the making of any 'value judgements' during considerations, and result in imaginative (or laterally conceived) solutions designed to cater for all the interests. ADR processes are thought to achieve this by acknowledging the interests/values/views of all the parties, as these are seen as objectives which the process seeks to accommodate and/or cater for. This characteristic of ADR processes is described as a 'reframing' of the problem (Ury, 1993; Fisher, 1983). "One of the major assumptions inherent in alternative EDR approaches is that the parties involved are the best judges of what the real issues are and whether an adequate resolution is being achieved...[84] In theory these approaches allow broader attention to the real issues because the parties themselves set the agenda and they also decide the terms of the agreement" (Bingham 1986, ME). Resolution does not have to be 'black and white'; shades of grey are anticipated, as accommodation of others needs and values, is a characteristic of reconciliation.

6.9.5 The development of "win/win" or "all gain" resolutions.

As the participants are encouraged to see issues in terms of problem solving rather than a fight over stated positions, the problems are transformed from zero-sum and mutually exclusive positions to a broader, complimentary set of conditions within the equation. As the objectives seek to cater for all interests, any agreement implies that all parties have achieved their objectives to a satisfactory level, hence the terms 'win/win' and 'all-gain' solutions are applied to the outcomes of ADR processes. A further implication is that as all the parties are satisfied or 'can live with' the agreement reached, the dispute has been effectively 'resolved', as parties willingly 'close' the conflict.

6.9.6 A greater degree of participation and 'ownership' of the result.

Direct involvement in analysing, evaluating, designing, and influence in formulating a 'resoultion' or response provides participants and their constituents with a greater level of democratic involvement, and a sense of ownership in the outcomes. ADR processes produce outcomes that are more agreeable to the community at large and therefore are able to be more smoothly implemented, and which are more stable or long lasting.

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[84] **"It should be noted, however, that all affected parties must be involved for this assumption to be valid" (Blackford, 1992, p2).**

6.9.9 An 'accessible' process

Consideration of costs, length of time to initiate the process, and direct input enables better access by interest groups and therefore enables these to have more influence. There is less uncertainty surrounding participation as there is an expectation that something positive will result. Formal processes are still available. On-going relationships suffer less damage.

6.10 CRITICISMS AND LIMITATIONS OF ADR APPROACHES

The theoretical constructs informing ADR, presented by its proponents, provide a view that the ideals underpinning the use of ADR are noble. An inference, drawn in Chapter 2, is that such ideals ought to extend into all forums for EDR and both the substance and design of the RMA reflects that ethos. Consultation, generally, is promoted as an opportunity to address the problems and limitations encountered in 'formal' approaches during the resolution of environmental disputes, therefore expectations surrounding ADR approaches are high. However, there are arguments which distort the view that mediation is a "miracle cure of society's ills" (Burton & Dukes, 1990, in Sands, 1993, p23).

6.10.1 A potential for inappropriate compromise of values.

There has been a "low demand for environmental mediation" and an "apprehensiveness" or "scepticism" of environmental groups to the use of ADR (*ibid*). Burton & Duke (1990) suggest that such groups are deeply concerned "that mediation of certain issues means inappropriate compromising of fundamental values". Chart (1988) also suggested "Some interests and values are *not*, or are not widely perceived to be negotiable." Issues of 'trading-off' values, as a feature of negotiation, can be carried into mediation.[85]

6.10.2 The whittling affect of ADR due to its promotion as non-precedent setting in 'unique' and independent circumstances.

When there is a public conflict over an issue, it is fair to assume that debate over 'what exactly are the *fundamental* values and the appropriate degrees of expression of these in a particular situation?' has not concluded. That 'like' disputes resurface over temporal and geographic space is indicative of continuing tensions during ongoing, dynamic, societal debate over the preferred or appropriate levels that different values ought to be catered for.

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[85] Theoretically, the terms of any negotiations and the outcomes developed within ADR processes are set by the negotiators themselves. If the negotiation appears to be leading to an 'inappropriate compromise' a party can, in theory, withdraw at any time. As participation is 'voluntary', so are levels set during negotiations or 'deals' struck within the process.

Although judges have indicated that courts are not the most appropriate forum to conduct a debate over 'primary issues' or 'constitutional disputes', (as these are political and based on value judgements), when courts do make a determination in what may be 'distributional disputes', "courts play a vital role in fashioning norms and articulating values for wider society in the form of legal principles which operate as precedents for future, like cases" (Charts, 1988). As courts are informed by societal ideals and principles, given a form of expression in legislation and also in case law, determinations made in that forum, therefore, reflect these. In doing so courts reinforce societal standards or actively promote them. A history and common threads or 'principles', which can be applied, are established and maintained through formal judicial processes. Currently no such history or common threads are being formulated for ADR processes. Each event is considered unique and distinctive. This characteristic, together with what Burton & Duke (1990, in Sands, 1993, p23) describe as a concern with the way developers have adopted the approach, gives rise to another concern about ADR processes. Amy (1987) sees industrial sponsorship of ADR as an attempt to "disempower environmental groups by channelling them away from precedent setting litigation". It is pertinent to ask whether the results of ADR processes, once ratified by formal processes can be considered 'precedent settled' or as describing principles, and also to consider how records of ADR processes and outcomes are maintained and whether they are accessible to others for reference in later processes?

6.10.3 Distrust in motives of 'others' with competing interests.

These types of concerns reveal that there is a basic distrust of the motives of 'others', which extends to the use of ADR approaches.[86] Given a history of adversarial confrontations between groups promoting different and often competing interests and values in society, that environmentalists distrust 'developer' sponsorship of ADR approaches could be anticipated as a feature of conflict, which would be carried into ADR processes. Accordingly 'distrust' is to be expected and is not reason to abandon attempts to interrupt an escalation in conflict. In fact, guides to undertaking ADR approaches provide advice on how to increase trust and remove doubt about the motives of others involved. Also, developers also have concerns about the motives of 'environmentalists' when entering ADR processes, as they have revenue losses and the provision of goods and services (which may be essential) to consider.

[86] Guides to mediation processes refer to a need to develop a sense of trust between the parties, particularly with regards their motives in participating in this type of forum, as opposed to formal ones.

6.10.4 An inability to predict and compare the costs and time expended to resolve issues.

The criticism that judicial processes are costly and slow, has led to suggestions that ADR may be cheaper and quicker. However, as Chart (1988) and Bingham (1986) argue, this is not necessarily the case. Mediation is not necessarily a substitute for litigation. Time, effort and money may be duplicated, in that a failed attempt at ADR will still require its day in court. Even a successful ADR process will require ratification by official decision making authorities at some cost to the applicant and participants. The costs of preparing for mediation, consent hearings and litigation may be similar, as an appropriate information base is required regardless of the EDR or decision making approach used, and payment to a mediator and for the attendance of participants may be as much or more than payment to a lawyer. In this research, it is assumed that there are some basic costs regardless of the approach used, (for example, in undertaking the appropriate research and consultation to inform the issues). It is anticipated that increasing complexity causes increasing costs to resolve issues. Therefore, the absolute cost is not considered crucial, what is important is any *additional* costs and whether or not these are offset by durability and other benefits of employing ADR approaches that may lead to lower costs in the long term.

6.10.5 Difficulties realising a power-balance

Sands (1993) states that the conditions presented by some practitioners of ADR as necessary for a successful process, like a balance of power (refer to 9.8.2), are rare in environmental disputes and gives the examples of gender and cultural bias (perhaps based on ethnicity). However, in recognising that there are different power bases in society, "power relationships form a complicated network of influence and it is difficult to assess where the balance of power lies" (Mulgan, 1992). Just as 'all are equal before the law' (in theory), ADR (in theory) attempts to redress power imbalances internally to a particular process. Also, participants voluntarily join an ADR process having considered if it offers a better opportunity to influence outcomes than other options would be likely to produce. That is, they assess their "BATNA" - best alternative to negotiated agreement (Ury, 1993). The criticism, that power imbalances existing in society may persevere in an ADR process, while a valid criticism, can be considered a 'standard' criticism (a constant) as it could be suggested of all EDR processes. Unless it is intended to transform 'society' or to provide new, alternative approaches that are free of any reflection of societies power bases and possible imbalances, resolution processes can only aim to redress these by providing as equitable an approach, forum, process and outcomes as possible.

6.10.6 Mediation is not a panacea

Chart (1988) considers the limitations of ADR by comparison with what may be achieved within a judicial approach.

> "*Because it is a process which seeks accommodation of individual disputes, mediation is not helpful when there are systematic grievances. Where a dispute concerns the underlying legality of conduct, e.g. the need to identify or to reinforce a particular standard which should prevail. This need may relate to a lack of certainty where many groups are affected; and/or, to the lack of relative power between groups in the absence of an enforceable and predictable standard. Courts play a vital role in fashioning norms and articulating values for wider society in the form of legal principles which operate as precedents for future, like cases*" (Chart, 1988, p7).

Chart (1988, ME) contrasts such disputes to those where principles are needed only for the particular, local situation. "This work of the adversary system may be more appropriate in particular cases than mediation. It also often forms an essential part of the framework for useful mediation... Similarly, court disposition of disputes serves an important function in aggregating disputes, and may be more efficient than mediation in settling disputes which have national significance"[87] Other limitations identified by Chart (1988) include:

> "*Mediation lacks the procedural safeguards of the adversary process, for example, protection against self-incrimination. It would seem inappropriate, for example, in cases involving prosecution for an offence... Mediation is not helpful where key parties are effectively 'conflict junkies'; or the dispute is seen as a heroic battle; or where the conflict is infected by extreme irrationality or irremediable power imbalances.*"

The criticisms and limitations of ADR indicate that there are hurdles to overcome in designing and conducting an appropriate and successful process. Sands (1993, p25, based on Amy, 1990) provides six conditions said to "promote ADR". These are given as: "a balance of power exists among the disputants; the dispute does not centre on disagreements over basic values or principles; there is no substantial disagreement among the parties as to the facts of the case; only a small number of interests or affected parties are involved; none of the parties will benefit from delay or stalemate; no legal precedents or fundamental policy issues are at stake". Sands (1993) suggests that "it is difficult to know with any certainty whether all these conditions will be present in many environmental disputes". These conditions are perplexing considering the sources and causes of environmental disputes presented in Chapter 5. It is rationalized here that all these conditions, said to 'promote' the use of ADR, are unlikely ever to be met. ADR

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[87] **"The Court of Appeal's recent decision in NZ Maori Council v. Attorney General [1987] NZLR 641 is an example of such a case" (*Ibid*).**

processes may be better able to address concerns and issues, by seeking to attain these very conditions as characteristics of the process. Thus, ADR processes promote these conditions; they are not prerequisites to their use.

6.10 EDR and ADR in CONTEXT

The theoretical context of public participation in EDR processes, outlined in Section II, can inform the observations of practice. It has been shown that the framework provided by the RMA attempts to redress past deficiencies in environmental management and that philosophical principles and objectives are anticipated to be given effect in current management processes and outcomes. The term EDR has been explored and a variety of possible approaches have been discussed. The theoretical purposes, strengths and limitations of each of the processes have been noted.

In the following Section (III) a case study 'environmental dispute', and the EDR processes utilized during the evolution and attempted 'resolution' of the dispute are described. Section III considers: firstly, the historical context in which the conflict was conceived; secondly, the sources and causes of the current conflict, identified through analysis of participants comments, and; thirdly, the processes used for EDR in this case study, to identify how and why each was utilized (its purpose and the reasons it was selected as the process to undertake), and each of the processes relationships to the RMA are identified. This analysis identifies the '*sources and causes of environmental dispute*' and focuses on *'the treatment of conflict in this instance*'. Following Section III, in Section IV, the characteristics of each of the EDR processes are considered, benefits and strengths, and problems and limitations are identified.

SECTION III

CONSULTATION AND EDR IN PRACTICE

THE CROSS RIVER TRANSPORTATION

FITZHERBERT AVENUE

CASE STUDY



Public protesters and police gather in the two lane and tree lined Fitzherbert Avenue (Jan 1997).

CHAPTER 7 THE EMERGENCE AND CONTEXT OF CONFLICT

7.1 HISTORY AND CONTEXT OF THE CROSS RIVER TRANSPORTATION-FITZHERBERT AVENUE CASE STUDY

7.1.1 Palmerston North Roading Layout

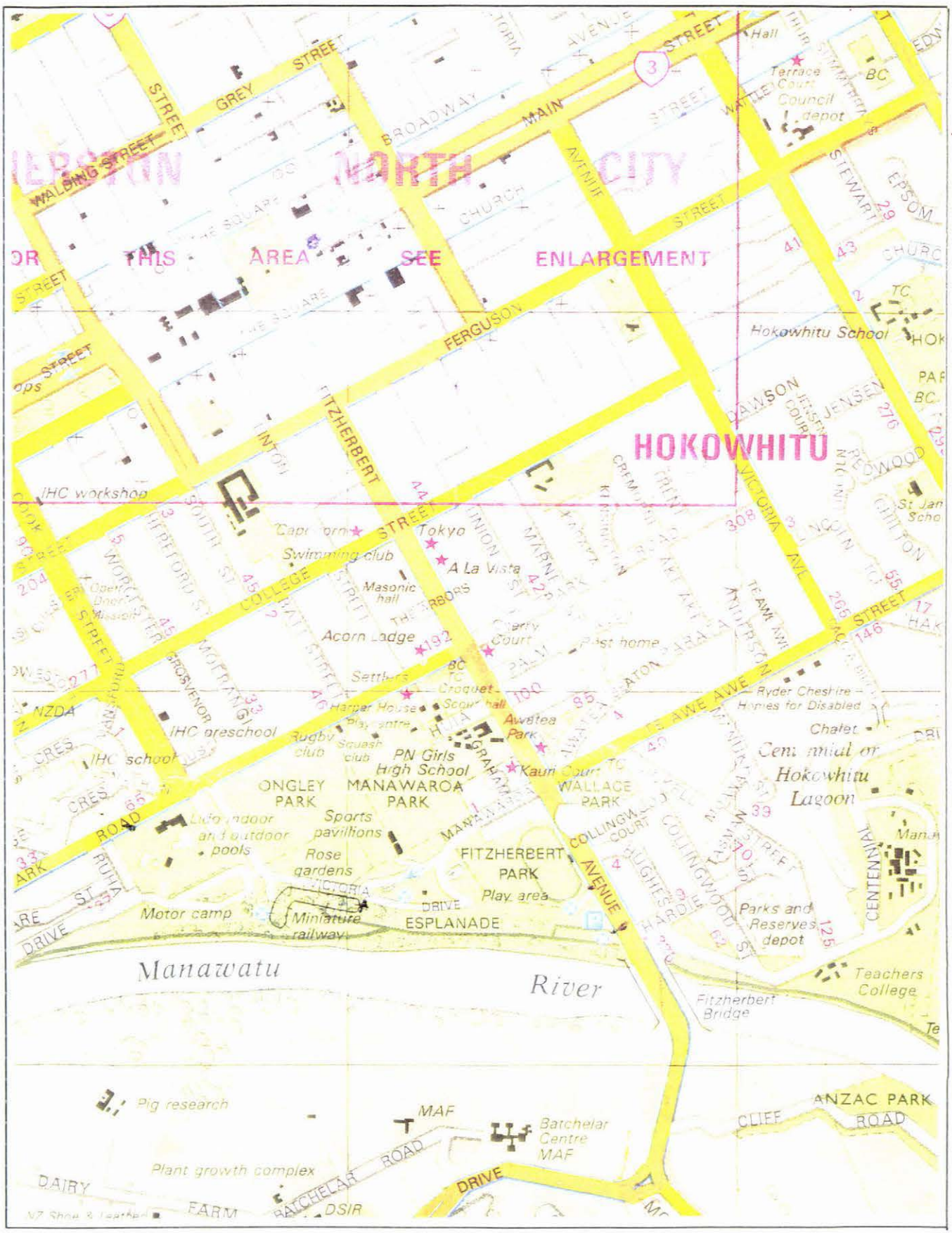
Palmerston North City has a grid roading system, a section of which is depicted in Plate 1, (refer to p97). A central square, surrounded by the CBD, is fed by four 'arterial' roads. Traffic heading out of the city in all directions, except east, has a number of exiting options. However, all routes for eastern travel from the city connect to Fitzherbert Avenue, as the sole crossing of the Manawatu River is via the Fitzherbert Bridge at Fitzherbert Avenue's eastern end. Plate 1 shows Fitzherbert Avenue connecting The Square with the Bridge. All traffic from the urban area proper, heading across the river is thus concentrated onto Fitzherbert Avenue. The Fitzherbert Avenue and Bridge connect commercial, industrial and the main residential area of the city to numerous research institutions and Massey University on the other side of the river. These institutions, among others within the city, give the city its slogan, 'Knowledge City' and are major nodes of activity during the day. This route is also the main corridor to the south-eastern satellite towns of the Manawatu, including Linton which contains an army base, and also connecting with routes to the Wairarapa. Urban expansion is occurring on the southern side of the river, with new residential sub-divisions being established on formally rural land in Aokautere. The Council's growth strategy is to limit growth in other directions and expected growth is to occur on the eastern side of the river, at Aokautere and in the satellite settlement, Linton.

7.1.2 Fitzherbert Avenue Functional Character.

Fitzherbert Avenue was formally part of the state highway network (SH 57) and was thus formally administered by the National Roads Board (NRB henceforth). The NRB revoked its state highway status, in July 1992, and transferred ownership and control of the road to the City Council. The Avenue is classified as an arterial road in the Transitional District Plan.[88] Such streets "provide inter-connection between major sectors of a large area, and through traffic movements on regional traffic routes" (Second Review of the District scheme, 1978, 19.9.1(a)). The Proposed District Plan (notified in 1996) maintains this status. The Avenue is approximately 30 metres wide and 2 kilometres in length, and runs from 'The Square' to Fitzherbert Bridge.

[88] Arguments concerning the 'designated' status of roads in the Transitional District Plan were heard in 1996. Fitzherbert Avenue was considered to have been designated, in Figure 9.1, of that Plan.

PLATE 1 **ROADING LAYOUT of the FITZHERBERT AVENUE AND BRIDGE AREA.**



SOURCE "Streetfinder Infomap", 271-25 Department of Lands & Surveys, 1989

At the time the public dispute emerged in 1993, Fitzherbert Avenue exited The Square as a 4 lane road, until it crossed its first intersection (with Ferguson St). Beyond that intersection it merged from 4 to 2 lanes, as the carriageway was bounded on both sides by mature trees. Parking was available between the trees and a cycle lane ran between the pedestrian pavement (curb) and the tree line. Plate 2, (p99) shows the layout typical of Fitzherbert Avenue at the time the dispute surfaced in 1993. This form continued with some exceptions, where the tree line was altered when individual or small groups of mature trees were removed - where 2 intersections were signalised (Plate 2 shows the Park Rd intersection, signalised in 1996), and in an area outside Palmerston North Girls High School (PNGHS henceforth), where 5 trees were removed to construct a bus-bay, in 1990.

Fitzherbert Avenue is the main corridor from the CBD to the bridge. The area surrounding the Avenue, in its first block is commercial, the rest is residential, however it contains the highest concentration of motels in the city, indicative of its function as sole entrance into the city from the east. The Avenue also serves PNGHS, which has a roll of approximately 1,200 students and a staff of about 60. Four main roads feed into and cross the Avenue, connecting extensive residential and recreational areas on either side of the Avenue to each other, and to access to the bridge and beyond. Traffic heading west from these residential areas, into the CBD, has alternative routes to travel.

The Avenue is the most heavily used road in the city, with traffic flows (measured at the bridge) of up to 23,700 vehicles per day. It is also characterised by high peak hour traffic volumes of up to 2,500 vehicles per hour. The peaks are, however, strongly one directional: in the morning it is eastward, (1,790 vehicles per hour) and in the evening westward, (1,680 vehicles per hour). The Avenue is also used by a large number of cyclists, coinciding with the eastbound (1,446 cycles per hour) and westbound (1,020 cycles per hour) traffic flows respectively, (traffic data in Tizard, 1994). Plate 3 (p98) shows a section of the Avenue, looking east towards Massey, at morning commuter time.

7.1.3 Fitzherbert Avenue Cultural Character

The first planting of trees in Fitzherbert 'Street' occurred on the first Arbour Day celebrated in New Zealand, 4th August 1892. On that day the Mayor, Mr Snelson said, before planting the first (Plane) tree,

> *"The planting of streets of a town with suitable trees was a work that should be encouraged, not only for the sake of those who appreciate them now, but for the benefit of the people who came after them, for it was not good to live simply for themselves.... The result would be of immense service in years to come, as the trees would be a source of pleasure so long as they survived. [He] trusted that the growth of the trees would be symbolic of the progress of Palmerston, and that they would continue to prosper for time immemorial."* (Quoted by Morris, G. 1995, p9, ME)



Plate 2 *Fitzherbert Avenue - Park Rd intersection (1996) looking west. This layout was typical of the Avenue prior to 1997*



Plate 3 *A section of Fitzherbert Avenue showing atypical morning commuter traffic conditions.*

Shortly thereafter fifty trees were planted, beginning from The Square. By 1902 the whole of the Street to the bridge was planted on both sides with trees. "All groups from the community participated in the planting, including the Maori community. The planting by the Maori people of karaka and their participation was very symbolic and of great importance... The ceremony marked the transition from destruction to restoration of their environment by the people of Palmerston North" (Morris, G., 1995). As such the tree lined boulevard creating an 'avenue effect' was a legacy of past generations to current inhabitants of the city. In 1926 Fitzherbert Street was renamed Fitzherbert 'Avenue' in recognition of its landscape character.

The Avenue, in 1993 at the advent of the most recent conflict, was lined on both sides by mature trees for a considerable part of its length. These trees were deciduous, thereby exhibiting seasonal changes. During the summer they formed a full canopy across the road, at those sections where trees were maintained on both sides of the Avenue. That Spring was seen in new growth and Autumn in colour changes of leaves and leaf-fall was part of the aesthetic character of the Avenue. Hollands (1995) reported that "[the] Avenue, with its trees, is a landscape feature which residents and visitors relate to when they think of the city and what it stands for. It can be likened to a prominent historical building, with its links to the past and its symbolism for the future."

> "*Fitzherbert Avenue is a boulevard...The ends of the street are strongly defined where SH57 (sic) crosses the Manawatu River and where the Avenue enters The Square. as a consequence, Fitzherbert Avenue links Palmerston North's two main landscape features. The Avenue also provides the most visible connection between the city centre and the knowledge-based industries clustered around the Massey Campus. [The] Avenue is one of four arterial streets which divide the city into quadrants. This street features on the Council's logo and the route probably forms part of the conceptual 'diagram' of Palmerston North which residents and visitors construct in order to understand and remember the city's form. For all these reasons, Fitzherbert Avenue might be called the 'front door' of the city. It serves an important symbolic role and the character of this street is an essential component of [the cities] identity.*" (McDonald, 1995, in Hollands, 1995, p2)

An historical account of debate relating to management of the Fitzherbert Avenue trees is provided in Appendix VI.[89] Each time a threat has been posed to the trees, members of the public have campaigned to save them, to have them protected and managed sustainably to preserve their positive values.

[89] It is important to review Appendix VI and VII prior to considering the case study dispute as it is assumed within Section III that the reader is familiar with the terms, features and events described in the historical accounts provided in these Appendices.

7.1.4 Motorcar Safety and Council Liability Bring the Future of the Fitzherbert Trees into Doubt and Conflict Begins.

With the advent of the motor car, the grass verges in which the trees stood were removed and the street was tar-sealed from kerb to kerb. On 8th April 1928 a car collided with a tree on Cuba Street. Legal advice was sought as to any Council liability in such a case and on 14th October 1928 an opinion was received by Council. It concluded that Council was indeed "responsible to persons using these highways, to make the trees clearly visible at all times and under all circumstances... If it can be established that the Council has not discharged its duty it is negligence and is liable for damage sustained as a result" (in Morris, G. 1995). On that same day, Council's Public Works Committee recommended removal of street trees on a number of Streets, including Fitzherbert Avenue, where the road was tarred kerb to kerb. A conflict between the safety interests of the motoring public, as well as the fact of Council liability for any damage to vehicles, and those wishing to retain the trees became evident. The Council came to see the trees as "a menace to traffic". While public opposition saw removal as "antagonistic to the beautification of our city." (*ibid*)

7.1.5 History of the Second Bridge Issue

Palmerston North was surveyed and settled by Europeans during the 1860's. The first bridge across the river was completed in 1877, and remained in service until the completion of a newer structure in 1935. A number of early attempts to establish a second bridge failed due to a lack of local support. It was not until the growth of 'Massey College' (now Massey University) and the Science Centres on the east side of the river "began to have a noticeable affect on Fitzherbert Avenue traffic during the 1960's that interest in a second bridge was to resurface" (PNCC, 1995, "*Cross River Transportation Historical Background Paper*"). An historical account of Council's responses to the issue of cross river transportation from the 1960's to the early 1990's is provided in Appendix VII. Many of the issues raised in recent debates can be traced back to the Transportation Plan proposed in 1964, which identified a "tendency to under-exploit the potential of the existing system, in particular Fitzherbert Avenue" (*ibid*) as this plan formed the basis of Council moves to widen the Avenue. As that plan included a proposal to duplicate the bridge, to provide 4 lanes across the river, the protracted argument that followed its introduction as to whether such duplication and widening of the Avenue was appropriate, and where a second bridge should be sited (if not off the end of the Avenue) ultimately meant that, because of lengthy delays, no second bridge was ever built. "The City received instead a replacement 2 lane bridge, capable of conversion to 3 lanes - some twelve years after a second bridge could have been built... While structurally sound, this bridge has the same problems as its predecessor" (*ibid*, ME). Council plans to relieve increasing traffic congestion in Fitzherbert Avenue, through 4 laning

both the bridge and the Avenue instigated the recent debate, as the proposed road design could only be accomplished with removal of the mature trees.

7.2 PROBLEM FRAMING IN THE PAST AND WITHIN THE DISPUTE CONTEXT

Part A of the research interview sought to canvass participants' understanding and views of the background to the problem, and the planning processes employed by Council to develop solutions. Responses enabled identification of the sources and causes of the current conflict, the issues as seen by participants, as well as their rationale for their perspective. This information informed '*the emergence and context of conflict*'.

Research participants were divided into four groups: Councillors, Council officers, public participants and consultants. However, this distinction was not found to be relevant in terms of the historical accounts provided, as all the participants had achieved a wide understanding of the historical context and provided similar accounts of the events leading to the current dispute context. Much of the historical background presented above and in Appendix VI and VII was confirmed by participants as the 'conditions' giving rise to the current conflict. A more relevant distinction was found between participants who had personal experience of historical events and those who had reached an understanding of the historical context through involvement in the current dispute. Those with personal experience provided a reasoning for specific actions or inactions in relation to attempts to resolve issues in the past, while the latter group was more inclined to recount acquired knowledge, 'urban legends', the accuracy of which is more difficult to verify. Both sets of beliefs were relevant as they describe the issues *as seen by* the participants.

Another distinction was found between participants who concentrated on specific events giving rise to the current conflict and treated those as 'triggers' to this conflict, and those who took a more overview approach in making their observations, for instance by discussing planning processes, transport planning, the way Council functioned and made decisions in the past. The latter group saw the emergence of conflict as a seamless process. These people presented a view of conflict as being difficult to interrupt, as progressive processes and decisions gradually form the entirety of the dispute context. An inference is drawn that they see the conditions, which are sources of the conflict, as achieving their own momentum. They describe that any one thing ought not, or could not, have been done differently at the time, and ultimately these conditions made this conflict inevitable in some form. By contrast, those focusing on specific trigger events present a view of conflict as being more easily interrupted. They describe that at each of the crucial

points along the way, if things had been done differently, the conditions would have changed and the conflict therefore, from that perspective, was not inevitable. This group tended to be public participants, while those who saw the evolution of problems/responses as seamless represented those in Council. Despite these two contrasts, participants' comments show a high degree of conformity, as to the pattern of emergence and characteristics of this conflict. However, during the analysis, comments and observations made by participants from each of the research groups were compared to inform the different perspectives or particular 'slant' given historical events, and the importance of these perspectives to each group. While some participants placed great importance on certain past decisions and events, others placed far less importance on these and some saw them as irrelevant to the current debate. For instance, the relevance of past debates over a second near bridge are thought a 'red-herring' in the current conflict by most participants in Council, while many public participants point to the failure to secure a second urban bridge as a major bane and source of contention to them. There are a number of other issues that similarly are deemed 'very relevant' or 'irrelevant' according to different perspectives. This suggests that some of the root sources of conflict have not been addressed to a point were conflict participants have achieved, or been brought to a common understanding about what was relevant to the resolution of the dispute.

7.3 THE EMERGENCE OF CONFLICT

Traffic congestion, causing 'delays' in Fitzherbert Avenue was identified as an increasing problem during the 1960's. As it was anticipated that the situation would deteriorate, Council sought to secure a second bridge within the urban area. However during the 1970's difficulties in finding a site, along with observations that the Avenue was under-utilized, meant that by the 1980's Council had shelved plans for a second bridge. Instead Council focused on resolving issues associated with replacing an unstable bridge with not only a structurally sound bridge, but a wider one and in conjunction with that, alleviating traffic flow problems by improving an intersection and lane capacity beyond the bridge. Subsequently, planning for road works was extended to include the entire length of the Avenue, and the Long Term Development Plan for Fitzherbert Avenue (LTDP henceforth) was formulated and adopted by Council in 1988. There are different perspectives as to why Council focused on modifications to the existing corridor rather than again seeking to establish an alternative urban bridge or to evaluate the feasibility of other alternatives.[90]

[90] Alternative solutions, to 'roading modifications', such as improving public transport and cycling facilities and efforts to change public behaviour, for instance by car-pooling or charging students for parking at the University, were promulgated but a 'common wisdom' that such measures would not be

7.3.1 The problems at the time the LTDP was formulated by Council.

i The traffic congestion and delays problem.

Participants indicated that traffic problems associated with travel in the Avenue was self-evident. Most provided personal experience of congestion and delays during peak commuter times when Massey University was in term. Public complaints to Council and Councillors personal experience of delays led Council to plan to remedy the problem.

> Councillor "I then pursued at Council the notion of a package to improve the flow of traffic... I wasn't the only one doing that, but that led to the 1988 'Long Term Development Strategy' agreed to by Council to solve that."
>
> Public "The problem was identified by the Council and the community in that lots of people had to get across to Massey during a very short time in the morning and back in the evening. There was a delay and I think that is how most people saw it."
>
> Councillor "The earliest report pointed out or set the idea that there would be a need to improve traffic flow by having a second bridge *or* in the meantime, to widen the Ave. Now, what the Council has done was go to widening and ignore the idea of a putting in a second bridge."

ii Sustainable management of mature trees as a problem

An officer indicated that the problem was not seen simply in terms of traffic flow. At the time the LTDP was being formulated, it was anticipated that traffic problems would be alleviated by modifications to the bridge and beyond, as well as more minor improvements (e.g. signalising intersections) in the Avenue. This participant suggested the original brief for the Avenue arose from concerns over the viability of the mature trees in the Avenue. A replanting programme was considered necessary and this was extended to make use of an opportunity to undertake works in line with what was happening to the bridge and beyond. Tree replanting and road widening became integrated within the LTDP, after the other works further along the road were adopted.

> Officer "The LTDP came about ironically enough from the then Director of Parks and Recreation saying to the then Works Directorate, 'what long term strategies do we have in place to replace some of the trees in the Ave?' It was recognised that the [Ave] was beginning to get a bit patchy - trees removed around intersections a couple of years before when signals were put in at College St, etc. So it was starting not to look like an avenue. So we had them saying 'what are you going to do to get the Avenue looking like an avenue?'. We thought we had to get a strategy and also took

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sufficient prevailed. The public was not formally canvassed during the development of the LTDP, with its resultant design for roading layout, to scope any other interests that may be affected or the level of public sentiment regarding other values which could be affected by any new design. However, the roading engineers were not oblivious to those interests and incorporated steps to mitigate adverse effects, by a tree replacement programme and to cater for interests other than motorists, for example, by providing cycle underpasses and lanes. This plan was approved by Council and the NRB and released to the public as the adopted solution.

> the option to look at, with the increased traffic, 'well hey if we are going to replace these trees, we could replace them on a new alignment, so somewhere down the track we can 4 lane the Ave'. So that is why the strategy was put in place." [*So Parks and Recreation had identified the problem in terms of a need to replace trees if aesthetics or maintaining the avenue effect was to be achieved. That was prior to the LTDP for the Ave. being developed*?] The LTDP was prepared as a result of that 'hey what are you doing?' [*And traffic flows became a feature of the problem as well?*] Oh yes they did, I mean that is why the plan we have currently was developed, primarily for traffic reasons, but we didn't just say lets decimate the Ave because we want to 4 lane it and this is what people don't understand. The reason for starting the thing was because 'the Ave was starting to look a bit patchy and some of these other trees aren't too crash hot either, so what strategy have you got to replace them?', because street trees are the responsibility of the roading unit, that is why it began."

The officer's comments indicate that the Roading Unit had 'responsibility' for the trees and was aware of a need to have a strategy to 'manage' them. It did endeavour to take account of aesthetics and recreating the 'avenue' effect, by incorporating a tree replanting programme in conjunction with road widening.[91] Public participants confirm that the state and health of the trees had been an ongoing concern. They suggested that past treatment had been detrimental to the trees and that active sustainable management was required.

> Public "Up to the time they formed this LTDP, they simply had been loosing the trees by acts of omission. They had sealed around the roots of the trees, when any trees got sick they cut them out quickly and never replaced them. So gradually the Ave got whittled down, up to this point, in 1988, when they actually came out into the open and said 'this is our plan'. So it was done surreptitiously up to this date. From then it became their formal plan."

iii Diverse perspectives on the interests and values associated with the Fitzherbert Avenue trees as a problem.

Participants described that the issue of protection and sustainable management of the trees had been raised for decades. The fourth District Scheme Review began in 1988. A rule relevant to any activities relating to the trees was included and some protection became part of the District Plan, operative in 1991. The process was underway for Fitzherbert Avenue 'amenity'/tree protection within the review, before the LTDP was adopted and publicized. The public present a view that there was no opportunity to influence the LTDP during its development as the public *did not know* it was being formulated.[92] When members of the public became aware of the LTDP and argued against it, there was little real opportunity to do so and all efforts to open the debate were "ignored". Public

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[91] Council records show that the replanting strategy was developed without the involvement of the Director of Parks and Recreation or the Director of Planning and they raised concerns in relation to the original replanting strategy. Consultation was then undertaken so these two Directors could have greater input into the design layout of replacement trees and to select the species of tree to be planted.

[92] It was suggested that had rule 2.25.1 not existed in the TDP, no public consultation exercises would have been required, even with the advent of the RMA in 1991 as "the public are not consulted on the design of roads" (consultant, 1997).

participants also suggest that the different departments within Council were not aware of what the other departments were doing as they were working counter to each other. Roading worked to widen the Avenue and replant trees in a new alignment, while Planning was securing protection for these trees that same year. However, a Councillor who stated a personal involvement in formulating the wording of the relevant rule, (following public submissions during the scheme review), suggested they were aware of the apparent conflict and therefore the rule was worded carefully to enable the removal of mature trees as replacement planting was 'adjacent to', even if in a new alignment to the original line of mature trees. When it came to removing trees, as a need arose to widen the road, the adjacent trees would grow to recreate the avenue and amenity values associated with the current line of trees. Whether this could be achieved, given the new road width and characteristics (e.g. expected height) of the new trees, was an issue in the later conflict.

> Councillor [*The rule in the plan was essentially to protect amenity values associated with the trees. However, it also provided the public with an opportunity to comment on activities related to the trees and therefore to oppose the LTDP?*] "That was never actually the intention of the rule in the plan... In the Avenue a lot of the amenity value was a result of the trees on private property over the front boundary. We proposed that there be a five metre setback [on the Ave] as a means of protecting the trees on private property. That drew 60 or 80 submissions against it. So [we] suggested giving some protection to the trees on [the] Avenue since the residents did not wish any protection of the trees on their own properties. Now that was worded very carefully to take care of the 1988 plan."
>
> Officer "There had been a bunch of trees removed from outside PNGHS [1991] obviously contrary to the Rule in the Plan and it wasn't even realised that was there."
>
> Councillor "Certainly the listing, when it came to light surprised everybody, because most of us didn't know they were listed, until somebody found out and it was like that [finger click], it was like a bolt from the heavens."

The issue of sustainable management of individual mature trees and also other values associated with their character (e.g. creating an 'avenue' effect, their aesthetic or amenity values, as well as cultural and heritage values) has repeatedly surfaced as a source of conflict. These expressed interests or values may be considered esoteric in nature. Perspectives on the importance of these values is variable. Some participants refer to opponents of the LTDP as "tree huggers" or to their being "overly sentimental" and "emotional". The difference in values or 'worldviews' thus expressed by participants, is that they each see themselves as undertaking 'worthy endeavours' while their opponents undertake 'trivial pursuits'. Supporters of the LTDP cited traffic safety and flow improvements, as well as the replanting programme, in support of the LTDP. Opponents also provided practical reasons for wishing to preserve the trees and character of the Avenue. It was suggested that the alignment of the trees was a safety barrier for cyclists and pedestrians as the trees served to separate these from vehicles and were an aid to

crossing the road. They commented on the "traffic calming effect" of the tree lined road, as drivers slow down and take greater care when passing through the tree lined and covered areas and speed up on more 'open' road. They saw 4 laning as detrimental to the safety of *other* users as traffic would speed up and undertake lane changes.

Another sustainability issue arose out of how the trees were to be evaluated and 'valued'. Supporters of the LTDP suggested many of the mature trees were diseased or dying and were therefore unsafe, and as many were approaching a century old they had a limited life expectancy. They reasoned the mature trees had to be replaced regardless of any other plans for the Avenue. Opponents of the LTDP refuted the diseased and dying prognosis and estimates of life expectancy. They also claimed good management would reduce any 'hazard' posed by dead branches falling and would improve life expectancies.[93]

iv Securing a second urban bridge as a problem.

Problems in the Avenue were linked to problems associated with securing a second urban bridge. Some believed that a second bridge would relieve traffic congestion in the Avenue. The Council, however, highlighted a number of political and economic constraints on securing a second bridge. The reasons given for problems included: local community reaction to any suggested site, environmental concerns at some sites, hydrological/ engineering concerns at an otherwise favoured site, uncertainties surrounding national funding for any new bridge in hand with Council reluctance to front costs independently, and, past Councillor involvement in companies which were land speculating at possible locations for future development.

> Public "Council tried to build a bridge in the early 1970's and community opposition slaughtered them totally. They got really politically burnt and I think, at that point, they decided they would never try to build a bridge in the urban environment. It was seen as politically impossible to do... Works consultancy advised them that the Cook St site was difficult from a hydrological point of view, so they went for Botanical Road, but there were two schools and opposition from residents and people associated with the schools. So in the end Council sold the land at the end of Botanical Rd, near the river, to stop anyone ever planning to build a bridge there again. At that time, it was [named Councillors], they were the main drivers of that bridge project and I think they got really burnt over that. They decided that rather than try to build a bridge in the urban environment, it would be more politically possible to widen the present road and this is were widening of the Avenue came from."
>
> Councillor "Recognise there was a group going round in the 60's speculating about land development on the other side of the river... Pecuniary interest was rife. In other words, people were making plans to benefit themselves. [Named past Councillor]

[93] This was one area in which information uncertainty was obvious as both cases were able to present expert/professional evidence to support their views.

> bought a lot of land with a consortium on the south side of the river with the hope of putting a bridge there... [The then Mayor] recognised the smell of this and put a stop to any future bridge - because the thing was all sewn up by all the land being bought by certain vested interests. It's not illegal but it's not ethical. So [the] Mayor put a moratorium on it and said, 'we will put it on the shelf and let it go', there were other things coming into the question as well, like a weir, these things were all put on the shelf because of the possible controversy."

The public describe the effect of these problems as an aversion to a second bridge by Councillors and a lack of will on Council's part to achieve it.

> Public "Some of the people pushing this through, in particular [named] Councillor, have been involved since 1972, and in 1972 there was a bitter fight over the proposal for 4 laning and also over the siting of a second bridge and they had to back off. It was to go off the end of Botanical Rd. The Council eventually sold that land so that there never could be a bridge across there."

Councillors and officers commented less about problems associated with securing a second urban bridge and tended instead to provide the rationale for shelving such plans. These participants pointed to a lack of need for such a facility, given the changing circumstances by the time the LTDP was being formulated. It was coincidental that problems with the existing bridge emerged and meant it needed to be replaced. As such, Council took that fact as an opportunity to extend associated road facilities. As a replacement bridge was seen as essential, Council focused on securing additional lane capacity (which it achieved, as the bridge was designed to be able to accommodate 3 lanes and tidal flow. A Councillor thought it was "the first to be designed with this specific intention within New Zealand"). It also secured approval and funding for major works on the eastern side of the bridge. The effect of this eventuality on Councillors was that the Council believed that one widened bridge capable of carrying increasing volumes of traffic, as well as the other NRB approved modifications on the eastern side of the river, were both efficient and sufficient to address the traffic problems.

There was public opposition to the road works proposed for beyond the bridge, as some people believed these were not going to alleviate the traffic problems in even the short term. Several alternative proposals were presented by opponents at the time those modifications were approved by Council and the NRB. However, public opposition to those new roading facilities, to all intensive purposes, was seen as minor. Council had determined a preference for expanding, to fully utilize existing facilities, and believed the problems could be thus alleviated as the traffic demands would then be more satisfactorily catered for and the replanting programme would recreate the Avenue effect, thereby mitigating the adverse effects of removing the mature trees in the medium to long term.

After the road works had been approved, the City boundaries were expanded (in 1989) to include areas previously beyond the City's jurisdiction. An urban growth strategy was then established to encourage residential development on the eastern side of the river. This would lend to a counterflow to city-Massey commuter patterns. The Council thus came to see any need for a second bridge as being linked to urban growth in satellite settlements and was therefore seen as a strategic planning issue linked to future development and not integral to traffic management on the Avenue, or as a pressing requirement. The possibility of residential development on the eastern side of the river (at Aokautere and Linton) also led Council to view 3 laning and tidal-flow as unwise, when 4 laning was later shown to be feasible.

The need for a second bridge or other alternatives to widening the Avenue only began to resurface when implementation of the LTDP was about to begin.[94] When Council informed the public through a press release (early in 1993) that the 4 laning of the last block of the Avenue was to begin (to develop the bridge approaches) the conflict 'erupted', as people realised the trees in that section were to be removed to accommodate road widening. This more intense opposition arose in relation to the modifications to the Avenue itself. Council had intended to 3 lane the bridge and there was little public awareness that Council also intended to 4 lane the section of Avenue closest to the bridge (its approaches), and subsequently the whole Avenue.

v Funding constraints as a problem.

Most participants suggested economic considerations were the driving force on Council focusing on widening the Avenue. At 'least cost to Council and most cost to Transit' was an inferred rule of thumb.

> Councillor "The [NRB] said that 4 lanes were not justified. We could have 4 lanes if we paid [a further] $2 million in connection with the new bridge, for the extra lane and in retrospect... well, I thought at the time and I still say we should have done that, but a reason Council didn't do that was it was already up for $2 million and it didn't want to be up for a total of $4 million. So the new bridge was designed to be extendable to 3 lanes." [*Originally 3 laning and tidal flow was accepted as safe or OK*?] Well not OK but that was all there was."
>
> Public "I think economic considerations weigh very heavily in the minds of Councillors who are struggling to, for instance, see if they can afford a land based sewerage system and so on. There are so many other major project coming on stream that I think they are worried about how they are going to fund it [a second bridge]. If they

[94] A replacement 2 lane bridge capable of being 3 laned was opened in 1986, and was later shown to be possible to 4 lane (with 'clip-ons' and 'sub-width lanes'). An overpass was constructed at the problematic Summerhill Drive intersection on the eastern side of the bridge and opened in 1991 and road widening, on the eastern side of the bridge, was completed during 1995.

> are going to keep rates down and that kind of thing, so I think it is a valid concern. I don't deny it, but I think it is easy to be over-awed by that kind of thing and forget about the hidden costs the community pays when residential areas are turned into motorways and all that sort of thing. This is the RMA side, which I think the Council doesn't pay enough attention to that aspect."

Regardless of the reasoning provided by participants, most confirmed that the desire to limit spending by Council and to attract NRB funding was a key determinant in the design of the LTDP for the Avenue. Officers and Councillors confirmed this was a strong influence on Council as several commented that this approach to solving the traffic problems made 'economic sense'. Similarly, public participants and consultants indicated that funding constraints acted as 'a priori' consideration, causing Council to focus on the Avenue as a state highway (SH) in need of modification. Several participants went further in suggesting that the fact that national funding was tagged only to roading modifications related to the SH network had precluded a wider appraisal of alternative proposals from consideration. These participants suggested that a number of alternative proposals were not evaluated fully: for example, alternative sites (for a similar heavy vehicle bridge), alternative means (e.g. a lower cost second 'commuter' bridge), and alternative 'traffic management' solutions. The inference is that the requirement for NRB approval and the desire to secure national funding led to both a focus on the Avenue *and* on engineering solutions rather than alternative traffic management solutions.

Councillors and officers indicated that Council saw a new bridge as an unnecessary extravagance. In 1986 Council accepted that 3 laning and tidal-flow would be satisfactory and could be implemented, if and when traffic demand required an additional lane for commuter traffic. However, Council came to see 3 laning and tidal-flow as a short term solution and as being operationally problematic, with expense and safety concerns. As engineering consultants indicated that the bridge could accommodate 4 (narrow) lanes, this became Council's preferred option. However, members of the public continued to believe that 3 lanes remained a feasible option that would alleviate congestion problems while a second urban bridge was constructed or other alternative traffic management solutions were implemented.

7.3.2 Participants describe the method by which the LTDP was developed.

All the participants believed that Council's roading engineers designed the LTDP in conjunction with the NRB. Participants thought the City lost a certain amount of autonomy in the design of a 'management response', as the variables and criteria to be considered in the 'cost-benefit analysis' (CBA henceforth) were determined by the NRB, as its funding was sought. Some participants also believed the original problem was defined narrowly by

the engineering fraternity and that the wider community was not canvassed or other values and thus objectives considered. Officers confirmed that the problem was seen originally as a series of isolated 'pressure points' along the route. These pressure points came to be seen as inter-connected and the proposed solutions were gradually extended into a package of road works from the Massey gates to Te Awe Awe St (the "Massey Jam Buster Project"), that eventually included the related, but distinctive "LTDP for Fitzherbert Avenue" (from the bridge to The Square). Evaluations of 'alternatives' (e.g. roundabout, lights, overpass, etc) were considered in relation to possible solutions at each of the 'pressure points' (intersections, pedestrian crossings) along the route.

Officer "After the replacement bridge was built the first job [in 1987] was to get a CBA for the intersection where the Summerhill flyover is now. We began there, a pressure point, and it grew back towards The Square until we have the project we have got today. So the programme started with a very small focus, one intersection. That was the original point of interest. It expanded as it was realised that in order to be comprehensive and integrated it had to take into account the whole flow down the Avenue. As we looked at getting more capacity there and we changed our field of interest as we looked at three or four options starting at that intersection and as we went back and back down the Avenue. In the finish the project we looked at was from and included the Te Awe Awe intersection right through the Massey gates and within that there were five different issues: upgrading of the signals, the tidal flowing or widening of the bridge, 4 laning from the bridge to Te Awe Awe, the Summerhill flyover, and 4 laning from the bridge to Massey."

Councillor "I would imagine the engineering section of the NRB would have had a very large hand in the design and development and agreement generally to, 'when you get around to doing it, that is what will be done, and we will be happy'. Well, you see it was 100% funded under the SH funding. Then the NRB decided to revoke the SH status and give it over to us, and we said, 'well we wont accept it until you sort out and pay for all the problems associated with the Ave, then we will take it over and carry it on as a local Rd. [*So the NRB was involved?*] Yes, very much involved in that, because of that earlier history. This would have begun in 1986 and would have culminated in 1988. So over a period of 2 or 3 years, I don't remember how it developed, it was a sort of seamless exercise that evolved and culminated in 1988."

Officer [*So it was guided by NRB criteria and CBA?*] That's right, really the fact it was a SH doesn't make too much difference in the way it was worked, other than to say who was going to pay for it. Obviously, being a SH works that is 100% paid for outside the Council by the road users, but the criteria we use for putting local projects in place is exactly the same as what Transit NZ uses for putting a SH into place and there is quite a strict criteria. It goes through a CBA and the whole process there. You came up with a project that can achieve a certain benefit-cost and we are away."

Public "The Council worked that LTDP out. I gather that the actual research work, to the extent that any was done, on traffic flows and design, was done by the Council's engineers. It was never a city wide transport strategy, it was always just the Ave and the bridge to Massey, and even the feeders into the Avenue were not looked at thoroughly, and they still had not been before the [resource consent] hearing and they still don't have the data. So there has never been an analysis of where the traffic was coming from. It worked on that bottleneck."

Public "The type of information required and options to be evaluated were predetermined by a need to get NRB funds, so the City did loose some discretion."

Officers described that developing the LTDP involved not only Council's engineers in consultation with the NRB, but also the Parks and Reserves Division which was consulted about the design of the new planting alignment and the tree species. The Planning Directorate however, did not appear to have played any significant role in developing the LTDP. Several public participants indicated that when they became involved in the conflict over the future of the Avenue, they found it necessary to research the history, characteristics (including health and state) of the trees and other amenity or cultural values associated with the Avenue, as well as the effects of different roading designs on communities (4 versus 2 lanes - noise, speed, separation) as there were practically no reports or references to these features in Council records.

7.3.3 Participants perspectives on canvassing public views and issues in the past.

All participants indicated that at the time the LTDP was being formulated, public input in planning was not the priority it is today and was therefore probably minimal. Councillors and officers were 'aware' of the views of the public as they heard both complaints about delays and had experienced conflict over the trees in the past, and as comments were reported in 'letters to the editor'. Participants described that in the planning culture at the time, it was generally accepted that the professionals within Council knew best how to plan for the City's needs, and that the Councillors likewise, would make wise and appropriate decisions on behalf of the community.[95] It is evident that little direct access was provided to the public to allow a greater influence in the development of a management response, or to resolve conflicts between interests over the Avenue. The petition presented to Council and other public opposition, was seen as representing a minority view. A consultant indicated that, even in today's public participatory planning climate, most roading or transportation planning is not undertaken within the RMA context.

> **Consultant "Most traffic problems are not resolved through the planning process. Most traffic improvements, road upgrading, intersection improvements are done outside the planning process. Generally if there is identified traffic problems, a survey would be done and analysis within the local authority, reports would be made to Council, the decisions made to do or not do the works. But it would be done outside the processes of the RMA. In this case, the RMA came into it because you had two parts of Council, one was engineering who was planning to widen the Ave, and the other was the Planning Department who introduced through the District Plan the rule to protect the trees - the two of which were mutually exclusive."**

> **Councillor "Well we didn't have it [consultation] then, but, with hindsight the answer would be no, [we didn't consult]. But, at the time and throughout the whole process that the thing was evolving to this point, I don't think a hand was raised in opposition.**

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[95] Some participants bemoaned that professionals and elected representatives are not held in as high regard and are not trusted as well as in the past, when describing problems in EDR processes.

It was being discussed and reported and I can't recall exactly what coverage it had, but if there had been any excitement I would have thought it would have erupted then. This is the odd thing, it never did. It wasn't until one resident who had arrived, years after the decision had been made, who suddenly discovered we were about to implement it that all hell broke loose. We thought we had the public on side, as we were of the view that 98% of the public wanted this. In fact up to the moment that [public] started yelling, I was getting some of the rudest letters I have ever had, 'why was I beggaring around?', this is the irony of it all."

Officer "If you go back to 87/88, was public consultation a big issue then for Council? It was a different type of thing. People are more aware and we don't do things like that now. With every roading project we get a couple of ideas up, because you have got to start with something. We prepare a plan and then go out to the street and say this is what we are looking at doing - but it is in no way set in concrete, and if we can fiddle around with it, we will. We say, this is our priority, what is your priority and quite often it is quite different to ours and if we are comfortable with that we will try to accommodate it and once again there are certain things you have to do."

Public "It was obvious that they didn't have to seek public comment on it at that time and obviously the CBA used was prior to the new think on what to include in a thorough CBA, to inform the issue properly in order to develop an optimum solution... They didn't consult the public. They just said this is what we are going to do. [Public] for example, among others, objected to the overpass in the 1992 Annual Plan process. They said it wouldn't work and someone at Massey challenged their CBA... There were petitions after the 1988 release. But [Council] just ignored all of this. So it wasn't Council asking anyone. They did have a CBA for a roundabout as well as the flyover, but I think they just liked the flyover, it is the most expensive option and NRB would pay for it. Also, about that time the growth strategy had targeted Aokautere for urban expansion. I don't recall any criteria for evaluating options against each other. Basically they wanted options that would be paid for by NRB. [Public] criticized the effectiveness of the solution they proposed, I don't recall people providing comment on other environmental issues. There have always been people who said what about public transportation and a few other things but they were crying in the wilderness. I don't recall any intense discussion about the Avenue itself at that time, we didn't know about the LTDP then."

While there was a view that the planning culture and way local government functions had changed in many ways, there was also a view that people have always had concerns about the directions their community was taking and wanted to participate in planning.

Councillor "If you go back to 1971, when they first proposed to realign the bridge quite differently, the public were in an absolute uproar. It was going to cut off a corner of the Esplanade. So it's not as if the RMA has altered peoples expectations."

Councillor "There have been several looks at a bridge, which the public have had a very strong hand in blocking most of... mostly in opposition to any change. But there has also always been one group of citizens saying, 'we need a 4 lane bridge or a new bridge', and another lot saying 'that's fine', but as soon as you propose a new bridge site you have opposition to particular sites. There are four main groups opposing the LTDP one wanted the trees kept, one didn't want the road widened, the political curve (the Alliance was very much into this[96]), and then the rent-a-crowd."

[96] Another Councillor said, "much of the blame for bad publicity has been laid upon the Alliance party", while another referred to "professional protesters", indicating that the 'noise' of public criticism is also gauged by Councillors perceptive to who is making it and their motives for doing so.

Councillors suggested there was always a part of the community opposed to any change instigated by Council in undertaking its responsibilities. Some public opposition was therefore seen as inevitable and perhaps insoluble, as, "you can't please all of the people all of the time. So you try to please most of the people most of the time" (Councillor). It is apparent that Council informally attempted to gauge the level of opposition in relation to specific project proposals. The implication is that Councillors kept a political 'ear to the ground' as they made references to "vocal minorities" and "minor opposition". It is evident that what could be called a 'critical mass' of opposition must be expressed before Councillors will enter into discussions over the issues brought to their attention by members of the public. They listened for an "uproar", and as there wasn't one (in 1988) they believed they had 'the publics' support. These conditions support the notion, found in EDR theory, that a conflict must be allowed to 'ripen', before resolution processes will be initiated.

7.3.4 Was the community adequately informed about works on the Avenue?

All the participants considered that in hindsight the community was not adequately or appropriately informed about the LTDP. From the Council's perspective the community did appear to be ill-informed when the dispute resurfaced in the public arena in 1993. Councillors and officers indicated they thought there was little public opposition until a particular resident "erupted" or "started yelling". From the public participants' perspective they felt 'in the dark' about the proposal and that they had not had input into evaluations of any proposals affecting the Avenue.

> Officer "We had been working 4 or 5 years towards that strategy before [Public] got in on the act with Save the Avenue, which is when things started going a little bit wrong on us."
>
> Councillor "In retrospect they were clearly not adequately informed... but they are also very articulate and very well educated and well organised relative to other cities."
>
> Public "I don't think the community was appropriately or adequately informed about the issues. I don't think that the range of possible alternatives have been fully presented or fully assessed (for example a near commuter bridge, 3 laning and tidal flow as an interim measure until a second commuter bridge is built, 4 laning without removing trees, traffic management strategies).
>
> Public "So that plan came out before I was here and there was little knowledge of it before I arrived. I don't think that most people realised that all the trees were going to come out until the notice for what would have been the resource consent hearing. When I started enquiring about what was going on, it did seem apparent that Council had just gone ahead and done this and there had not been a great deal of public consultation, and from my perception there had not been a great deal of thought into other ways of tackling the problem."

Councillors and officers came to the conclusion that the issues and attendant reasoning behind the LTDP were not kept sufficiently 'alive'. The rationale behind earlier decisions

was lost and residents were not (re)informed early enough or adequately prior to implementation.

> Councillor "I suspect it is because the time between the decision and the time to actually do things wasn't kept sufficiently alive - we should have had a hoarding up, perhaps in 1992 saying this is the site for the bridge and Avenue widening. It lapsed totally and the justification that people had understood in 1988 had gradually faded so that when someone got wind of it in 1993 and said this is ridiculous, nobody had any residual traces of memory defences to think 'hang on, we didn't think that" in fact, they had forgotten that they had even had a view in 1988, that it was an OK plan."

However, public participants inferred Council deliberately kept its intentions quiet, in order to allow public support to mount as the traffic situation deteriorated, alternatives became less feasible, and as the opposition would be hamstrung by the urgency of some action being needed to address traffic problems.

> Public "I'm sure they knew that an informed public would mean outspoken opposition. I mean the Councillors that are there now, a lot of them knew this is hot because they had a vicious fight in the 70s over whether to take the trees out and there were big petitions. They knew they were in for a fight if they were taking the trees out, so they didn't want people to know I think. They wanted to keep it really quiet."

7.4 THE SOURCES OF CONFLICT.

A clear picture emerges from the participants comments about the sources of the conflict. Extensive tree planting carried out between 1892 and 1929 had the aim of beautifying the city, as it would be graced by tree-lined avenues and boulevards. With the advent of motorcars, road sealing occurred and occasionally trees were removed. At every tree removal event in the Avenue, public opposition had arisen, but in all cases the removals had eventually been undertaken as the Council found in favour of the safety and convenience of the motoring public. Council had, in recent times, endeavoured to mitigate adverse effects by replanting programmes. Regardless of the reasoning provided for focusing on widening the Avenue, Council responses to addressing the problems as identified in the 1980's, along with the time lapse and changing circumstances meant that in 1993 a public dispute became not only very evident, but it also caused a real impediment to implementation of the LTDP. The primary sources of the dispute in this instance were identified as follows:

i Expansion of daytime activities on the eastern side of the river, while the residential or dormitory and commercial areas of the City were located on the other side. This route became the most heavily used in the City, particularly because of Massey commuter traffic (most evident during term time).

ii The creation of an 'Avenue' (combination of road and trees) variably perceived as an asset to the community for interests and values additional to those associated with a motor vehicle transport facility, (e.g. cyclist and pedestrian facilities/safety, residents/local users, amenity, aesthetics, cultural and heritage values).

iii Budgetary constraints and priorities of Council.

iv An inability to secure a second urban bridge in the past to provide additional access links for increasing numbers of commuters, and a concurrent inability to manage the motoring publics' behaviour to reduce single car occupancy for commuter travel.

7.5 THE PRIMARY CAUSES OF CONFLICT IN THIS CASE STUDY.

The central issue was seen as a debate between those wishing to widen the Avenue to provide greater road capacity and those wishing to retain the mature trees and values (aesthetic, cultural and heritage qualities) associated with these. In response to the question, "What was the dispute about?" all the participants comments indicated it was primarily a conflict about interests and values - the convenience and safety of private car users versus those promoting values associated with the 'character' of the City.

> Councillor "The widening of the Avenue... Expediting the traffic flow to Massey - that is what it's all about."
>
> Public "Frustrated and angry road users that travel daily from the city to the [Massy side] and return support the 4-laning of the Ave from Te Awe Awe to the bridge... retaining the trees or not is an emotional issue."
>
> Public "The promotion of better traffic flows at the expense of present aesthetics."
>
> Public "Efficient use of road network versus amenity protection."

Diverse interests and values in the community, with the attendant objectives of those articulating these, came to compete against each other in a mutually exclusive way, as a proposal was generated which people reacted to. That conflict again emerged in that event is not surprising given the history of similar disputes. This conflict was inevitable.[97]

7.6 THE SECONDARY CAUSES OF CONFLICT IN THIS CASE STUDY.

A string of related issues found expression in this conflict. Many of these issues were directly related to the specific problems in the Avenue, however others were only indirectly related to it, but were introduced by public participants principally as there was no other forum to debate and resolve these additional or wider issues.

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[97] Whether it was possible for this community to 'reframe' the problem so that all the interests and objectives could be catered for to the satisfaction of participants is addressed in Chapters 11 and 12.

7.6.1 Variable perspectives on 'appropriate' safety for all users of transportation facilities

The Avenue contained a number of accident spots, around non-signalised intersections, where tail end and turning collisions occur. Coinciding with commuter traffic in the morning, approximately 1,250 Palmerston Girls High School students and staff arrive at school by foot, cycle, car and bus. Most of these use and also 'cross' the Avenue, causing congestion at the school. A large number of cyclists also use the Avenue, predominantly students travelling to Massey. A survey indicated that up to a third of all 'traffic' crossing the bridge at peak times is bicycles, (PNCC, 1995, report to the CRTWP). Reducing risks to all road users was seen as a priority by all participants, even though they differed on how this could be achieved and over the appropriateness of what was proposed. Some participants believed the interests of some user groups were being advantaged to the detriment of other user groups with the 4 laning proposal.

> Public "The bridge was designed for 3 laning. Their present plan to 4 lane the bridge, is going to cost around 1.6 million. If they were actually going to do it to their own proper standards for traffic lane widths, cycle lane widths, pedestrian widths, they would actually have to spend about $4.6 million - to widen the bridge to proper standards. In other words, they are widening it to 4 lanes, but each individual lane is going to be only 3 meters wide, the cyclists have to share with pedestrians and these are totally opposed to that, but that gets buried in the backpack. All this has been debated and all the submissions were just rejected."

> Public "Given that any new bridge could take 5-7 years to eventuate, [the] Avenue will continue to put road users at considerable risk. If the trees are not removed [we] will suffer the economic consequences of an inadequate roading infrastructure to the greater Massey area... Concern for the safety of all road users has not been given the same emotional enthusiasm that is applied to preservation of the trees."

7.6.2 Variable perspectives on the nature and severity of the traffic problem and how it could or ought to be addressed.

> Public "Frustrated and angry road users that travel daily from the city to the [Massy side] and return."

> Public "If the traffic delay is so bad, why don't more people find alternative means of transport or demand better public transport. They choose to suffer the delays and continue to use one person per car, thereby contributing to the problem they claim to suffer from... Its only at commuter times, during Massey terms that it is a problem."

> Public "There are certain things that people will actually live with. They will make it bad and then complain about it and they do that with transport... But there is a mismatch of philosophy, while all this is going on about [the] Avenue, at the same time, in the [PDP] there was a requirement that Massey [University] would have to increase the number of car parks it provides - so while they have a traffic problem they still want to increase the number of car parks. Now Massey argued against that and [Council] were just not interested in listening to this... Given the dimensions of the proposed road layout and given that a third of the traffic across the bridge in rush hour is actually cyclists, they clearly show a very car-centric view. The reason for confusion over the bridge is that they are going for a cheap and unsafe solution. I think they are reckoning on $2 million to do it at the moment, whereas to do it properly would cost something like $5 million, which completely throws the CBA."

7.6.3 Variable perspectives or approaches to transport planning and city design.

Council indicated that the volume of traffic using the Avenue was projected to nearly double over the next twenty five years.[98] Opponents questioned the accuracy of forecasts with regards to both traffic volumes and urban growth, and also whether more traffic ought to be catered for or could it be managed in some other way. The perspectives focused on arguments about whether traffic demand leads to road supply or vice versa.

> Public "My actual objection was not to the removal of trees. It never has been to save the trees *per se*, but I actually think it is very bad traffic planning. They are not really dealing with the problem, but also removing the trees is a bad idea... You have the history of traffic planning maybe through the 1950's and 60's which has gone very much towards putting the motor car first. In many parts of the world they have realised that was a bad idea, but there are still groups who carry on with that and they haven't widened that scope and then you get the objectors coming in who are thinking of environmental issues and I think you have got that mismatch here. Now there are valid cases when roading is the solution and valid cases when it's not and I don't think those issues really came out."

> Public "So on the surface there is, 'we have got this problem and this is a cheap solution', politically it is quite attractive but it doesn't address the basic problem. The basic problem is that they are catering for individual car users, they are encouraging traffic demand, not managing it."

> Public "I saw it as a long term planning issue... This plan has always been to make Palmerston North the only city in the country which has never got a traffic jam and there are no values to be weighed against the question of delays to commuter traffic. There was this vision, and it was supported by the now outdated forms of CBA used by the old NRB, and indeed they have changed them now... you have to consider all the alternatives for a start and you have to make attempts to use things like tint evaluation to measure amenity value and things like that."

> Consultant "Philosophically they were looking at it as a minute traffic problem rather than in an holistic manner. I think they got people and cars mixed up to some extent. They felt that the more cars you could get through equated to the number of people you could get through. Well in actual fact... the number of cars you get past a particular point does not equate with the number of people you get past a particular point. So Council saw it as their role to move cars and not to work to change people's behaviour. Every individual wants to drive from their home to their work in less than 10 minutes, we must enable them to do that. They didn't ask, 'is that really what we want or should we now take steps to encourage other behaviours?"

7.6.4 Variable perspectives on the importance of the Fitzherbert Avenue trees - identification with place/landmarks/home.

> Public "The Avenue was and is a tree lined boulevard. The history of the trees shows that they are an invaluable cultural resource with outstanding heritage values for the people of Palmerston North. The trees form a continuous link with the past, with the city's European heritage."

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[98] However, Council anticipated that the tidal-flow pattern would become less pronounced as residential areas on the eastern side of the river develop, thereby requiring greater capacity in both directions at commuting times.

Public "I will not debate the merits of old versus new trees... what price can you place on either safety or aesthetic values that is not subjective."

Public "[The trees] are at odds with the homogenous world-wide postmodern culture, by which places lose their identity and people lose their sense of where they belong. A sense of belonging is an essential ingredient to the health of individuals, and of communities. A sense of belonging is necessary for the cultural wellbeing of the people of Palmerston North."

Councillor "I have always said, 'look, you were given two options and the logic is to build the bridge to protect the Ave'. The Avenue was not to be seen to be sacrificed for the benefit of not ever having to build a new bridge."

Public "I think the Avenue has always been an issue because it is Palmy's front door to a degree. All of the other entrances to Palmy are terrible. It's just main st anywhere. The Ave is the only place that has any sort of character. I think people empathise with the idea that this is the front door. This is 'hello to Palmy' and it's important in that respect to a degree. That is partly why we say, 'we are not fighting for the trees, we are concerned about the whole streetscape.' Its what kids remember from their childhood days, it helps give the place its identity."

7.6.5 Variable perspectives of, and visions for, the future city.

Public "I am concerned about what I see as strongly linked issues of the second bridge and the use of the amenity provided by the river, or disuse as it is at the moment and also the trees in [the] Avenue. I see them as all linked... I put quite a long submission into the Annual Plan in 1992, saying I thought that there should be an attempt to make use of the river, that we needed a second bridge across from somewhere. I did a simplified CBA to show the savings in travel costs [stated his estimate] probably more if you began to think about savings by not spending more on [the] Ave and the benefits that would come from retaining the current amenity values of the Avenue... I made a submission to the [resource consent] hearing in which I referred back to those proposals for making use of the river. I mean I thought the river should have a weir put across it to raise the level for boating and recreational purposes, develop the banks with park on both sides for other possible recreational uses. Generally make use of a facility that the City Council ignores."

Public "The airport would like 2 lanes because that is all they need for capacity... the Council want a 4 lane road... The officer recommendation document to the Council simply said, 'we believe we should have a 4 lane road to present the right image of the City', they never explained what the 'right image' of the City was, and that is an opinion and you have a Council here who take that opinion. You build big roads and they felt that was appropriate. That is why the traffic engineers differ. Some take that view and they look at purely engineering solutions to allowing for more private cars and others say, what about buses, or cyclists or pedestrians. You end up saying, 'what sort of city do you want to live in?"

Consultant "There has been a poorly articulated primary question. What sort of city do you want to live in has never been debated. The engineers have captured Council, and all roads led to more and wider roads... As I have said this was not just transportation. It's what sort of city you wanted as well. It goes beyond just the simplest and cheapest traffic solution, which is clearly to widen the bridge. I don't think it gives the best city. People have different views of what they want the city to be like, and that is a political decision. I think it is a 'what kind of city you want to live in', not a traffic issue."

A senior officer implied a similar philosophical question by describing why, to his mind, this whole debate was not an 'environmental' dispute. It was a clash of values about growth,

development and progress, and 'environmental' issues (he suggested) are a small part of that 'wider' issue. This person argued that framing this conflict as an '*environmental* dispute' missed the point that it is actually a '*use and development*' dispute about gains and losses inherent in accommodating the *needs* of a growing city.[99] Some public participants also expressed concerns along similar lines. For example, concerns about the 'functional character' of the city. A common feature of this conflict was that people had different 'visions' for their city. The trees debate was the 'tip of the iceberg' and was seen as the only current venue by which to enter into discussions on issues in regard the 'future city'. Many of these people felt that the legal protection for the trees in the TDP, provided the only opportunity to debate with Council the effectiveness and appropriateness of not only the LTDP and by extension the transportation strategy, but also their visions for their City. While the Council's Strategic Plan (adopted in 1996) now describes an idealistic 'vision' of the City, there appears to be contradictory interpretations of what the (draft) visions actually meant in practice.[100]

7.7 THE TERTIARY CAUSES OF CONFLICT IN THIS CASE STUDY

A third level of conflict was identified as arising from the dispute itself and the efforts and processes employed to resolve it. The interactions during participation to 'resolve' substantive issues, led to a different set of issues which contributed to the evolving 'conflict' context. This level of conflict is more telling about why conflict persists than many of the substantive issues in themselves. These causes of conflict were identified as problems within EDR processes, which are considered in relation to the experiences and observations of participants discussed in Section III. However, they are introduced here as they demonstrate the evolutionary nature of conflict as new issues emerged.

7.7.1 Different perspectives about how local government ought to operate in a representative democracy.

> Public "There are moral issues about the exercise of power which I feel have been abused in this town and this was one way to stand up against what I thought was an inappropriate use of power... I think it is a fight over power. Those trees are just a power symbol. Let's knock those buggers down and let's show who rules Council."

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[99] This view also illustrates that concepts described in the RMA have been personally interpreted by those working in local government.

[100] Several participants had participated in consultation processes during preparation of the Strategic Plan for the City, being formulated concurrent to this dispute. It is beyond the scope of this research to consider that document in relation to the issues describing this conflict, as it was not directly applicable to its resolution, and also as it is not intended to critique Council policy.

Public "The clique that runs Council have had this vision of 4-lane highways from 4 directions into Palmerston North meeting in the square. That has been their model for years. This is what they have been doing and they now see themselves frustrated from realizing the completion of their vision. So they are not interested in arguments, they are just interested in showing who is boss at this stage of the proceedings and they pay their very able officials to set up the process so that they can't get the wrong answer, from their point of view."

Public "Through all of this thing the Councillors have taken the view that they are the representatives of the people and they sort of make comments like, 'people have said to us', but they have never done any real canvassing."

Public "I think in relation to major issues like transportation policy direction and development of the City, these things should not be written in documents which then drive decisions, they should be open for review, in terms of 'what are we trying to do?', 'what sort of ideas have people got?'. I would like the broad direction to be up for continuous review rather than things being driven by decisions which become entrenched. [*An officer suggested that once a decision is made, or policy is set, it is difficult to change it as it is like an oil tanker, its direction and speed is set and it takes a long time and planning for it to change direction or to stop it.*] Yes well, this thing that decisions can't be reviewed for six months and in the meantime [officer] is using every conceivable form of skulduggery to ram it through before that period, when the thing can be questioned again, has lapsed, that kind of thing is crazy."

7.7.2 Different perspectives about what is meant by working in the 'public service' and on the roles and 'authority' within Council.

There was dissatisfaction in some quarters of the public as to the fundamental ways in which powers are exercised in local government. These participants also brought into question the 'ideals' associated with the 'public service', indicating the relevance of 'public choice theory' to informing perspectives as to how individual advisors may be self or politically motivated. Needless-to-say Councillors and officers provided a different view of their own and others motivations and modus operandi, and of their professional work situation. As such, participants described there is a conflict in political philosophies about the level of public influence that ought to be cultivated in planning and decision making. Many within Council believed there is a continual and important role for officers (as respected professionals) and Councillors (as duly elected representatives) to plan and to take the tough decisions.

Councillor "The Council has this idea that they are going to do a service for the community by making the decision for the community first and then have the community react to that decision. The logic is, it is better to in fact show leadership and show the community that Council is putting forward a, [Council] don't call it a decision, they call it a 'preferred solution'. The preferred option is a way for the community to react. They believe that is the best way of consultation. You put a preferred option. That then becomes concrete."

Consultant "I don't think that Council informed the public in order to canvass their views. Well the Council stated... they had a particular agenda in mind, as I have said, and they commenced the entire issue by stating, 'this must be done'. There was no, 'these are the alternatives and this is our preferred option because of... approach. It was, 'this must be done'. It was dictatorial."

A full discussion on the issues of power, roles, responsibilities and 'relationships', in a representative democracy and in the operation of local government is beyond the scope of this thesis. However, it was found that a source of conflict in this case study stemmed from the diverse perspectives taken on 'accountability relationships' within local government, and between Council and the community.

When asked, "who was responsible for solving the problems?", public participants indicated 'Council' was, although some also indicated that 'users' also ought to be taking some responsibility. Councillors believed it was a shared responsibility between themselves and the City Manager, except for the Mayor who stated "absolute, the buck stops here", but Councillors also indicated they are 'held accountable' through elections. In contrast, the typical initial response of officers is represented by one who stated "ultimately the City Manager is responsible". Officers did not mention Councillors until prompted to comment on their responsibilities. It was evident that Councillors saw themselves as ultimately responsible, while Council employees saw the City Manager as ultimately responsible. The public, whose behaviour and diverse interests gave rise to the conflict, was apparently not 'responsible' for either 'the problem' or for a solution to their problem, presumably as they could not be 'held' accountable as they have no delegated or official responsibility (apart from electing their political representatives once every three years). 'Ownership' of the problem was firmly in the hands of Council, although it was unclear from participant responses where the balance of responsibility, authority, and thus also accountability lay, with the Mayor or with the City Manager, or whether it was an equally shared responsibility (a diad). The problem was thus, however, not in the hands of the community.

Those who made up the 'public service' viewed themselves as being accountable or responsible to the City Manager first and to the public, (which was described as "amorphous" and "obscure") second.[101] Furthermore, links to the public were implied to be indirect as these found expression in officers' relationship with Councillors, as representatives of that public. It was the responsibility of the public to elect the Councillors as they saw fit and for these, in turn, to appoint the appropriate Manager to ensure that they have a public service working in the 'communities interest/s'.

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[101] Whether this is a generalisation applicable to all councils or is a characteristic of this City due to factors other than legislated links of accountability, has not been evaluated in this research. It was not evident whether staff allegiance was to the individual or to the position, that is, the management characteristics/model in use *or* to Council as an organisation and such analysis is beyond the scope of this research. Nor was it possible to determine whether the management model applied in Palmerston North is in ubiquitous or isolated use.

7.7.3 The issue of influential Councillors and Council officers political will and 'sponsorship' of specific projects.

Lines of accountability set out key responsibilities, but also importantly the opportunities to exert personal influence in either supporting or opposing particular issues onto the Council agenda, or a particular project to completion. The relationships identified as accountability links, (in this case study) tend to support a view presented by public participants that for any proposal to come to fruition it requires, in essence, sponsorship by influential Councillors *and* the support of influential officers. Participants indicated that, if one or others support for an idea or project were to flag, then that proposal could be side-lined or dropped from the planning and political agenda all together. The crucial people in Council, in terms of strongly pushing or restraining a project, were identified by participants as being the City Manager and a core group of long-term Councillors (including the Mayor and the few who chair key committees).

> Councillor "Well, you always have to go back to the Chairperson of those Committees, and [Councillor] was always the Chair. Now, the Chair has an enormous amount of discretion in setting the agenda, in the way advice is presented and also the reports that are in fact directed to be undertaken."

Issues of power relationships also inform what some participants believed was a lack of unity within Council, between its various divisions. A number refered to certain divisions of Council being "captured" by another division. A reason for this was inferred by those participants, who referred to staff dynamics as an influence, indicating which departments had staff with long terms of service and those which had relatively new staff or a high turn-over of staff. A participant provided a comparison of the budgets at the disposal of different divisions and suggested that was a way to measure power and influence within Council. Another suggested a particular division was not 'influential' as it had a limited "institutional memory", due to both rapid (legislated) changes (affecting it more than other divisions within local government) and staff dynamics (turn-over). Some participants also commented about their impressions of some staff appearing to be having to "tow-the-party-line" and indicated feelings of empathy for the conflicts of interests which they believed Council staff may find themselves in.

> Consultant "The fact that Council got into this position, I think shows some problems within the Council. That Council should act in a far more integrated way than this and not have two departments heading in two different directions. I think it showed up some weaknesses in the unity of Council in that the various departments were not really working together." [*So organisationally there were problems which helped give rise to this dispute situation*] "Yes, I think so."

A Councillor expressed frustration at an inability to influence Council as a "relative new comer". Other participants referred to "junior" members of Council being "lap dogs" to

"senior members" of Council,[102] as they wish to curry favour with the influential Councillors who hold Chairs of Committees, and one day be appointed Chairpersons of Committees and thus gain more power and influence themselves. Whether there is any 'truth' in such views is of less interest than that participants reported them, so they were 'true' to their mind and thus relevant to the dispute context, as a tertiary issue.

It was also commented that many Councillors did not actually articulate their views or appear to have participated in debate, they simply voted and therefore their personal reasons or motivations remained private to them. It was therefore difficult for the public to know what individual Councillors thought about many issues, especially during the election campaigning leading to the election in October 1995.[103] These comments demonstrate that issues of power, and political strategies for 'effective' influence within Council, as well as those of 'the public' were (tertiary) sources of conflict.

However, an alternative view was also provided, that despite the evident conflict (between Council and some portion of the public, and also between factions within the community), officers presented a "unified face" to the public. The apparent unity within the organisation of Council, (which was not reflected in either the community or in Council chambers), suggests one or a combination of several things: a high degree of 'consensus' or 'uniformity of thinking' had been achieved within Council; a tightly controlled, well disciplined, or

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[102] The distinction between 'junior' and 'senior' Councillors was confirmed by Councillors and relates to the longevity in Council rather than age. Longevity gives rise to a hierarchical 'status' between Councillors which is imbued in Council processes, from the seating arrangement within chambers to the chairing of Committees, to who is invited to 'private' meetings and discussion groups with officers and between Councillors. The issue of a "probationary period" of a year for new Councillors as they "learn the ropes" and come to understand what directions have been taken, where Council is headed and why, was identified as a source of conflict between Councillors. The consequent issues and ramifications for 'representative democracy' in terms of how Councillors do function or ought to be able to function, while of interest, are beyond the scope of this thesis.

[103] The characteristics of an election held during the course of this dispute was discussed by participants, as exactly what elections show about public support or mandate on particular issues was not agreed by participants. During campaigning most incumbent Councillors did not comment on issues specific to the Avenue, other than saying they would decide whether to proceed with 4 laning based on the merits of the cases they heard at the time decisions had to be taken. Also, at the time of the election there was a lull in the profile of this issue as a working party had presented recommendations to Council, which Council had ostensibly accepted. The major recommendation had been to pursue a second bridge and it had been promoted in Council brochures that incumbent Councillors were now committed to a second bridge and that most of the mature trees would remain at least for the medium term. The trees debate, therefore had waned at the time of the elections. It was also indicated that no one issue dominated the election as several things were concerning the community at that time. Some time after the election, it became apparent the siting of a second bridge was required to link with the urban growth strategy and was not seen as able to solve problems in the Avenue. Issues identified by participants, arising from elections are too complicated to recount in detail here, and as most did not consider the election was critical to EDR in this instance, they are only discussed briefly in Chapter 14.

navigated organisation, or; a fear of repercussions to any dissenting voices in the ranks.[104] Diverse perspectives were indicated as to which condition, or combination of these existed, and explanations were proffered for each or a combination. These involved issues surrounding 'contestability', professional autonomy, lines of accountability and also responsibilities, bottom-up versus top-down generation of ideas, etc, but, as these views are speculative, (in this research) they are not described.

Councillors likewise were described as being 'fairly' unified as the 'majority' consistently voted in support of actions that progressively gave effect to pursuing the LTDP, although the majority margin became less pronounced as the conflict progressed. Issues surrounding the ability of Councillors to fully explore and 'debate' issues in the 'public' Council forum were observed by participants. It was suggested that discussion between Councillors must have occurred in private, as many of the Councillors appeared to have achieved a common understanding prior to the 'debates' that were held in public view in Council meetings, and some observers (including Councillors with the minority view) were at a loss to understand how others had come to their views and had achieved a common understanding about how some things would be done within the public forum of a Council meeting. There were then, indications of a lack of unity within Council, but also equally, indicators of strong unity. It is beyond the scope of this thesis to explore exactly what occurred within Council, and between Councillors or why. However, participants indicated such issues as (tertiary) sources of conflict within this dispute and EDR efforts.

7.7.4 Issues about what was relevant and accurate information.

Participants consistently disagreed as to whether the data, information and analysis that was presented and considered within the processes used to attempt to resolve the issues was: comprehensive, integrated, accurate, objective, independently generated, sufficient in scope, inquiry led or conclusion led (i.e. structured to suit predetermined conclusions or to enlighten the problem-solving endeavour). Therefore, there was frustration in all quarters that they were not able to convince their opponents as to the validity of their information and thus also their case. Suspicion and mistrust surrounding the motivations of opponents led to rejection of information as it was consistently assumed, by each group, that information presented by 'others' was designed to suit particular purposes and not merely to inform the issues. These issues are discussed in Section III, however, it is relevant to

[104] Some public participants claimed to have access to 'unofficial', 'sensitive' information and 'informants' within Council (and described instances which suggested some conflict and 'power' plays within Council). While they described such information, similar 'leaks' were not publicly reported through the media, presumably as these were 'unsubstantiated', the press did not report such information.

note here that issues surrounding information 'uncertainty' stemmed in part from information 'inconsistencies'. Inconsistency in turn stemmed from the dispute context, in which much of the information was given in presenting a particular argument or case, rather than in laying the 'facts' and *all* relevant information on the table, in order to then debate what conclusions could be drawn from it. Participants described that information was generated to support or refute predetermined positions and that criteria were inconstantly applied (for example 'safety' criteria were not standardised for the analysis of options). A typical comment revealing this condition in this dispute was.[105]

> Public "They have got the funding there, it has been rolled over by Transit. But it was a stick that was used to beat the opposition all the time, that Transit would pull funding if we don't get on and do this quickly. [Council] actually produced faxes showing Transit supported the notion of taking the trees out and said, 'look if we don't take the trees out we wont get any money'. Transit would not confirm that was its official view. Transit's view simply was that they would expect that the existing route would be fully utilized, but of course 'fully utilized'.. you could argue it is fully utilized right now, because the protected trees are in the way, so you can't widen it."

Comments about the accuracy of information and motivations underpinning analyses undertaken *after* the LTDP had been adopted, were made regarding practically every topic of information (from the health and life expectancy of the trees, to the generation and use of traffic statistics/models/CBA's, safety issues, to how to effectively gauge public opinion). Information uncertainties and mistrust was manifest in participants from all groups. They each pointed out the strengths in their own arguments, the weaknesses in their opponents and rationalized their conclusions were 'right' and their opponents were 'wrong'.

7.7.5 Whether the original problem definition and scope was able to take account of or consider all the issues and values the public brought into the debate?

Participants generally agreed that the LTDP was based on traffic engineering solutions to a traffic problem. However supporters of the LTDP believed that, within that strategy, other values were, and continued to be, considered and weighed against its key objectives, and were accommodated or catered for as well as possible within it. Opponents believed that the LTDP developers and appraisers did not consider other interests, values and objectives, or, if they did, did not think of them as important by comparison to those driving the design of the LTDP. A number of the latter believed that the justifications surrounding how other interests and objectives had been 'taken into account' or 'considered' within the design of the LTDP came after the fact, when conflict arose, and were not actually

[105] For a period of over 6 months during the dispute, it was unclear whether Transit N.Z. funding would continue or at what rate, if any, it was being reduced, and also over whether funding was tagged to the LTDP or could alternatives receive (any) funding. Contradictory and inconsistent information was circulating in the public arena, with no confirmation as to the facts on these matters to remove doubts..

integrated into the planning process or considered important when weighed against the concerns described within the original problem definition. Therefore they suggest, other alternatives were not sought or evaluated fully. In response to the question, "Do you consider the initial definition of the problem was an accurate account of the planning problem?" participants responded,

> Councillor "Yes I do, because a lot of those issues had already been thought of by the officers, so alternative options had been considered. Even the second bridge had been well thought of, it had been on the go for some 20 years. Now, it wasn't a new issue. [*The original problem definition, types of alternatives and analysis undertaken, you felt, was able to consider the range of issues brought up later on*?] "Yes"
>
> Councillor "Well, it just was not identified, because there just was not a hint of a signal that this might subsequently happen."
>
> Councillor "It was seen as a traffic engineering problem and a traffic engineering solution was developed. So the problem definition led straight to the solution and a way of doing things that is accepted in the traffic engineering fraternity. There was no assessment of other objectives and thus a search for different types of solutions. The earliest [traffic consultant's] report did put out that the delays was the issue really, in terms of determining that the second bridge was needed - that 4 laning would never in fact cope with that. What the [Council] traffic engineers said was, 'forget about delays it is the volume of traffic that we are concerned with. All they could do was show that every year the volume of traffic was going up, so they had a line on a graph going straight up. While [the consultant's report] pointed to peaks in daily use and suggested to target those another crossing OR more lanes should be used"
>
> Public "I think the original problem was just given a narrow roading definition and in its scope, just the Avenue to Massey. They didn't ever, as far as we can tell, look at the whole thing - for example, they have only just put lights in at Park Rd, so it has been hit and miss really - or ask whether they actually wanted to increase traffic volumes. So in terms of considering all the issues in the original problem, they chose what they wanted based on achieving a narrow range of objectives and didn't consider all the related issues the public later felt ought to be considered important alongside those objectives. I think they took a really narrow view, that is 'delay', said this is because they are jammed into 2 lanes, let's widen it to 4 and it will be better. The entire world knows more lanes, means more cars and then the jams start again, except the engineering people here. They just ignore this and keep saying we have got to 4 lane because we have to get rid of the delays. They didn't take account of cycle and pedestrian safety, aesthetics etc. So they are actually encouraging people into private cars, it is a very carcentric approach. There was no attempt to actually determine what type of city the people wanted. There was some talk this would help development at Aokautere, which had just been identified as the next spot to go. So there was also this urban growth thing... They just seemed to assume that there was more traffic, there was some delay therefore automatically, if you 4 lane, you can make it better, and this has been the assumption... that more lanes means a faster way of getting across and that was that. It's a pretty unsophisticated model and as to who had responsibility to develop a solution, well the Council would have been pushing the NRB to do something. But, I see also that Massey should also have been doing something at their end, and they didn't actually act properly to deal with the problems at their end either. That's how it was originally described, increasing traffic capacity to decrease delay. Originally there would have been no actual planning processes apart from traffic engineering processes, CBA and so on. So the NRB agreed to 3 lane the bridge and 4 lane the Ave and it was part of a mix of what they would do on the other side."

Public "No. The processes have been designed and entirely constrained in order to produce answers which don't conflict with the Council's strategy; which can't conflict with the Council's strategy. [*Are you suggesting the problem was framed so a certain type of solution would be the result of the process?*] Yes. Calculations of the savings to travel time were never entered into the Council's calculations. They never actually looked at how far people were travelling parallel to the river. They only looked in terms of delays on that road, having defined that road was the only route across the river. So the problem definition was grossly prejudiced... I said, 'look, you haven't asked the prior question of, 'what sort of a second bridge do we want?'. I said I thought the Council ought to investigate the costs and benefits of different kinds of bridges [before trying to site one]. They ought to have been investigating what I call a commuter bridge, one that just takes cars and bikes. If you build a bridge that takes trucks the cost goes up steeply as the weight of the vehicles it has got to carry goes up and all we need is a little low key, low impact bridge somewhere. The problem on [the] Ave would solve itself. There is no need to 4 lane."

These comments also serve to illustrate a difficulty, observed throughout this conflict and within its EDR processes, maintaining a distinction between defining the 'planning problem' (by way of describing objectives to be met) and the subsequent phase of designing and evaluating options. That is, participants struggled to separate the distinctive but related questions 'what will we aim at?', and 'how best to hit that target?'. Table 6 presents a summary of the issues relevant to EDR in the most recent dispute over the Avenue.

TABLE 6 THE CURRENT ISSUES INDICATED BY PARTICIPANTS.

The issues relevant to the resolution of this conflict hinged upon reconciling diverse perspectives on:

i What comprehensive and integrated planning means - the scope of the problem to be considered, how the problem ought to be framed, the range of interests, values and thus objectives and criteria by which to measure their level of attainment, evaluated while generating an optimum solution.

ii The provision and accuracy of all the relevant information, describing the current situation (e.g: traffic data concerning that part of the city affecting Fitzherbert Avenue; who, how, where from and to, when and why?); and including the accuracy of projections/scenarios for the growth of traffic, population and spread of the city.

iii Any importance / values / interests and sustainability of the Avenue trees as individual trees or as a group, requiring means to assess 'values'.

iv Good city form, in terms of both functional abilities, and 'ideal' characteristics for what the city ought to be like (linking all the related issues into a common 'vision', e.g. safety, convenience, amenity, historical, aesthetics, symbolism, community)

v What is 'good' transport planning and management, together with methodologies to measure and incorporate the range of objectives relevant to evaluating alternative means and ways of solving the planning problem.

Table 6 continues....

Table 6 continued...

vi	The nature and importance of congestion and delays. What are appropriate responses to any perceived problem in traffic facilities and traffic management. Sustainability issues (for instance, of catering for single car occupancy, against other possible scenarios e.g. public transportation/car pooling, cycling).
vii	Any 'need' for a second urban bridge or alternative light vehicle river crossing; the 'appropriateness'/'wisdom' of focusing traffic into one route or dispersing it.
viii	Funding possibilities and spending priorities of Council;
ix	The level of commitment by all participants to 'resolve' the issues or solve the problem to the *satisfaction of all interested parties*, and the *willingness* of conflict participants *to accommodate the interests, views and values of others* during attempts at dispute resolution; disclosing 'agenda' and 'motives' of interested parties so that information could be objectively considered.

This extensive list of *issues* relevant to 'resolving' this conflict, illustrates that past airing of issues and diverse views had not led to a satisfactorily resolution or solution, for all the interested parties. Council's adoption of the LTDP in the same year as provisions regarding the trees appeared in the draft District Plan serves to highlight that diverse interests were on a collision course. However, it has also been shown that those interests were not all that was relevant to resolving this dispute. Secondary and tertiary issues were also in need of resolution and importantly, resolving the secondary and primary issues 'effectively', became an increasingly difficult and complex task as the dispute evolved and conflict remained unresolved, in light of the emergence of tertiary issues.

7.8 PUBLIC DISPUTE AND A STATE OF IMPASSE

The primary conflict was not laid to rest, when the LTDP was adopted by Council, as its 'solution' meant that conflict was inevitable. The character of transport planning in the 1980's was such that public opposition to Council plans, while given a hearing was seen as being insoluble. It was partly a problem in public relations, of how to effectively inform the public why certain actions were 'necessary'. The historical issues in designing and implementing solutions led to inaction on some fronts. The result was that, both remedial and preventative measures, to redress and alleviate further deterioration of traffic problems, (and those associated with the declining trees) were neglected and essentially these problems were allowed to escalate unchecked, until it was perceived that urgent and major action was needed to mitigate the adverse effects of traffic congestion and delays on the route. Further postponement to allow testing of more 'agreeable' actions was considered

unpalatable and ineffectual given the advanced state of the problem. Also, measures were incorporated to mitigate some of the adverse environmental effects of road widening.

Because specific actions and certain inactions on the part of Council made it more committed to particular directions, it became increasingly difficult for Council to alter course, to consider and trial alternatives, or to adjust its timeframe for implementation (its speed). As attendant problems deteriorated (e.g. traffic congestion and state/health of some trees), new problems/issues emerged and the level of latent conflict in the community increased. Concurrently other values were enhanced, (e.g. fewer mature trees which were getting older and more significant in the eyes of some citizens, increasing numbers of cyclists - becoming a stronger lobby group). Thus the diverse interests came into greater direct conflict. Solution became a more pressing priority rather than having time in hand, to plan for and lead into responses to address issues. With a direction set in progress, Council moved closer to becoming embroiled in public conflict. All the participants indicated that, on reflection, and with their current understanding of the history of these issues, this conflict had been latent in the community for some time. It was inevitable that if Council proceeded to widen the Avenue and remove the mature trees, conflict would erupt.

> Public "I think the dispute has been latent since the proposal was originally adopted to treat the Avenue as an arterial road."
>
> Public "This controversy about the Avenue is more than 20 years old. The first proposal to build a second bridge was in 1907 sure, but this fight the Council has had over the bridge, the trees and the Ave. There was a major furore from about 1969 to 1974 and there was a group called 'Citizens Initiative' set up. We have 'Save the Avenue' in this particular round. Looking at the editorials from those days is just fascinating, because they were actually pointing to these transportation and infrastructural problems right then. But they weren't able to force the second bridge."

A significant point is that while Council had experienced opposition to similar proposals and thus must have anticipated some public opposition, it believed its rationale for this project was well understood and its reasoning behind the decision of 1988 would carry the day. Furthermore, it is apparent that Council had not anticipated a legal impediment within the TDP, or any statutory requirement to 'consult' the public in light of the planning (consultation and EDR) processes required by the RMA. Consultation had been undertaken in relation to funding issues for some features of the road network, in the inaugural RMA Annual Plan process of 1992. That process had not disclosed, uncovered or considered all the issues in their entirety, as it related only to funding issues on implementing a component of the works. By contrast, many of the public participants who became involved in the conflict were not anticipating a conflict with Council. These were genuinely surprised by the LTDP project when they became aware of it in 1993. Many of these people felt the

community had not been consulted for views or about all their related interests, values, objectives and concerns, or as to alternatives for alleviating traffic problems, prior to developing and selecting a solution. They strongly believed the community should be consulted before Council did anything major, regardless of whether there was a statutory requirement on Council to do so.

'Public' opposition to the LTDP, from 1988 until 1993, had been muted. Correspondence to the media and opinion expressed to Council was by individuals. Members of the public, either supporting or opposing aspects of the LTDP's implementation, which featured in the Annual Plan, were able to participate in the consultation processes required for that 'formal' decision making process. In 1992 a number of submissions were received on the issue, and these steadily increased as the public became more aware of the issues. In 1993, with Council re-informing the public as to its progressing of the LTDP, the public was alerted that a large number of trees were to be felled that year, to make way for 4 laning. The dispute context changed with the formation of a public interest group, 'Save the Avenue'. Save the Avenue argued that rule 2.25.1 in the TDP was an impediment to implementation. A threat of an injunction against tree removal, or an enforcement order for their retention, was made by Save the Avenue. Council sought legal advice as to how it could proceed. The heightened media profile in 1993, as a result of the activities of Save the Avenue, marks the beginning of a lengthy period of public dispute which is of interest to this research. While this rapid rise of a concerted public opposition was something of a bombshell dropped on the community, it has been shown that the fuse had been lit some decades earlier. The Council faced, not only a vocal public interest group, but a real impediment to implementation within its own policy framework.

Also, the community was becoming divided over the issue as Councillors and officers indicated that comments they received included those asking Council to "do something", (to alleviate traffic delays caused by congestion) or to "get on with it", (widening the Avenue), as well as those of people against the proposal. A state of impasse was reached and some method of resolving both the substantive issues and any legal impediments to implementation of preferred solutions was sought. Since 1993, within the context of the RMA, a number of statutory public participation processes and other EDR processes have been utilized in order to 'resolve' issues relating to traffic management, cross-river-transportation and the status of the Fitzherbert Avenue trees. The Council employed each of the consultation processes on the basis of statutory requirements, together with officer and legal advice. This advice changed as the dispute context evolved. For example, it had not been intended to apply for resource consent to remove the mature trees, and decisions

were also needed as to whether an application would need to be notified. The necessity for this, or some other EDR option and consultative mechanisms (road designation, a plan change), only became evident after a co-ordinated public opposition emerged. Also, instituting a plan change was rejected twice, firstly in favour of a resource consent in 1993, and secondly, in favour of a working party consensual approach in 1994. However, when that groups report included a recommendation requiring a Council determination, which subsequently confirmed 4 laning and tree removal along a short section of the Avenue, Council reconsidered and chose to employ a plan change. In doing so it initiated a further consultative process, as required by statute. At each stage the public had seen consultation processes as an opportunity to have their interests/values/information/perspectives contribute to the decision making process. They endeavoured to *influence* planning outcomes, through formal and informal processes and means. The interview schedule, Part D, question 4, (refer to Appendix I) lists all the means by which the public sought to exert an influence on decision makers.[106]

As described in Chapters 3 and 4, the statutory processes are designed to include the public, ostensibly so as to facilitate a comprehensive-integrated analysis of all interests and values, and the effects of proposed activities or policies on these, and then to make determinations to achieve sustainable outcomes. Throughout the conflict similar issues and arguments were revisited within each EDR process. It is evident, in the fact that this dispute required the use of a range of EDR processes in an effort to 'resolve' the conflict, that the dispute was not settled to the minds of *all* participants, at the conclusion of each process. Table 7 (following page) presents an outline of the sequence of public consultation / EDR processes as employed to attempt to resolve this dispute.

[106] **Each means used, was identified through consideration of Council records and reports in the "*Manawatu Evening Standard.*" They were also identified as being 'possible' in EDR theory, as each of the 'informal' means the public undertook in attempting to have an influence, was noted by Chapple, K. (in Milne, C. 1993 - Chapter 2 "Effective Environmental Advocacy").**

TABLE 7 SEQUENCE OF CONSULTATION/EDR PROCESSES EMPLOYED.

1992 *Annual Plan Process*: recurred each year, notification, submissions, hearing, determinations, decisions presented in the "*Annual Plan*".

1993 *Notified Resource Consent Application Process*: Notified, submissions, pre-hearing meeting, hearing, determination made (consent declined), resolution posted/notified.

1994 *Consensual Approach to Dispute Resolution*: (Nov) The Cross River Transportation Working Party was established with "Terms of Reference" and the Facilitators, "Terms of Engagement".

1995 CRTWP reported to Council (21st April) with a package of recommendations making up a consensually agreed strategy.

The Proposed District Plan Process: notified on 31st May. This statutory process initiated a new round of consultation. As all protection for the trees had been omitted public dispute resurfaced.

Public comment invited: through an information brochure "Crossing the Manawatu River", outlining 3 versus 4 laning.

Deputations made to Council meetings in opposition to 4 lanes.

Reports from officers (August) recommended 4 laning only the last section of the Avenue, in accordance with a recommendation of the Working Party to 'widen' that section of the Avenue (to 3 or 4 lanes). Council resolved to proceed with 4 laning that section of the Avenue and the bridge. The accompanying implementation strategy included proposing a change to Transitional Plan.

Local Government Election: (October) Incumbent Councillors and Council stated their committment to a second bridge. A second bridge site working party would be established post election.

Proposed Change to the Transitional District Plan: to remove the trees protection provisions from the TDP, notified 13th Dec. Statutory requirements initiated another round of consultation.

1996 *Hearing process*: June. A combined hearing was held on the Proposed District Plan and the proposed change to the Transitional District Plan. Determination made and resolutions posted/notified in September.

October and November. A number of applications were made to the Environmental Court with regards 'correct' notification of decisions as public opposition attempted to mount an appeal. No appeal was filed by the closing date.

November. Council endorsed the Commissioner's decision and approved the plan change.

1997 January. Council began to remove the mature trees in the Avenue amid public protests and arrests. The trees from the bridge to Te Awe Awe were felled in January. Between June and August all the remaining mature trees were removed and the Avenue was 4 laned throughout its length (from the Fitzherbert Bridge to The Square) by October. The tree replanting programme was undertaken concurrently. The bridge was to be widened in stages, as the east bound clip-on was constructed early in 1998, the bridge operated with a 3-lane and tidal flow system (using central cones) while the west bound clip on was constructed. The 4-lane bridge will be completed by mid 1998.

7.9 CONCLUSIONS ON THE SOURCES AND CAUSES OF ENVIRONMENTAL DISPUTE IN THIS CASE STUDY.

The historical background to the case study dispute described the conception of conflict in this case study. As conflict emerged in relation to the LTDP, it was evident that the parties in this conflict prioritorised the considerations relevant to designing a solution to 'the planning problem' in different ways. Conflict participants came to view the LTDP as either appropriate or inappropriate according to their own perspective about 'priorities'. Prioritorising values and concerns, and the consequent ranking and weighting to be applied within a problem-solving endeavour was demonstrably a perspective dependent, subjective and political undertaking. The sources of conflict at the time dispute emerged (in 1993) revolved around three levels of issues.

The central issue was a clash between those wishing to widen the Avenue to provide greater road carrying capacity for vehicles (to cater to the motoring public's interests) and those wishing to retain the mature trees and values associated with these. This would classify the issue as a *'distributional dispute'* with site specific characteristics, as it relates to a particular project. The LTDP pitted interests and values against each other in a competitive way. Furthermore, it cast some interests and values as 'mutually exclusive' (as some values would be lost and others changed permanently) and conflict 'erupted'. This then was a *conflict between interests and values derived from diverse perspectives within the community*. People had *different perceptions about the future consequences, and uncertainties about the adverse effects*, with regards the ability of mitigation measures (e.g. replanting) to achieve similar environmental qualities (e.g. an 'avenue effect' or amenity values), and on the likelihood of the adopted solution(s) achieving its objectives.[107]

Secondary causes of conflict were associated with that 'central issue'. People had different perceptions on the importance of a raft of different interests and values, and therefore also different perspectives on the level to which each ought to be accommodated relative to, or at the expense of, other interests and values. There were *variable perspectives on the level of importance of specific interests and values, and thus the level of attainment required, and on appropriate means to cater for them*. Some of the 'secondary issues' indicate that public participants linked the debate over the Avenue with other issues, that would (or

[107] Those objectives were not specified as such, at the time, but have since been identified as: to reduce congestion and thus delay (assume 'in commuting times') and improve 'safety' (accident spots were identified in regards turning and nose-tail collisions between cars), while also trying to minimize costs to Council. Other objectives were to address problems relating to the declining health of the mature trees and to recreate an 'avenue' effect, in time.

could) be affected by decisions in response to problems in the Avenue. The scope of the problem being considered was thus contentious, as it restricted some peoples ability to have their interests and values included in considerations. Some opponents to the LTDP described the cumulative and synergism effects which could occur as a result of how this issue was resolved, in terms of setting a pattern and course for the future city. They therefore endeavoured to widen the debate to include concerns additional to those identified by Council in relation to the Avenue.[108] *All of these secondary issues and the central issue are not 'distributional' in nature, some stem from diverse philosophical outlooks and are thus political in nature.* It was evident that the issue was not just over a project which pitted some interests against each other in a competitive way, *it was also about fundamental philosophical differences of opinion about what sort of a city the people of Palmerston North wanted to live in.*[109]

A third level of conflict was identified as arising from the dispute context itself. *An inability to satisfactorily manage the conflict (and the interested parties interactions), led to a different set of issues, which contributed to the evolving 'conflict' context.* These causes of conflict, while identified as problems within EDR processes, were becoming apparent prior to any EDR process being initiated. That these issues were not acknowledged as important to effective 'resolution' of the dispute, until after the resource consent hearing found in the opponents favour, led to an escalation in the dispute context (as relationships deteriorated, positions became more entrenched, distrust and suspicion surrounding the motives of other protagonists developed, and other characteristics described within the 'spiral of unmanaged conflict', became more evident).[110] Tertiary issues included for example: *what was relevant to informing the issues, and the need for accurate information to describe 'the problem', and the diverse interests and values. Information uncertainty abounded.*[111]

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[108] For example, amenity values of the river. Some participants did not want to just cross the river but wanted to be able to use it, and to better incorporate it into the character of the City, as Palmerston North is not identified with its river the way other river cities are.

[109] These sources of conflict provide part of the explanation for why conflict persisted, as all of these secondary issues were not able to be resolved entirely (settled) within the EDR forums undertaken to 'resolve' this dispute.

[110] That such characteristics arose in this dispute indicates that an escalation in 'conflict' was not interrupted or the conflict effectively 'managed', until the working party was initiated. Following that process, as all of these tertiary issues were not able to be settled entirely within it, the dispute resurfaced and continued to escalate. These sources of conflict also provide part of the explanation for why conflict persisted.

[111] As data describing the problems and all the interests was not available at the time the dispute surfaced and was not able to be generated by the time the CRTWP had to conclude, what the 'facts of the matters' were remained contentious on many issues, (from the 'desirability' of public transport to

Even when data was available, participants variably interpreted its relevance and what it indicated. When they agreed on the analysis of information, they responded differently to how the issue ought 'appropriately', or 'best' to be addressed, as there was uncertainty surrounding predictions of future characteristics.[112]

Disputing parties drew different conclusions on the relevance and accuracy of information, as subjective value judgement could not be eliminated from the analysis of issues. They variably believed forecasts about the future and came to different conclusions as to what was likely or feasible, and thus, what appropriate responses were to addressing the issues. A problem in relation to these issues was that participants variably selected the timeframe to apply to forecasting for sustainable management, and also applied different timeframes according to the issue under consideration.[113] A related issue throughout the conflict was *whether the problem definition was of sufficient scope to take account of or consider all the relevant issues and values the public brought into the debate.*[114] There were consequently *different perspectives as to whether the scope and problem definition could be interpreted as an 'holistic approach', or was comprehensive and integrated, and whether it was 'appropriate' to deriving an 'optimal' solution* (one that could cater for all the interests satisfactorily).[115]

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the health and life expectancies of the trees).

[112] People had different beliefs, for example, about future urban and traffic growth patterns, the ability of replacement trees to form an 'avenue' effect, the safety of all users in a 4 lane as opposed to a 3 or 2 lane road, the ability to secure a second bridge within a certain time, the sustainability of catering for single car occupancy and of the trees, the appropriateness or desirability of 'dividing' communities with wide roads designed to speed up traffic, etc).

[113] While traffic problems needed to be mitigated now, was catering to single occupancy in private cars sustainable long term? While the mature trees would die eventually and need to be replaced, did that mean they were dying and needed to be replaced now? Had traffic flows reached peak demand or was demand suppressed by limited supply (of road)? As traffic had increased at X rate over the past 5 years, did that mean it would increase at that rate for the next 5 years? The issue of appropriate time-frames to apply to the analysis remained unresolved, for example, the CRTWP report refers to immediate, short-medium, and long-term timeframes, but these are not specified in years and were found to have been variably interpreted. While securing a second bridge was a short to medium term goal, that came to mean 7 to 15 years hence. Retaining some of the mature trees also in the short to medium term however, came to mean 2 years.

[114] Some wished to debate the merits of different types of character for the city, others wished to open discussion on the transport network, or, to begin to effect changes in public attitudes to commuting to work. Still others wished to focus on how to get to work more conveniently, safely and more cheaply now, on how to maintain the current character of the Avenue, or, on how to cater for other interests not well considered originally (like cyclist safety)

[115] Diverse perspectives on the 'scope' of the problem remained after the public dispute was legally 'resolved', in that a formal determination had 'broken the impasse' as it re-circumscribed the legal 'rights' of the each of the interested parties.

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

8.1 PART B of the RESEARCH INTERVIEW: PLANNING PROCESS

In Part B of the interview it was assumed that the LTDP had been put on hold as a series of consultation (EDR) processes were initiated to identify and resolve issues surrounding removing the mature trees, and the LTDP therefore had the potential to be retained, adjusted or alternative solutions developed. This section of the research sought to canvass perspectives on public participation and EDR processes as employed to resolve the (then) current problems and to determine solutions. Participants were asked why they thought each of the processes were used and its purpose and objectives. They were prompted to discuss how the results of each process led to the use of subsequent processes. The analysis informed, '*the treatment of conflict in this instance*'.

8.2 IMPASSE CAUSED BY AN IMPEDIMENT TO IMPLEMENTATION OF THE LTDP.

Since the adoption of the LTDP in 1988, three forms of public participatory processes were undertaken prior to the public dispute emerging in 1993. A District Scheme Review, triennial local government elections and the annual plan process.

The District Scheme Review, undertaken in 1998, received submissions relating to a proposed "Fitzherbert Avenue Amenity Area". In the event, this was confined to restrictions with regard managing most of the 'public' trees along the Avenue, via a rule (refer to Appendix VIII) in the District Scheme, (renamed the Transitional District Plan (TDP henceforth) after the RMA was passed in 1991). Triennial local government elections occurred. However, the future of the Avenue was not evident as an election issue until 1995. The annual plan process, undertaken each year since 1992, also provided a mechanism for public comment. In 1992, members of the public made submissions on issues relevant to modifications planned for the eastern side of the river and since 1993, also on activities proposed for the Avenue. None of these processes could be said to have produced an 'impasse' in the dispute. While public concerns were emerging, they had no effect on the actual design of the LTDP and at the conclusion of each process, Council confirmed its committment to that project. The public participants view, in that event, was typified by the following comment, "these issues were brought up in submissions [to annual plans], but these were just ignored."

Council participants indicated that Council did not initially have a consultation strategy in relation to the LTDP. Council had reconfirmed its plan for the Avenue. In 1993, however, it was recognised that implementation of the LTDP was not possible without consultation. This did not arise because of outspoken public opposition to the LTDP, but was due to recognition that a rule within the TDP was an impediment to widening the Avenue. Public participants also thought that consultation was necessitated by the rule in the TDP.

> Public "Without that rule in the plan, there wouldn't have been a necessity on Council to consult. They wouldn't have had to go through the processes... they had to change their own tack."

Participants, from all groups, believed that Council had (since 1993) undertaken a lot of consultation, in relation to this issue.

> Public "I think the Council, to give it credit, has attempted to bend over backwards on this issue. But then the Council had no choice but to bend over backwards. It had written itself into an impossible legal position, so it had no option, no place else to go [but] to consult to an extraordinary length."

> Councillor "There has certainly been a great deal of public participation and every step of the way there has been thorough consultation. I don't see that anybody could say, 'hey, I wanted to contribute to that and never got the chance', I think everyone has had the chance."

The number of different forums that were utilized to 'resolve' this dispute showed that 'consultation' had been extensive. However, it also indicated that at the conclusion of each process, when a determination has been made, one or more of the parties was not satisfied with the result. The issues were not 'resolved' to all the parties satisfaction and therefore the dispute continued.

Besides aspects of procedure, (such as 'notification' and time-frames, established within the RMA), and directives on what must be presented by proposers of change and considered by regulatory authorities, the other characteristics of individual EDR processes were discretionary, (e.g. a pre-hearing meeting, or some other ADR process, requests for further information). The importance of discretion and flexibility in EDR has been described in Chapter 6, while in Chapter 4 it was been noted that the RMA is not specific in prescribing the characteristics of EDR processes and forums to enable discretion.

8.3 THE RESOURCE CONSENT PROCESS

8.3.1 Purposes and objectives of the resource consent application

With the rule in the TDP identified as impeding removal of the trees, Council considered

its planning options. The following choices were identified: applying for a resource consent; proposing a change to the TDP to remove the 'tree protection' rule from that plan; proposing omission of the rule from the Proposed District Plan (being drafted at that time - PDP henceforth) and waiting for that process to conclude, or; seeking to have the rule in the TDP declared 'ultra vires'. These choices demonstrated that Council's focus was on how to best enable implementation of the LTDP. However, each of the processes Council identified as options *required* consultation under the RMA, and thus further consideration of public views as to consequences and alternatives. In the ensuing debate several Councillors believed a plan change should be pursued, but Council eventually elected to apply for a resource consent to fell the trees.

The relationship between the community and local government in describing the 'publics interest/s' in this dispute context was not considered relevant, by Council, at this stage in the dispute, while issues arising from the nature of the relationship between Council and the community was a major source of conflict to opponents of the LTDP. The legal impediment which gave rise to a state of impasse in the dispute appeared to public opponents as having been treated as an obstacle to overcome by the Council.

> Public "Public disharmony has simply been a nuisance for Council. It wasn't a hurdle. They saw it, in fact, one of the Councillors described it as a 'hiccup', which is ridiculous. That was [Councillor] who said the whole Avenue dispute was a hiccup and they would get there anyway."

Council had interpreted the policy and rule in the TDP in such a way that it believed the LTDP did accommodate the intentions of that rule, as a replanting programme was incorporated to mitigate adverse effects of its project. Council believed it had fully comprehended the issues, that earlier analysis accurately reflected priorities in the 'public interest', and that the design process (as a problem-solving endeavour) had been comprehensive and integrated. As proposer of the development, Council was prepared to argue these points to an independent decision-maker. Opponents, in contrast, believed that the rule was designed to protect an aspect of the public interest (acknowledged within the environment management framework) which needed to be accommodated in designing development projects and were prepared to argue that the LTDP did not do so. In addition a raft of other interests and values were considered relevant to the planning endeavour and opponents of the LTDP did not believe these had been integrated or well considered in earlier planning processes or debated fully in the community. Also significantly, public participants articulated concerns about *the way* current problems were being addressed, and suggested the then current choices established patterns or preordained future directions and characteristics of the City (by closing off some possibilities and channelling

into others). These participants articulated concerns about the future city form and character and did not believe there had been a debate about what type of city Palmerston North could or should be. Also, these participants expressed a view that Council did not have a 'right' to take such decisions on behalf of the community, in an absence of wide consultation and no demonstrable mandate from the community.

Council's purpose in applying for resource consent could not be described as inviting public comment in order to identify interests or objectives, or to assess the scope of a particular planning problem. Nor could Council's purpose be described as an effort to determine how to prioritorize interests for local government in undertaking its civic services, or to evaluate alternatives, or to *formulate* a strategy which would attract less opposition. Council's focus was that of a developer which had concluded its design of a project and wished to implement it, but because of a rule in the TDP, had to go through a regulatory authority and thus also democratic processes. Council as developer (in its capacity as civic service provider), did not therefore promote any necessity for 'consultation' *per se*. It was assumed by participants from all groups that if there had been no rule in regards to the 'amenity values' associated with the avenue of trees, within the TDP, no consultation processes would have been initiated in relation to this dispute.

As a regulatory authority, Council had to ensure the resource consent process was carried out appropriately. Consequently, a commissioner (Tizard) was appointed to hear the application under delegated authority. Thus Councillors were not in a position to make the determinations as they had been in the past. An independent commissioner was considered necessary to ensure that the principles and objectives of consultation, and of the TDP and the RMA, would be seen to be applied in an impartial way. Council's trichotomy of functional roles were thus separated out within the consultative process and EDR forum. Council remained service provider (developer), but an independent Commissioner was delegated authority to act as environmental manager (enforcer) and decision-maker (judge).[116]

The progress of the resource consent application is summarised in Table 8 (following page).

[116] As described in Chapters 3 and 4, public participation in planning and decision-making processes is the formal means by which EDR is provided for, within the RMA. It is opportunity for all the concerns of all interested parties to be heard, considered and appropriate responses formulated.

TABLE 8 THE PROGRESS OF THE RESOURCE CONSENT APPLICATION

1993 Resource Consent Application

May 27 Council announced in the "*Evening Standard*" that it would apply for a resource consent to remove the trees. The RMA and TDP provisions required that the application be publicly notified and thus open to submissions.

Oct 20 The application was made to the consent authority (PNCC) by Connell Wagner Consultants on behalf of the PNCC.

Nov 3 Application notified.

Nov 22 Commissioner Tizard appointed to hear submissions and is delegated authority to determine the resource consent application.

Dec 1 The submission period closed. A total of 42 in support, 53 opposed and 1 which was equivocal were received.

Dec 6 Pre-hearing meeting. It was announced that to be fair to all parties, as a witness would be unavailable on the date set down 16/12/93, the hearing would be postponed until 9/02/94.

1994 Resource Consent Hearing and Decision.

Feb 9 The hearing ran for three days ending on 11/02/94. Much argument centred around the status of rule 2.25.1 in the TDP, and whether the removal of trees was a 'non-complying, 'discretionary', or a 'controlled' activity under the terms of the RMA. The other key argument concerned whether removal of the trees would result in a significant adverse effect. At the conclusion of hearing evidence the Commissioner heard final submissions from counsel both for and against the application. He identified what he thought were the important legal issues and his provisional views on these, and reserved his decision.

Feb 24 Commissioner Tizard determined the provision "was designed to protect an amenity value". He determined that the trees removal constituted a 'non-complying activity' (one that contravenes the rules of the District Plan but which is not prohibited), as it was proposed to replant trees on a line other than that on which the existing trees stood. As such, under section 105(2)(b) of the RMA, consent could not be granted unless the effects were considered at most 'minor', or were not contrary to the District Plan. He determined that the loss of the visual amenity from the removal of the trees was more than a minor loss, "I can not but think that the removal of the remaining trees will have a significant visual effect and it is an adverse one," as such he stated, "I need not consider any other alleged adverse effect. That one effect alone means the applicant cannot meet the requirements of s.105(2)(b)(i) of the Act." The application for a resource consent to remove trees from the Avenue was declined.

Source: Tizard, J.W. "*Decision of the Commissioner*", 24/02/1994.

8.3.2 Results of the resource consent hearing

The Commissioner's decision said that the adverse effects to protected amenity values would be more than minor, and within the current regulatory framework, this proposal could not be allowed. "It fails because it does not meet the statutory criteria which govern what I have found to be a non-complying activity", (Tizard, 1994). As such the application to remove the trees was declined. Commissioner Tizard (1994) wrote "In this decision I appreciate I have not dealt with some matters that the parties, and no doubt some of the witnesses too, would consider of great if not prime importance." That he did not, left many issues unresolved in the minds of the protagonists. The decision was based on an interpretation and resolution of legal issues, as they stood, regarding the protected status of amenity values and any adverse effects on these alone, rather than a wide evaluation of diverse interests and resolving these sustainably or equitably.[117] Neither did the decision identify what a more sustainable or acceptable solution could be for all the parties, or what the Council could specifically do. The problems in the Avenue and conflict persisted.[118]

8.3.3 Council's response to its failure to get resource consent

Decline of this resource consent meant Council had three choices. It could appeal, it could accept the decision and seek to rethink a solution to problems in the Avenue, or, it could disagree and as the determination was based on interpretation of the regulatory framework, it could seek to alter that framework in which future decision-making would operate. A memo was prepared by the City Manager[119] (1994, ME) in which he writes "The decision to opt for a controlled use application was clearly wrong, not only in hindsight but it was against both expert and staff advice at the time... it seems likely that the application would have failed on planning grounds alone." Council, in considering what it ought to do next, set up a Cross River Transportation Staff Group (CRTSG henceforth) to consider planning options and legal advice[120], and advise an appropriate process to follow.

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[117] Explanations for the outcomes of formal processes are discussed in Chapter 10. For instance, that the Commissioner was delegated authority to make determination on the felling of mature trees in Fitzherbert Ave as that was the application, it is generally accepted by participants that he did not have to, or even ought not to comment on other issues.

[118] On February 22, while waiting for the decision of the Commissioner, Council announced it had dropped the idea of a 3 lane, tidal-flow arrangement for the Bridge, instead opting for a recently identified alternative of 4 sub-width lanes for the bridge.

[119] "*Fitzherbert Trees Resource Consent: How we would do things differently*", Willis, M. City Manager, undated, PNCC File 4500-01.

[120] Council had received legal advice dated March 6, 1994, (from Chapman Tripp Shieffield Young Barristers and Solicitors, in file 4500-1), which advised that, undertaking a plan change, seeking a declaration that the rule in the Transitional Plan was 'ultra vires', or, an appeal, were "poor options" as

> Officer "There was [a group of] probably half a dozen of us working on the process. It was pretty hard to identify how it was designed as such. Each of us put in our own professional input into that in order to decide what to do. It wasn't as if the decision to go into a working party was made by one person. Some said we shouldn't have mucked around with the working party, that we should have gone straight into the plan change. That was also our legal advice at the start. So personally, I certainly had an influence but it wasn't my sole role to do it, it was taken within the group. During that whole process we were asking, what are we going to do next, even now [1997] as in, what is the public relations work needed.

The minutes of an early meeting of the CRTSG (6/04/94) show that Council identified issues, short, medium and long term traffic objectives, options for increasing traffic capacity and reducing demand, roading and engineering strategies, as Council saw them at that time. This group agreed that all the options identified were to be evaluated. Consideration was then given to opportunities for improved public consultation strategies, in which a "working party", with an "auditing role" was noted as an option, as was a "focus group" and "public workshops". The minutes note a "need to define what is public information/ consulting." It is evident in the breakdown of methods into two categories, informing and consulting, that officers saw the two processes as distinctive, that both were required and would need to be linked. Further-to-that, the group agreed "that a plan of action needs to technically appropriate with the best community support", and that the Council would "seek the approval of a Parliamentary Commissioner, prior to action, on the adequacy and recommendations of public consultation."

This staff group continued to meet on an ad hoc basis. On 21/07/94 it decided to establish a "communications strategy" and a "communications advisor", from outside Council, was invited to take that role. This person was to facilitate informing the public, by working with those responsible for whatever consultation process Council adopted and liaising with the media. Consideration was also given to the composition of a working party, and it was noted that "the Working Party may cost less in agony than going into the cost of initiating a plan change, and... may reduce Plan Change costs in the long run (Section 32 analysis)"

"all have the appearance of changing the rules after a loss". At that stage legal advice suggested "following the new plan timeframe and using a designation." It also suggested to use a working party. The advice noted that "using a working party was not adequate on its own, as it would not achieve the Council's objectives on its own, but would be a useful addition to whichever other option(s) are progressed." It then outlined the benefits to be gained of using a working party and indicated that pursuing the new plan option, "involves designation of other roads and omitting the rule relating to Fitzherbert trees. As it is just one of many rule changes, [so it is] a less focused issue than a plan change. [Furthermore], whether the issue is a major one when the Proposed Plan is notified may well depend on the success of the working party... The burden would be on those wanting the rule, to convince the Tribunal why it should be included and there are strong arguments against such a position... Also there was potential for economy of money, effort and emotion if the issue were dealt with in the context of the new plan." In summary the advise was to "consider the merits of an option which combines the working party, new plan and designation options".

(CRTWP, 21/07/94, ME).[121] Also, "there were also mixed views on Councillor involvement in the Working Party", but that "Councillors may lack commitment if not involved." This group thought "staff should remain as advisors to the working party." It decided, the Chairperson of the 'Goals and Strategies Committee' (G&SC henceforth) would identify Councillor representation. Such comments indicate the state of 'public dispute' had become an important consideration to Council, as officers saw a need to try to manage that conflict and limit any escalation in the dispute, as well as a need to re-evaluate the LTDP and to assess alternatives to that project in the current planning climate, and given changed circumstances. The CRTSG met again (18/08/94, ME) to consider the City Manager's report, to be finalized for a Special Meeting of the G&SC. The minutes show consideration was also given to:

> *"a need to scope for the degree to which the Working Party discussions ought to be made public... identify how the focus of the CRT objectives are included in the Annual Plan and the Strategic Planning Process... provide the environment whereby behind the scenes the working party would have the ability to 'call a spade a spade'. There may be a need to get that blunt."*

Issues of concern to the officers, arising from the establishment of the proposed working party included:

> *"It would be essential to maintain a degree of silence over the general attitude of the working party at the early stages... A need for the group to agree to the appointment of a spokesperson who will be the only one authorised to make media statements.*
>
> *There would be a need to ensure that the scope of the working party was realistic... to ensure the aims of the working party were limited cautious and achievable... There might be a fine line in the difference of the campaign between the Councils CRT expectations and that of the working party.*
>
> *Ensure the composition of the group encourages an openness in viewing all possibilities. There would be a need to identify who were the stakeholders in the establishment of the working party... for the Council to be thoroughly prepared as to the procedure to be followed when approaching the various parties for membership on the working party. This preparation would include the Councils understanding of the scope and direction of the group... the approach to various prospective members of the working party would be made with an openness which encouraged a confident contribution to its establishment and function. The challenge would be trying to get the kind of group which will agree upon an end result.*
>
> *There would be a need to develop 'fall-back' strategies. There would be a need to review the process of the working party in January 1995 with a view*

[121] **Estimates of costs for "options for resolution" show a Plan Change Now at $139,000; Part of New District Plan, at $30,000 and; Working Party at $87,000 - which would then have to be linked in with the new District Plan (Minutes of the CRTSG, 21/7/1994).**

to considering a plan change in the new District Plan. There would be a need to review the Council's decision as to the establishment of the Working Party and identify the expectations of Council of that Working Party" (CRTSG minutes, 18/08/94, ME, MI).

Such observations suggest that officers had taken Councillors' concerns on board (expressed in an 'informal meeting' of the G&SC held on the 25/07/94, Councillors' comments are provided in Table 9, p147) and became focused on getting the working party process set up so that it would be able to generate practical, acceptable ("cautious and achievable") solutions to the problem as Council would come to define it.

The City Manager's report (Willis, 22/08/94, MI), to the G&SC began, "This report considers the implications for the Council's strategies of improving traffic flows across the Manawatu River, as a result of the failure to gain a resource consent for the felling of certain trees in [the] Avenue, and thus frustrating the proposed 4 laning. This report considers the following options to enable the achievement of Council plans." Options were proposed for Council consideration. These were:

- Doing nothing - A consequence of abandoning 4 laning would be "that the current traffic flows would worsen, and cause considerable public concern. Clearly, this is unpalatable, not to mention unrealistic" (Willis, 22/08/94)
- Appeal the decision of the Commissioner to the Planning Tribunal as allowed for under s120 of the RMA - "This received some support from Councillors, however it was passed over as being risky, expensive, and probably unpopular with residents" (CRTWP Historical Background Paper, un-named officer).
- Abandon the project and focus on other solutions. The main alternatives were seen as public transport or/and a second bridge, both of which were considered poor options.
- Undertake a stand alone change to the TDP or designate the Avenue - These were seen as inviting similar public consultation processes. While thought these could avoid the potential delays which might be associated with the District Plan formulation, these were thought to be too provocative as "Council may appear to be abusing its power by changing the Plan after it failed to gain a consent", and would be likely to result in a counter plan change from other interest groups. Also "it would be somewhat incongruous to produce a blunt instrument like a Plan Change, while at the same time espousing a consultative approach with the new District Plan" (Willis, 94). Council staff and resources would be stretched and there was no guarantee that the Council will get the end result it wanted.
- Allow the matter to be integrated as part of the District Plan review process. This was discounted on the grounds that the issue was wider than a regulatory one, and should be resolved outside the District Plan (Paper to the CRTWP).
- Form a working party to review the issue. "This would allow all parties to look at all the issues and all alternative solutions aimed at resolving them. It would include a re-evaluation of the Council's original thinking" (Willis, 94).

Sources: City Manager, PNCC, 22/08/94, "*Cross River Transportation*", Report to the G&SC tabled, 30/08/94; PNCC, 1995, Unnamed Council Officer, "*Cross River Transportation Historical Background Paper*".

These options reflect a continued desire to achieve the LTDP, as that was Council's adopted solution, but also as no other potential solutions were considered 'appropriate'. For example "abandoning 4 laning" appears under the heading "doing nothing" which carries an implication there were no other courses of action to alleviate the traffic problems in the Avenue, (if Council could not 4 lane it could effectively do nothing) which was "unpalatable and unrealistic". The main alternatives (public transport and a second bridge) were considered "poor options", presumably in terms of their abilities to address current traffic problems as they could prove ineffectual or were more expensive than the LTDP, as they were clearly 'good options' if the intention had been to cater *solely* to the other interests and values as described by some members of the community.

Considering the benefits and problems foreseen with each of the options the City Manager concluded, "[the working party] seems to offer the best hope of success. In large part that is because *it signals a step away from a confrontational approach, and will instead allow the issue to be defused, and hopefully a common solution agreed to*" (Willis, 22/08/94/, MI). This rationale led him to recommend that Council establish a working party "to consider options for resolving the cross river transportation issues," and he indicated that adopting this approach, "would, however, mean that all parties, (including Council, and the Save the Avenue group) would have to *suspend their current preferences in order to ensure that open and productive discussions* can occur. It would also mean that quite clear ground-rules and timeframes would need to be spelt out at the start" (*ibid*). The City Manager in consultation with the PCE's Office and Save the Avenue was to develop the terms of reference, operation and membership of the working party. The PCE's Office had been approached for advice in establishing a working party and it was considered essential that an independent facilitator (from outside the region) be appointed. The City Manager also wrote "it would be appropriate to put a timeframe on the working parties deliberations to avoid the matter going on for too long and *avoiding actually making a specific recommendation*" therefore, he suggested that "all participants be advised at the outset that the working party be given until no later than 30th April to report back on its deliberations" (*ibid*).[122] The working party's role was mainly seen as one of opening a constructive dialogue to explore solutions. Councillors debated the recommendations of officers (30/08/94). Their comments on establishig a working party, are within Table 9.

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[122] Several public participants indicated that the option of a working party approach appears in a report which, considered *options to enable the achievement of Council plans*. While other points indicate this ought not to be taken as a reference to the LTDP specifically, such comments are open to personal interpretations. Variable interpretations contributed to the dispute context and thus to problems in EDR processes. This issue is discussed further in Chapter 12, in discussing explanations for problems within EDR processes.

TABLE 9 COUNCILLORS' CONSIDERATIONS ON THE PRO'S AND CON'S OF ESTABLISHING A WORKING APPROACH TO DISPUTE RESOLUTION.

Councillors' points in favour of establishing a working party:

Citizens uncommitted over the issue would be better persuaded with the establishment of a working party. Many citizens understood the issues involved with the CRT dilemma and the Council needed their input. There was a need to accept a mode of open government on this issue which ultimately could gain considerable kudos for the Council. A strategy needed to be developed to balance private rights with public good.

A working party presented an opportunity to enable others to take on board the direction being taken by Council. This would be achieved by them being better informed and being involved. There has been some element of belief by the public that the Council had not explored all the options. The second bridge option should be taken into the equation even though it may not be a likely direction. There were six real options in peoples minds and there was a need to work them through further.

If Council considered an immediate plan change there was a risk there would be an appeal, whereas the process of a working party would ensure better public support of the case and diminish that possibility. There was no guarantee of the outcome of any other process options. A plan change process would provide the community with transparency and simplicity and ensure Council was seen in a leadership role on the matter, and there would be sufficient opportunity for consultation in the process provided for a plan change.

The degree of importance the Council placed on the establishment of a working party may provide a greater chance of success which would have long term benefits to the Council. There was a need to consider consultation with the other groups beyond Save the Avenue. There was a need to promote a public information campaign before committing any commencement for a scheme change. Publicity without the support of a working party would appear arrogant.

Councillors' Points against establishing a working party:

The concept of widening the Avenue was not new, it had been the subject of the annual plan process and also the subject of a specific project. The LTDP should be pursued as Transit subsidies could be lost if options other than the LTDP were developed.

A working party may not be appropriate as it could lead to unrealistic expectations of the development of other options. There may be no realistic alternatives to the LTDP project. A working party could bring a duplication of effort and costs if it did not produce a result more acceptable to all the parties.

Timing for the construction of a second bridge prevented it being a realistic option. A second bridge was a long term action and it was not expected to be a realistic option in the short term. The use of a second bridge as an option would have to be well argued. Current issues needed to be alleviated without a second bridge being regarded as a credible solution. There were concerns expressed about delays to (implementation) to date. There could be increasing costs associated with a piece by piece process as the opponents were not considered likely to change their views.

Legal advice, in May 1993, said that a scheme change should have been pursued. It may be desirable to formulate a strategy for a plan change. A plan change process would provide the community with transparency and simplicity and ensure Council was seen in a leadership role on the matter, and there would be sufficient opportunity for consultation in the process provided for a plan change.

(Sources: Minutes of the G&SC of 25/07/94, combined with those of the G&SC meeting of 30/08/94)

These comments suggest that despite failure to get resource consent to remove trees, most Councillors continued to prefer the LTDP in comparison to what was seen as the main alternative, (a second bridge). Furthermore, while officers were presenting the view of an (legal) 'impasse' in the dispute and thus a need for re-evaluation and perhaps re-development of options in a collaborative, problem-solving, consultative process, some Councillors saw a working party as an informing process, an opportunity to enhance community support for the LTDP, which would facilitate either undertaking a plan change or designing the new plan in such a way as to present no impediment to the LTDP's implementation. Councillors' comments indicated they believed the LTDP did have a base of community support and that if the issues were explored thoroughly again it would win greater support with wider and better community understanding. This shows that Councillors had faith in the integrity of the planning processes (of 1988) which had led to the development and consequent selection of the LTDP as the preferred option. Councillors' comments also show a concern for doing the 'right thing' with regards consultation and evaluating alternatives, and that they also considered risks associated with other processes, or their BATNA[123] ("best alternative to negotiated agreement", Fisher and Ury, 1981) in terms of achieving both practical/'appropriate' solutions and enhancing their political kudos. These issues, from Councillors' perspectives, indicate motivational factors underpinning the political decision to sponsor a working party, at that stage.

Some Councillors preferred to pursue the plan change option as they disagreed this would be perceived as an abuse of power, and also as they wished to retain the funding agreed to by Transit N.Z. for the LTDP. These Councillors continued to support the LTDP, as they believed it remained not just the best possible solution, but perhaps the only feasible solution. In pursuing the LTDP, they argued there could be possible loss of Transit funding share in hand with increasing costs of a "piece by piece process" among other points noted above. However, this Committee endorsed the recommendation to establish a working party on 30/08/97.

It was later noted by the G&SC (9/09/94, MI) that, "The solution reached by the [CRTWP] should be the best solution for the City, *rather than a compromise decision to*

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[123] The concept of BATNA, describes that protagonists weigh up all the implications (as pros and cons) of alternative options for 'resolving' the dispute, along with the likelihood of achieving what they want within each option. For example, litigation by comparison to an out of court negotiation. Having assessed their BATNA, they decide whether to enter negotiations or to pursue other alternatives. As they participate in negotiations, the BATNA is re-assessed to ensure they still wish to remain in that process, or to abandon it in favour of an alternative. In this case study, Councillors compared all the implications of pursuing a variety of 'formal' processes available under the RMA, as well as those associated with 'informal' or ADR processes.

accommodate affected parties", which suggests that the 'consensual process' was not well or consistently understood by the sponsor of the process, at that time during its establishment. There appears to have been a belief in Council that a community derived compromise solution, while capable of 'resolving' the conflict between interests in the community, might not reflect the priorities of Council or exhibit characteristics thought 'necessary' in a solution, from the point of view of developer. The G&SC's decision to establish a working party was subsequently confirmed by Council (26/09/94).

The comments made by Councillors and officers about this ADR process reveal that there were apparent contradictions in Council's approach to choosing to establish the working party, and in the purposes or 'objectives' for employing such an approach, as the debate about establishing a working party generated a range of perspectives. Some comments can be interpreted as suggesting the parochial interests of Council as developer were being pursued, while others suggest the altruistic interests of Council as bastion of democratic processes, sustainable management and as civic service provider were being pursued. The 'problem' appeared to some Council participants as, 'how to most efficiently and effectively *implement the LTDP*', to others as, 'how to address the traffic problems or *cater for traffic interests*', and to a further group as 'how to achieve a better balance between what have become competing interests, and to *resolve issues and avoid conflict between interests*'. There appears to have been some uncertainty within Council as to which set of motivational factors were predominant in the selection and design of this ADR process. Some Councillors and officers, inferred that a good working party result would be community endorsement of the LTDP. However other officers did not focus on a particular solution, but rather on a preferred process which would enable the generation of an 'optimal' solution. As such most officers took an increasingly facilitatory role between the different interests being expressed in the community, including those of Councillors, as they endeavoured to set up an ADR process which would effectively resolve the dispute, as it would provide a response to the problems that all the parties could agree with.

The motivation of officers thus came to be to implement a good consultation process to generate not only a solution to the problem, which would need to be both technically 'appropriate' (the term 'feasible' was not used by Councillors or officers) *and* politically acceptable, but which would also resolve the issues causing conflict, in line with the earlier articulated aim of achieving the best community support. The inferences were that technically 'appropriate' *and* politically 'acceptable' solutions would have to be found in order to elicit Councillor endorsement of any resultant strategy. The implication was that any strategy would have to match the Council's priorities as perceived by a majority of

Councillors (and/or their advisors), as they were responsible and accountable and so would make the final decisions. The objectives of Councillors would have to met, as well as those of the other interested parties.

The CRTSG set up two new groups, (on 1/09/94) one a Steering Group, made up of the City Manager, the Regulatory Services Manager and four 'senior' Councillors, and a Coordinating Group, made up of key officers and the Regulatory Services Manager. The latter group identified whom they perceived as 'stakeholders' (interest and user groups), who may wish to have input in the working party.[124] A "Draft Terms of Reference" for the working party was prepared by officers, taking into account advice from the PCE's Office and in consultation with various interest groups. The appointment of an independent professional facilitator was also confirmed (4/10/94). The facilitators "*Terms of Engagement*" show that the working party would employ a "consensual approach" to dispute resolution.[125] The facilitators "*Terms of Engagement*" and the "*Terms of Reference*" established for the Cross River Transportation Working Party are provided in Appendix IX. It was thus clear that this consultative process was a voluntary, collaborative, problem-solving forum, which aimed to 'resolve' issues and produce an agreed 'optimal' solution to the problem defined in the "*Terms of Reference*".

8.4 THE WORKING PARTY CONSENSUAL PROCESS

8.4.1 The Working Party Consensual Process

The official working party was made up of the facilitator and a group of eleven members - all representatives of interest groups. This included two Councillors, two representatives of 'Save the Avenue', and one from each of the following organisations which were identified as 'stake-holders' as they use the Avenue and river crossing: the Automobile Association, Emergency Services Co-ordinating Group, Crown Research Institutes,

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[124] The roles of these groups respectively were, "to monitor the process up to November when a report [on establishing the CRTWP] goes to Goals and Strategies" and to "consider the future role of Officers in the process; to define ongoing support/monitoring past November; to consider a communications proposal for the [CRTWP]." The next meeting of the later group included a person from the PCE's Office and the role of the group was extended to include: consult with the PCE concerning: terms of reference; composition; facilitator and their role; timeframes for completion of objectives; technical and financial resources; budget implications and strategies. Prepare a report for G&SC concerning setting up a working party.

[125] These "Terms of Engagement" defined the role and responsibilities of the facilitator, which include: "Ensure the working party adopts a consensual method of working and facilitating agreement" and "Ensure that the working party develops agreed criteria against which options will be evaluated." 21/11/94, PNCC.

Manawatu Commerce Centre, Massey University Students Association, Massey University and Palmerston North Girls High School.

In addition to the public participants representing the communities interests, values and views, two Councillors were included to represent the interests of Council, as well as to maintain a wide view of the City's interests. That the working party membership included representatives of community interests and 'stakeholders', rather than people with technical expertise indicated that this process intended to address diverse community interests, in an effort to settle the dispute. An additional two "participants" were invited to attend, by the facilitator, as they had not been included as "members" by Council. These represented the interests of cyclists. A number of 'resource staff' (officers and consultants) attended the meetings and all invited participants were accorded speaking rights. Meetings were open to the public, who were also provided opportunities to contribute.

The "*Terms of Reference*" for the CRTWP identified the problem requiring solution as: "*The current level of service for cross river transportation offered by the City of Palmerston North is not meeting the needs and expectations of users*" and "the stated agreed goal of the [CRTWP] was to: *find acceptable means of improving the movement of people and goods*[126] across the Manawatu River", (Frawley, 1996, MI). The first meeting of the CRTWP took place in the Civic Administration Building (on 16/11/1994). The CRTWP met on ten occasions over five months, concluding with a report and recommendations (on 21/04/95).

8.4.2 Participants describe why the consensual approach was chosen and what its purpose and objectives were

Councillors indicated that the approach was chosen over other (adversarial) options as it would enable a review of all the issues and for collaborative problem solving to take place between all the interested parties, in light of changed circumstances.

> **Councillor "To try and come to a consensus on the methods and projects to enhance the safety and convenience of traffic flow across the river."**
>
> **Councillor "The plan of 1988 had to be changed because circumstances had changed and that was one of the reasons we determined to look at the thing fairly thoroughly on the grounds of, well what else has changed?"**

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[126] **This problem definition and stated goal were adapted from advice to Council on setting up a working party, provided by the PCE's Office (1994). This advice discusses, among other things, how "*problem definition is an essential precursor to finalising terms of reference.*" Attached was a section of the PCE's report on the proposed Transmission Gully motorway where "*we redefined the narrow problem that transportation planners had presented us with*", and stated the problem as: "how to move people and goods *while maintaining or improving the quality of life in communities and of the environment*" (PCE's Office, 1994, MI). Issues relating to problem 'definition' and 'scope' are discussed in Chapter 12.**

Councillor "It was seen as a method for resolving issues through dialogue and mediation to build on commonalities and negotiate differences."

Officers indicated the Council's objectives in such a process included:

"It would put the Council in a much more positive leadership role and may also allow the public and working party members to become more fully aware of all the issues... It would allow the issue to be seen in a much broader perspective and allow advocates of different approaches [to solutions] to explore the options in a relatively open and constructive fashion...It would give time for current intransigent positions to be softened while working towards a final outcome... The Avenue would not be seen in isolation but rather as a part of the whole City's transportation network...The City should also be able to regain a great deal of the initiative that it has lost to date and will effectively put it back in control of the process... Given the extended time frame and the more conciliatory nature of the working party, it may be possible to better encourage a wider range of community opinion on the issues." (City Manager, PNCC, 22/08/94, "*Cross River Transportation*" report tabled at G&SC meeting 30/08/94)

Officer "The Council had an objective it wished to achieve... to improve the traffic jams going to and from the south side of the river... Unfortunately some years ago Council had, in its wisdom, included in the [TDP] protection for those very trees. As it turned out the issue activated a certain sector in the community who were in favour of saving those trees, and the Council lost its case. That left the Council in an unenviable position because, on the one hand we had a large section of the community demanding that we improve transport across the river, on the other we had a section of the community saying that the only practical solution we could find was not acceptable. So we had the community polarised in its views on how the problem should be solved. So it seemed to Council that we should consult the community and give [them] the opportunity to help or to develop a solution to guide the Council on where we should go."

Officer "I think it was an appropriate method because it brings opposing views together in a non-confrontational arena."

Officer "We thought OK we have quite a few interested stakeholders here. Now we will work through those stakeholders and see if we can find some common ground."

[*There was seen a need for community representation. Was there any debate over other methods of consultation?]* Officer "No, certainly not. The only debate was looking at other strategies to achieve a solution and there weren't many. We knew we were entering a phase of developing a new district plan. We could have slapped a plan change in, but what sort of message would that have been - if we can't get it by that means, do it another way - so the CRTWP was seen as the most desirable means of getting a solution."

The City Manager noted,

"*The CRT project [CRTWP] aims to enable a cross-section of the community to work together on arriving at a common understanding of the problems, with hopefully a suggested solution to them, or at least some clearly understood options for the resolution of them. In a broader sense it will provide a lead into the discussion of an issue of long standing in the community, namely, the location of a second bridge.*" (City Managers letter to the Communications Advisor, 21/08/94, PNCC file 4500-1)

Further to the specific objectives, Council recognised that there were indirect objectives associated with using that process. For example, the aims of the "Communication Strategy"

to be conducted alongside the CRTWP were:

> "*To demonstrate the Council's dedication to open, inclusive and democratic decision making. To discover public perspectives on [CRT]. To raise the level of understanding of [CRT] issues. The [CRT] Working Party Communications Strategy has two main thrusts, covering inward and outward communication... Ensuring public contribution to and endorsement of working party processes... Ensuring a smooth and regular flow of outward communication on Working Party processes and deliberations.*" (CRTWP Communications Strategy, undated probably 10/94, PNCC).

The working party consensual process was thus to be communicated to the wider public, to encourage a two way information feed, and to encourage community support of the process. The City Manager noted, "while this process may appear somewhat complicated, we believe that it:

a Is fair and will appear to be so;
b Will require each of the parties to think about exactly what they want to achieve;
c Will achieve an outcome with the assistance of the independent facilitator" (Report to Goals and Strategies Committee 22/08/95).

Both the direct and indirect objectives can be read as Council's stated purposes in establishing the CRTWP. Importantly it is indicated in press releases and reports that for the CRTWP to be successful in achieving its objectives, "the Working Party and all associated with it must remember that consultation is not a process whereby the informed teach the ignorant to 'see it our way'. Real consultation takes place between equals who have agreed to leave their 'agendas' at home in order to listen and learn from one another" (Communications Strategy, 10/94, p7). Public participants agreed that the working party consensual process should be supported.

> **Public "[The City Manager] put out a report saying the working party would be the most user friendly approach... and that the other methods would be seen as an abuse of power. So they did that, the right thing there."**

They also indicated that the working party was multi-purpose. It was to provide relief to the conflict situation by undertaking a less adversarial or confrontational approach. It would better inform the community about all the issues and had the potential to produce a mutually acceptable solution, taking into account the different views, interests and values brought to the forum. It would also improve public relations for Council.

> **Public "To be seen to be using a consultative process, to garner a variety of opinions from as wide a spectrum as possible... PNCC was desperate to achieve a community consensus on a difficult issues."**

> **Public "Pressure in the city to use effective consultation methods... They certainly did try to get some political mileage out of having it, I can tell you that. It was a good idea, to try to improve their image, from their point of view. Also they wanted a quick**

way of proceeding with their project. [*What was the stated purpose in choosing a working party?*] To have a range of options. To have people coming away from it more informed so, in some ways they could dispel a lot of the myths and conflict."

Public "Because PNCC had themselves in a bind with 'Save the Avenue', so they saw this as the best means of resolving a difficult situation [and] also, a wide cross section of independent views/groups could somehow reach consensus and make clear recommendations."

Public "They had already received quite bad press for their ... approach to their determination to push their policy. They saw consultation and mediation as a less confrontational approach. They had other alternatives, they could have simply amended the [TDP], but they were told that would be confrontational, so it was the least aggressive approach to furthering their policy. [*You think they did recognise it was less adversarial, but went into it to further their policy?*] Oh definitely. That was never a secret or anything, that was simply the way they saw of moving it forward. [*The CRTWP was set up 'as how to improve the flow of goods and services over the river'*] "No, That was the brief for the CRTWP - but the Council discussions that preceded that were quite clearly, 'we have these options, which one will we pick', and they picked the mediation approach. I think because they felt that what they were doing was rational and proper and that we would see that... that there would be a better chance of their opponents seeing their perspective through this mediation approach. I'm sure that was what it was about."

Several public participants believed, at the outset, that a purpose was to "move forward" the LTDP, as a working party was an opportunity to gain greater public support for the LTDP, to reduce public pressure or to convince opponents of the LTDP of its merits or that suggested alternatives were not efficient, effective or feasible.[127]

8.4.3 The CRTWP's Final Report and consensually agreed strategy

The CRTWP Final Report and recommendations were introduced to Council by the facilitator (on 1/05/1995). The facilitators letter and the "*CRTWP Final Report*" are reproduced in Appendix X. Clause 12.1 states "This report is accepted by members of the working party as follows:" There follows a list of signatures of all the "members" and the two "participants", showing all had agreed to the report as a consensually determined strategy. However, one of the signatories (a Councillor) included the rider "with reservations re:" followed by a list of six clauses.

Consideration of the CRTWP report shows that issues of timing and the sequence of actions, (and also an inference of precaution and monitor/evaluate 'as you go'), were fundamental to resolving the issues. The impression is that the group had achieved, through common understanding and problem-solving, a package deal or negotiated strategy, which catered for all the different interests brought to the group to their members

[127] Some other participants also came to share this view as a result of their experience in the process. Comments showing views based on experience in the process, are discussed in Chapter 12.

satisfaction. The strategy was designed to progressively cater for the range of interests and objectives, given the anticipated changes at each phase of implementation. Evaluating the effectiveness of each component before undertaking further actions was linked to allowances for flexibility (refer clause 5.13 CRTWP report). For instance, it was apparent that the recommendation for a second bridge did intend (in hand with the immediate to medium-term actions recommended) to address problems and conflict over the Avenue by providing an alternative (near) river crossing (investigations to begin immediately, refer clauses 5.5 to 5.9). However, as it was recognised that siting and construction of such a bridge could take up to seven years, the report was written so as to allow for widening of not only the last section of the Avenue closest to the bridge (between the bridge and Te Awe Awe St), but possibly also the next section of the Avenue (between Te Awe Awe St and Park Rd) depending on the success or otherwise of the immediate and short-to-medium-term strategy as outlined. But, for the immediate term, the recommendations (8.12 to 8.14) sought to retain the 2 lane layout for the remainder of the Avenue, (not affected by the widening from the bridge to Te Awe Awe Street), in order to allow monitoring of the success of the other recommendations for improving traffic problems. Following that, under "implications for the future", the CRTWP recommended that "due to the importance of retaining the present streetscape along at least parts of the Avenue, minimising the potential for further division of residential areas by concentrated traffic routes" (clause 10.2), "two lanes should therefore be retained in the *long-term* between Ferguson Street and Park Rd" (clause 10.3, MI). "Final treatment of the section between Te Awe Awe St and Park Rd will depend on the nature and effectiveness of the short-term to medium-term improvements (see clause 9.9), and on the number, location and timing of further bridge crossings" (clause 10.4).[128] Further to the need for monitoring and perhaps some flexibility, it was recommended that a CRT liaison group, to include members of the CRTWP, would be established to help overcome any issues arising from implementation of the package of recommendations and to monitor the success or otherwise of the strategy as it came into effect, (clause 11.4).

The CRTWP report, therefore, outlined a comprehensive 'package' of immediate, short to medium, and long term actions which made up the preferred solution that the group developed and which all members had agreed to. However, it included one

[128] The phasing periods are not defined in terms of months or years, however, it is apparent the short-to-medium-term applies to the period up to construction of a second bridge, which was thought could take up to seven years. This bridge would also be designed to cater for "long term" traffic and demographic projections (concerned with 25 years hence). Long-term within this plan can be variably applied to the period post construction of a second bridge, i.e. beyond 7 years (or whenever that bridge is built) to about 25 years hence.

recommendation containing an either/or option. This recommendation provided for widening of the section of the Avenue closest to the bridge (between the bridge to Te Awe Awe Street), but didn't specify whether that should be to 3 *or* 4 lanes. That was to be decided based on further analysis of 3 laning with tidal-flow and 4 laning, which had not been completed in time for the groups consideration.[129] The CRTWP's report did not comment on the policy ramifications of widening to 3 or 4 lanes.[130] Nor did it not discuss planning mechanisms in regard to any of the recommendations outlined.

While all the members (and the two invited 'participants') endorsed the report, (including the Councillor who signed 'with reservations'), a number of participants indicated they would have liked further opportunity to "fine tune wording" which could give rise to contentious interpretations. But, for various reasons each had signed it and thus agreed that it was the optimal solution given the circumstances.[131]

All the participants indicated, in 1996, that the most crucial aspect of the CRTWP report was the recommendation to build a second bridge (and to consider the possibility of a third bridge to serve future urban growth). The result was a noticeable change to Council's previous policy as it became committed to a second bridge and initiated planning processes towards securing it. Other key features were that the Fitzherbert Bridge and the last section of the Avenue as it approached the bridge would be widened. Furthermore, the report made provisions for maintaining the mature trees in the Avenue from Te Awe Awe to Ferguson St, at least to the medium term and then possibly only those from Park Rd to

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[129] Some in the group had argued to maintain 2 lanes along the entire length of the Avenue, others argued for 4 lanes. Information on 3 laning and tidal-flow of the last block and the bridge was requested but was not available to the CRTWP before it had to conclude. Never-the-less, 3 laning the bridge and up to Te Awe Awe Street was offered as a compromise by those preferring 2 lanes. Thus, those preferring 2 lanes were said to have *agreed* to 3 laning as they offered it as a compromise, while those who preferred 4 lanes would not accept this as a compromise solution. Others in the group were unable to decide between the two options, as accurate comparative evaluation was not available to the group. The CRTWP could not reach consensus on whether to 2, 3 or 4 lane up to Te Awe Awe Street. However, with opponents of 4 lanes agreeing to widen to 3 lanes, the recommendation could be made "to increase the number of vehicle lanes over the bridge and approaches (including the section of Fitzherbert Avenue from Te Awe Awe Street to the Bridge)" (CRTWP Final Report, 22/04/95, p5). Further to that the group agreed that Council, with further analysis and consultation, should decide whether this widening would be to 3 or 4 lanes.

[130] The CRTWP did not comment on the ramifications of widening that part of the Avenue in relation to the new District Plan or the TDP. They did not, as 3-laning would not require tree removal. In fact, the CRTWP report does not discuss the policy ramifications of any of its recommendations, or make any recommendations with regard the Proposed District Plan, despite the fact that the closing date for the CRTWP was set down to enable any findings of the CRTWP to be incorporated into the new District Plan, drafting of which was due to be finalised two days after the CRTWP had to conclude. It was not intended that the CRTWP would be that specific in its recommendations.

[131] The circumstances of the final hours of the CRTWP are described by participants in Chapter 12.

Ferguson St in the long term, depending on the success of the other recommendations, in catering for traffic interests in the Avenue and depending on construction of another bridge.

8.4.4 Council's response to the CRTWP strategy

Councillors raised concerns about the element of indecision (3 or 4 lanes) within the report, about how representative members were of their interest groups, and also about how interest groups were canvassed during the process (especially in the final meeting, which spanned two days). Despite this airing of concerns, however, participants believed (in 1996) the the report was accepted by Council and that Council would pursue the strategy.

> Facilitator (1996) "There was never any criticism by Council of the outcome of the CRTWP. I think, importantly, because it incorporated most of the things that were important to even those [Councillors] who opposed the CRTWP"

> Officer (1996) "The Council has brought into the solution only because it serves two purposes, to reduce the problem in the meantime and to cater for urban growth."

The CRTWP report was referred to the G&SC for further consideration together with officers' reports in relation to the CRTWP's recommendations. Because most participants believed that the CRTWP attempted to develop an optimal solution and reached consensus on all but one aspect, and that the recommendations had been accepted by Council, they were asked (in 1996) who was accountable if the proposed strategy did not achieve its objectives. All participants indicated responsibility lay with Council and not with CRTWP members, because Council would have to endorse the recommendations before they would be implemented.

> Officer "I guess its not so much a legal issue. The CRTWP is after all just a working party and any decision which it makes because it is a working party can not be binding on the Council."

8.4.5 Linking the CRTWP to Council decision-making processes

i Councillor representation in the CRTWP

The two Councillors in the CRTWP chaired the Goals and Strategies Committee and the Resource Management and Regulatory Committee respectively. Their letters to the Mayor, (16 and 17/08/94, refer to footnote 133) registering interest in representing Council in the CRTWP, indicated both felt they had considerable understanding and interest in the issues of concern to the CRTWP. The Mayor considered both Councillors had a "particular interest", one in terms of consequences and ramifications for the committee, and the other,

in the outcome as a planning issue. They were therefore appointed to represent 'Council'.[132] It was felt that they would also understand the outcome document and would be able to communicate its intent to their respective Committees and to wider Council, and "the support of Councillors is important, and will be increased if they are kept informed" (CRTWP Communications Strategy, PNCC, 1994, p5).[133] The political arm of Council thus required and achieved a two way communication flow with the CRTWP. Councillors wished to be able to have their concerns and views expressed directly (rather than indirectly represented by officers) and heard within the process, and to be able to influence the results of that process. They also saw a need to be involved in order to understand the process and its outcomes. Officers comments indicate there was some concern about including Councillors in the CRTWP, but these were less significant than the need to have Councillor commitment to the process, endorsement of it, together with involvement that would foster their sense of ownership in the results.

ii Other Councillors Involved

Councillors indicated that 'decision-making' would remain their prerogative and that they would approve or disapprove of any solution generated by the CRTWP. However, most

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[132] The Mayor noted that he "disregarded informal comments that Council should not be represented by those with publicly announced views on two grounds... many members appointed to the working party from outside the Council have also strongly held views which have been publicly stated. Secondly, the Councillors who submitted their names were capable of taking an objective view of the information that will be presented to them in the working party, notwithstanding the views they may currently hold."

[133] Both Councillors supported their registration of interest with reasons why they believed they were suitable. One indicated they had considerable experience in dispute resolution through the "Dispute Resolution Tribunal", and so considered they had mediation skills. This Councillor wrote, "at the preliminary work day on 29/09/1994 there was much accord and good humour and I would seek to carry this on. I applaud the officers for the stance they are taking on this issue and their attention to the selection of an independent mediator." The other Councillor stated (ME, MI) "While I have expressed views on the desirable outcome of the deliberations of the Working Party I do not consider that it is reasonable to expect that all members of the Working Party, with the composition as proposed, will come to the group without any ideas on the topic. What can be expected and naturally I would undertake, to consider all the information placed before the Working Party and weigh its deliberations before coming to a final view on the Working Party's report to the Council... It is imperative that there is a representative by a person from [my committee] on the Working Party and that this person has an extensive knowledge and understanding of the resource management issues, including transportation planning. I am unaware of a Committee member with as extensive experience as my own. *I do not accept that points of view consequent upon this experience can be canvassed by officers in their reporting to the Working Party.*"

Both Councillors indicated they saw "no conflicts of interest", the first because of their experience in mediation the other as "it is likely that submissions on any resource consent or plan change would be considered by a Commissioner." Both mentioned their "interests", the first as being "the citizens of Palmerston North, especially those who travel across the river and the Palmerston North City Council", the other as "the citizens generally... I also have the long term interests of future citizens not yet identifiable, very much in mind. My Chairperson's position requires me to take a longer view and to represent, as far as possible, future as well as current citizens." Both Councillors indicated an ability to be "fair-minded" in a CRTWP.

participants believed that if a consensus was achieved, the CRTWP solution would be adopted by Council. They also believed, in 1996, that Council had adopted the CRTWP strategy. The reasons given for this belief was described by two consultants.

> Facilitator (1996, ME) "Because the Council was involved it was unlikely they would make any changes... I was confident... that the strength of the CRTWP recommendations wasn't going to be undermined when it came to the Council later on, because politically it is too correct. It carries a lot of weight when a group has worked for six months and has been directly involved in a consensual process with all these groups involved and they come up with a package of recommendations which everyone, including members of the Council who were on the CRTWP, has agreed to... There is no way the Council is going to change it. If they do they run huge political risks, and that is exactly what happened [Council accepted the report].

> Consultant (1997, ME) "One would hope that the process actually took all of the participants along with it and those were then able to represent the group feeling and that everybody made a group decision. But I wouldn't want to undermine the right of Councillors to have a working party report as just one piece of information. In a way there are safeguards built into it too, in that they have been party to a working party and they have invested money and time into it, and that is a fairly powerful group they have set up. If they overturned the major exercise they had paid for, then it sort of undermines their own processes and their own decision in establishing it"

iii Council's decision-making procedures.

Participants were asked "How was the process linked to Council procedures?" It was recognised that the decision to undertake the CRTWP process was not unanimous, but the integrity of the process would mean any agreement that did emerge from it would be difficult not to accept. It was expected (in 1996) that Council would work to implement the CRTWP's strategy by whatever means were appropriate or necessary. This was anticipated within Council, hence an assertion that the CRTWP should not be specific about implementation. This would allow Council flexibility in designing the best way to implement the recommendations.

> Officer (1997) "Basically it just gives the Council advice - but of course it is fairly substantive advice, because it's been a body set up specifically by the Council. Beneath the nine Standing Committees, which have a certain amount of delegated authority to make decisions which bind the Council, we have a whole raft of other 'group' activities, for want of a better term, which include working parties, advisory groups and so on, and the CRTWP was just one of those, set up under the [G&SC]. I guess the connection is that the work that has been done earlier on, to some degree - the ideas, concepts, the problems - has sort of fed into work further down the track."

Following receipt of the CRTWP's report, Council did not actually adopt the recommendations of the CRTWP. Rather, officers provided advice and made recommendations based on the CRTWP report and presented these to the G&SC, along with the "*CRTWP Final Report*" (on 22/05/95). Public participants believed the strategy recommended by the CRTWP was clearly outlined in the report and that it was Council's role to determine how it would be implemented. In doing that Council would follow the usual

procedures for approving works or subsequent processes.

> Public "We thought it was adequately spelt out... The Councillors more or less said, 'now the process is over, we have a report, now we go back into our proper decision making processes. We draw that document in and go through our normal processes allowed'."

The officer's report entitled "*Report for the CRTWP*" (19/04/95), prepared by the Services Facilities Manager, Regulatory Services Manager and the Strategic Planning Manager, set implementation of the CRTWP recommendations in motion. This 'consequence' report contained: a brief 'summation' of key CRTWP recommendations; discussion on implementation of recommendations; District Plan, financial and community/communication implications, and; the establishment of a "CRT Liaison Group" (CRTLG henceforth). It concluded with eight recommendations summarised as:

- Receive the Final Report of the CRTWP.
- Seek further advice from the City Manager on the implementation, timing and funding of recommended immediate actions to be reported to Operations and Review Committee.
- Report to the Operations and Review Committee on the composition and terms of reference of the CRT Liaison Group.
- Seek a further report regarding increasing lane capacity in the Avenue (South of Te Awe Awe St) and the Fitzherbert Bridge.
- Seek funding in the 1995/96 Annual Plan to commence detailed studies in the siting of a second bridge.
- Start detailed studies for a second bridge forthwith, providing opportunity for input from the various stakeholder groups.
- Formally thank the CRTWP and the facilitator for their efforts, enthusiasm and time over the last six months.
- That the City Manager provide advice on the necessary alterations to the [TDP] and [PDP] as required to meet the recommendation of the CRTWP and the results of recommendation 9.3 of the officers report.[134]

It was these recommendations that were considered and "accordingly, and generally in accordance with the officers' recommendations" adopted by the G&SC (22/05/95). Council then began to implement the CRTWP strategy. Notable actions included:

The G&SC requested analysis of the benefits and costs of 3 and 4 laning from the bridge to Te Awe Awe Street.[135] The results of that investigation were reported to that Committee by the Technical Services Manager (on 7/08/95). "The report recommended that Council

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[134] 9.3 of the officers' report reads, "Whilst they were able to agree unanimously on a number of issues, they were not able to reach such agreement on the medium term solution to the problem, i.e. whether to 4 or 3 lane the Avenue south of Te Awe Awe Street"

[135] Later on in the conflict, argument involved whether any CBA had included or considered the remainder of the Avenue - i.e. was analysis confined to the section agreed to be widened by the CRTWP or otherwise, and what difference would this 'frame' make to the analysis?

discard the option to 3 lane, tidal-flow the section of [the] Avenue between Te Awe Awe St and [the] bridge given traffic safety concerns" (Frawley, 1996). The G&SC and subsequently full Council adopted the recommendations of that report (on 28/08/95).

The Operations and Review Committee received a report (on 15/06/95), prepared by the Services and Facilities Manager (dated 31/05/95, ME), in which setting up the liaison group was discussed. It was envisaged that as "the short to medium term actions will take up to two or three years to complete.. the CRTLG... would operate over that period". This committee approved the terms of reference, the proposed composition of the group and the means of membership selection that was outlined in the report. It also stated that the input of the proposed liaison group would be an integral part of continued consultation on the immediate and short to medium term actions as part of the CRT project.[136] Similarly, in accordance with the CRTWP recommendations that detailed studies for a second bridge be actioned immediately, Council announced that it was committed to a second bridge. The G&SC considered a report entitled "Second Bridge Site Selection Proposed Process" (in September/95). That report considered issues of consultation, the type of technical information that would be required, and a process to identify a site for a new bridge. The Committee and subsequently Council agreed to the recommendations of the process and to the establishment of the "Second Bridge Site Selection Working Party", as soon as possible after the local government election (of October 1995).

At this stage in the evolution of conflict and its EDR processes, Council had adopted and was pursuing the strategy outlined by the CRTWP. Some immediate actions were undertaken during 1995, for example, cycling and pedestrian facility improvements. Other modifications, in line with CRTWP recommendations were undertaken during 1996, for

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[136] Such consultation included, for example, that Council delivered to all households a pamphlet "*Crossing the Manawatu River*", in July 1995. (Refer to Appendix XI) In this, Council introduces the problem as one of traffic demand exceeding capacity, resulting in traffic jams, delays and accidents, and explains it set up the CRTWP to look at the problem. "They say we are going to need at least two bridges across [the] River by the year 2010. So, what are we doing to solve the problem of crossing [the] River? We are committed to building a second bridge. The consultation process and actual construction could take some time but if all goes well it could be finished in as little as seven years. But first, to solve the problem at the Fitzherbert Bridge we are going to expand it to four lanes... Let's look at the options *for the approach* to the planned 4 lane Fitzherbert Bridge." ("Crossing the Manawatu River, PNCC, 1995, ME, MI). The information contained within the pamphlet provides detail of 3 and 4 laning from the bridge to Te Awe Awe St. It outlines issues for both options, including that, 3 laning will cost "at least $800,00" with "ongoing costs in running the system" and while retaining the mature trees these would need to be trimmed back and, the cost of 4 laning "will be about $200,00" and would involve removing the mature trees, but a new alignment of trees would be established. It indicates that "The trees from Te Awe Awe Street to The Square will remain" under both options. The brochure indicates some of the issues that need to be taken into consideration by Council in relation to building a second bridge.

example, installing traffic signals at the Park Rd intersection and at the Girls High School crossing. This would imply that the issue had been 'resolved' to the satisfaction of protagonists and the dispute settled, as conflict ought to have been dissipated. However, that was not the case. There continued to be an ongoing conflict, because in May 1995, Council had notified its Proposed District Plan and following that its Annual Plan, each drawing submissions from an interested public.[137] Also, there were some adverse reactions to information being presented in the public arena as a result of the CRTWP Report. For instance, to a pamphlet "Crossing the Manawatu River" disseminated in July (refer to Appendix XI). There were also some adverse reactions to other Council actions in implementing CRTWP's recommendations, including comments over characteristics of the liaison group set up in June, the nature of cycling facility improvements (as undertaken), and conflict over any need to remove trees to install lights at the Park Rd intersection.[138]

8.5 THE PROPOSED DISTRICT PLAN PROCESS

8.5.1 Background to the Proposed District Plan process, and participants describe why this process was used and its purpose

A "Councillors Workshop on the District Plan" (28,29/03/95), agreed on a 'holding provision' in relation to the policy on the Avenue trees, to be included in the PDP. An officer wrote a memo (19/04/95) for the CRTWP on the progress of the PDP in which he informed the group that "as drafting was to be completed by 24th April, an interim holding provision for the status quo had been drafted and that this provision or some other which may result from the Council's consideration of the CRTWP report would be included in the new District Plan". When Councillors considered the "*CRTWP Final Report*", they received advice that, as more information was required before Council could decide between 3 or 4 laning. "It is not therefore, recommended that a revised provision, taking account of the Working Party recommendations be included in the [PDP], but rather that the 'holding provision' agreed upon at the Councillors' Workshop on the District Plan... be included" (Officers "Report for the CRTWP", 19/04/95/ ME, presented to the G&SC, 22/04/95).

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[137] 96 submissions were received in relation to the resource consent application in 1993, 247 submissions were received in relation to tree protection or non-protection in the PDP, in 1995. These figures show an increased involvement of the public in formal processes, after the CRTWP concluded. The objective of "raising awareness" can thus be said to have been achieved, as an outcome of employing that process.

[138] The matter of the Avenue trees was also the subject of comment by the Planning Tribunal decision in 1995, BP Oil NZ Limited v Palmerston North City NZRMA504 at p509 where the Tribunal said. "What we have said however [in relation to the Council's plans for the trees] is conjectural, because the Council have not yet fully explored the public reaction to that proposal [the LTDP]. Many people may not wish to see trees of substance and maturity removed to make place for motor vehicles."

CRTWP members were then sent a letter to which was attached "the Council's decision made at last night's meeting", in which they were informed, "In relation to recommendation 10.5,[139] a member proposed an amendment in accord with legal advice which recommended that the Council not attempt to change the District Plan until a policy had been decided by the Council. This meant the protection of the trees remained. When the Council determined its policy then, in the case of 4 laning, there would be a proposed plan change to the [TDP], and in the case of 3 laning, an objection to the [PDP]. The City Manager advised an amendment that protected the status quo and existing provisions remained unchanged until policies were determined... Accordingly, and generally in accordance with the officers recommendations, the [G&SC]... recommends: 1) That no provisions be put in the [PDP] and no change be initiated to the [TDP] until the Council had received a further report on 3 or 4 laning of [the] Avenue from Te Awe Awe St to [the] bridge and had determined its policy on that issue" (letter to members, 23/05/95, ME).

The "*CRTWP Final Report*" had recommended among other things, that action be taken to: "enhance the streetscape (including keeping the older trees between Park Rd and Ferguson St [in the long term]" (clause 10.3]), and; in the short to medium term, in the block from Te Awe Awe St to Park Rd, "Retain as many as practicable of the older trees, until the strategy for further bridge crossings is decided (see clause 10.4)" (clause 8.14), as these were not seen to be affected by widening part of the Avenue. An inference of the CRTWP recommendations is that it agreed, in principle rather than in practice, to exclude protection of those trees from the bridge to Te Awe Awe St to allow widening to 4 lanes (if that was what Council determined over 3 laning which did not require tree removal) and anticipated the retention of, and possibly some form of protection for, the remaining trees.

The PDP was notified (on 31/05/1995). Council had not yet received the analysis on 3 laning and tidal-flow and 4 laning, and had not released its decision. However, there was no reference at all to the Avenue trees, including the 'holding provision' that CRTWP members and their constituent groups had anticipated. As the notified PDP omitted these trees in any of its protection mechanisms (eg for historic, cultural or amenity values or in its register of protected trees), submissions were received in relation to this issue. Furthermore the "transportation policy remained unchanged in the [PDP]" (Public) and this also drew a number of related submissions. However, Fitzherbert Avenue was "designated for road" in the PDP and as such "the Council will be able to do anything on the designated

[139] **The officer's "Report for the CRTWP" (19/4/1995) reads "10.5: That the City Manager provide further advice of the necessary alterations to the [TDP] and [PDP] as required to meet the recommendation of the [CRTWP] and the results of recommendation 9.3"** ***(refer to footnote 134).***

land for roading purposes (including the removal of trees to allow the widening of the carriageway) notwithstanding any rule to the contrary" (Wiltshire, counsel for Council, in Bornholdt, 1996, p5).

A public participant described a belief echoing those of most opponents to the PDP, in saying, "removing all protection was seen as the thin edge of the wedge," as they saw this omission as enabling Council an ability to fell all the mature trees along the Avenue and not just those agreed in principle by the CRTWP. Some also described such an outcome could have an effect of predetermining future activities and characteristics, not just of the length of the Avenue, but of the City. Other public participants described surprise over the PDP and suggested it was designed to overcome obstacles to widening all of the Avenue, as quickly as possible.

> Public "The protection just ceased to exist. So this brought forward a new round of submissions saying they should be protected. The way I saw it, the [PDP] was going to get them around this problem in the [TDP]. They had written themselves into a problem. Here was a chance to write themselves out of it and then what they did was they provided an accelerated programme to deal with that. They took all the issues pertaining to the Avenue and stuck them in a pile and said 'right, we'll have an earlier hearing on those issues'."

> Public "In May they had put out their [PDP] in which all protection for the trees was removed. Although the CRTWP was told by [named Officer] that they would keep protection for the trees in the [PDP] and test this out with the public and with Council. But when it came out, all protection for all the trees was removed. So they got a lot of submissions asking that protection be put in down the whole Avenue... They didn't actually mention in the [PDP] that they had a policy to 4-lane the Ave as they don't have to... There is a limit to what you can put in a District Plan. All they can do about roads is say this is designated as a road. They also have policies like improving traffic safety. But they don't have to say whether they are going to 4-lane or any of those things. That would come into the annual plan in allocating funds.""

Submissions to the PDP, therefore related not to what was in the plan, but to what was not contained within it. The public opponents of the LTDP described having to demonstrate why policies (and/or rules) were necessary, desirable or appropriate in seeking to recognize specific interests and values they believed ought to be included in the environmental management framework, (so that the regulatory authority could continue to control activities in relation to those interests and values). The public considered it difficult to argue for the 'necessity' or inclusion of policy and regulatory mechanisms. They considered it relatively easy to show that there were alternatives to regulatory means for managing environmental outcomes, by comparison to showing why regulatory means were thought necessary.[140]

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[140] Such difficulties were anticipated in legal advice to Council in 1994, refer to footnote 120, "The burden would be on those wanting the rule, to convince the Tribunal why it should be included and there are strong arguments against such a position", (Chapman Tripp Shieffield Young).

Public participants interpreted the omission of any policy and rules in relation to the mature trees as a demonstration by Council that it no longer wished to enhance or maintain those particular values, or indeed the other values identified within the CRTWP process.

Council had earlier indicated it thought policy or regulatory mechanisms inappropriate in this dispute, particularly in light of the resource consent hearing decision. The issue was recognised as wider than a regulatory one and should therefore be resolved outside the PDP process. The issues were seen as requiring an overtly 'political forum' for debate and resolution. That rationale had been a consideration in choosing to employ an ADR approach in preference to relying on the PDP consultation process. However, several of the 'wider issues' were not *concluded* or 'resolved' in the ADR process[141] and as no other public forum was offered in which to debate these issues, so components of them were reintroduced within the PDP process.

The purpose of the PDP hearing was to determine whether Council as regulatory authority ought to recognise the interests and values associated with the mature trees along the Avenue, as well as the other interests and values brought to the debate. The process of hearing submissions and evidence in relation to protection or non-protection of Avenue trees was held in June 1996. The results of this hearing are discussed together with that of a proposed change to the TDP (notified 13/12/95), as these were combined.

8.6 'CHANGE TO THE TRANSITIONAL DISTRICT PLAN' PROCESS.

8.6.1 Background to the Transitional District Plan change process.

Two reports were presented to the G&SC (7/08/95). One by the Technical Services Manager, strongly recommended the Council discard the 3 lane option. The other by the Roading Manager, recommended that the preferred planning option for implementing the 4 laning strategy for the Avenue was to follow the process established for the PDP. However, at the meeting he advised verbally of an amendment to his report, "being that a change to the [TDP] was the preferred planning option." The G&SC resolved to recommend that Council reaffirm its commitment to proceed immediately to action the process for the construction of a second bridge, that the 3 lane option be discarded, "given the traffic safety concerns", and that Council initiate a change to remove the tree protection provisions outlined in Policy 2.25, ordinance 2.25.1 and Figure 2.2 of the TDP. Council adopted these recommendations (on 28/08/95).

[141] Why all the issues were not concluded is discussed in Chapter 12.

A memo (dated 12/09/95) indicated that the officers preparing a brief for consultants (with regards to their being commissioned to prepare what was now 'proposed plan change No. 11'), considered "Council's objective is to process this plan change expeditiously in order that public submissions to it can be heard simultaneously with submissions to the [PDP] on the same issue."[142] Consultants were contracted to prepare the proposed plan change No. 11 according to a brief prepared by officers (on 25/10/95) and in accordance with Council's recommendation. The proposed plan change was to be prepared by December 1, 1995 to enable inclusion in Committee Agenda Papers for that month. The brief for the consultants stated:

> *"The Council cannot proceed with the [outlined tree removal and road widening to Te Awe Awe St] work however, without successfully making a change to the [TDP] to remove the policy and rules governing protection of the trees... The intention is to remove this rule in its entirety - the effects being no tree protection over the full length of the Avenue. The [PDP], publicly notified on May 31st, has no equivalent protection provision. This has attracted a number of submissions in opposition. It is intended that these submissions to the [PDP] be heard simultaneously with submissions to the plan change to the [TDP]". Specific actions required for the project included: "That the plan change be prepared pursuant to Section 73 of the RMA following the procedure set out in Part 1 of the First Schedule of the Act. That the plan change satisfy the requirements for preparation set out in Section 74 of the Act including the duty to consider alternatives as set out under Section 32 of the Act*" (officer to consultants, 25/10/95).

On completion of work by consultants, the Resource Management and Regulatory Committee considered a report (dated 28/11/95) by a senior planner, the Proposed Plan Change No. 11 and the associated Section 32 report. That Committee recommended "that the Proposed Plan Change No. 11 to the [TDP] seeking removal of the protection provisions for [the] Avenue be adopted for Public Notification" (11/12/95). This Plan Change

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[142] Considering this, an officer had sought clarification from legal advisors as to whether "this course of action, i.e. a change to the [TDP] will indeed benefit Council in terms of timing" (advice requested 6/09/95). The advice, discussed in the memo (12/09/95) led this officer to believe there was no benefit to be gained by pursuing a plan change as the process for the PDP was in train, and as this officer had concerns about the additional work for both staff and submittors in pursuing both strategies. This officer wrote, "Technically there is no advantage in terms of timing, by Council hearing submissions to the Plan Change and those to the [PDP] at the same time." Furthermore it is noted that "This approach, seemingly the quickest scenario, however is contrary to public goodwill as [submittors to the PDP] have indicated a willingness to argue the issue under the [PDP]. Given that Council has indicated its acceptance of having to consider the issue under the [PDP] the question begging is why simultaneously process a plan change to the [TDP] when there is no benefit in terms of time. I believe the Council needs to be informed of the pros and cons of the various statutory scenarios as regard timing, preferably with a recommendation from staff that we argue the issue under the [PDP]. These options are essentially set out on p2 of [legal] opinion dated 12/09/95. If the Council agree to do this, then we can proceed to prepare a strong evidential case when submissions to the new Plan are heard. This in itself will require much work and this should start soon" (12/09/95, PNCC File 2690-11). It is not apparent what consideration was made of this opinion as no further comment on it appears in Council records.

was notified (on 13/12/95). The decision of the Resource Management and Regulatory Committee was confirmed by Council as a late item to the Council meeting (on 18/12/95).

Mr Bornholdt, a Wellington barrister, was appointed as commissioner. He was delegated Council's functions under s34 of the RMA (as per Council's resolution dated 27/05/96), to hear the following matters: "Proposed Plan Change No. 11 to the [TDP] to allow the removal of trees on [the] Avenue road reserve. Submissions on that part of the [PDP] relating to the protection or non-protection of trees along [the] Avenue Road Reserve."

8.6.2 Participants describe why the Transitional District Plan change process was used and its purpose.

Participants were asked "Can you describe how Council came to the decision to proceed with this process?" Most participants suggested it aimed to achieve implementation in a faster time-frame than may have been possible otherwise. However, some participants disagreed that was necessary, as they believed the relevant parts of the PDP could be heard early and could be allowed to come into effect before the rest of the Plan was operational. Others thought "contradictory plans" would be complicated or inappropriate.

> Councillor "The [TDP] will continue to have force and effect until such time as we release the decisions on the [PDP on 30/04/97], but matters which are subject to appeal will remain open and we will have three district plans essentially, until they are heard by the Environmental Court. The plan change was proposed to take care of the issue at an earlier date than it would have been possible if it had just been left until the [PDP] extinguished... all appeals to do with it heard. Now that could easily be 1989. The advice we had was that we should consider both. That was my view too."
>
> Public "My view of that particular process was that by this stage the Council were in a very serious position legally, in the sense of where they had got themselves with the [PDP] in relation to the [TDP]. We had quite significant legal advice to say that they had got themselves into some difficult water."
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> Public "In November [named Councillor] said, 'we are wimps, we have got to go ahead and remove protection and get on with it', and so they decided to move forward with the dreaded plan change. It is all quite complex legally which is a problem with the RMA. They could have gone to the Environmental Court and asked for that particular part of the [PDP] to be fast tracked, but they didn't consider that an option - partly because they wanted to remove [the rule] altogether... Instead of just letting the process of removing protection for the trees in the [PDP] they put forward plan change 11 which was designed to fast-track, which they deny furiously. [Named another Councillor] is very scathing about anybody who suggested that, but that is exactly why it was done, which is what their own documents say. The formal planning document said, 'we want this so that we can get it through in a faster timeframe' and if that is not fast tracking then what is."
>
> Public "They introduced this idea of changing the [TDP], as a quicker way of getting it through."

Participants indicated that appointing an independent commissioner to hear submissions

and make a determination was necessary to be fair to all parties, as was the decision to hold a combined hearing for the Proposed Plan Change and the PDP.

> Officer "The advice was given to Council that they should appoint independent commissioners and a report was put up... that appointments be made. I think the basis of the suggestion was that this is a matter in which the Council has got a substantial stake, therefore it would be prudent to engage an independent commissioner. That certainly is the underlying rationale which applied to both the resource consent application and the hearings last year."
>
> Public "We argued that they had to have an independent commissioner because they were going to be totally biased, this being the third attempt by Council to get rid of the trees, if they were going to hear it themselves. There was no way they could hear it and be independent having twice heard it. So everyone asked for one and Council said, 'well yes, we are going to get one', and then they got one... They got advice from the [PCE] that they should hold the hearings together so as not to disadvantage people, but also obviously it was cheaper to hold the two hearings together."

8.6.3 Decision of the Hearing Commissioner.

The combined hearing ran from June 11-14, with further evidence and rebuttal on July 16, 1996. The decision was received by Council in September 1996 and was posted to submittors on September 12th. Commissioner Bornholdt recorded, "I have kept in mind that the hearing basically relates only to the protection or otherwise of [the] Avenue trees" (1996, p6). A number of contentious legal matters were considered, one of which related to the "validity" of the proposed plan change. He held "that the proposed plan change 11 is a valid change to the TDP pursuant to Sections 73 and 74 of the Act." The other key arguments related to whether or not the Avenue was in fact designated (i.e. its status), whether such a designation (if it existed) applied to the existing 2 lanes or from kerb to kerb (i.e. including where the trees stood), and, the relevance of the designated status of the road to a hearing on protection or non-protection of the trees. Bornholdt noted the question of status "is very much an issue because I consider it to be basic to both an understanding of the issues arising from the matters before me and to enable me to reach a decision upon them."[143] The Commissioner noted key evidence presented by Council's witnesses. The summary record shows that witnesses were asked clarification questions by the Commissioner and more information was requested of some witnesses. The evidence of submittors was then reviewed along with his views on this evidence. Then rebuttal evidence was reviewed, also with his views on it. A number of related issues are

[143] Bornholdt (1996, MI) held that "[the] Avenue *continues* to be designated as a road, with the Council as the controlling authority responsible for the designation." Furthermore, "The Tree protection rule in the TDP has no application to the designation - so long as the road remains designated" and that "The 'protection' provisions in the TDP were not and could not have been conditions on the designation."

discussed: Section 32 of the Act;[144] the precautionary approach;[145] district and regional plan policy issues.[146] The Commissioner then presented an "evaluation", in which he presented his observations about the hearing and his reckoning of the important considerations informing the process of coming to a determination.[147]

> "*In its simplistics, the argument before me revolves around the use and development of [the] Avenue resources and the protection of [the] Avenue trees, both as physical and natural resources... Adopting this approach leads me to a* ***balancing process, where such a process of evaluation involves importing weight to be given each consideration*** *involved with that process*" (Bornholdt, 1996, ME, bold added).

Applicable provisions of the RMA were then given along with his views on how the RMA ought to be applied in this case. Bornholdt stated these sections "require further examination in the light of the totality of the evidence as given, and the submissions made to me as I have outlined them during the course of this decision. In this area of my decision I am mindful of [counsel's for Council] opening submissions... and... the [named submittor's] acknowledged conflict between the use and development of [the] Avenue as a physical resource and the protection of [the] Avenue trees." Further-to-that he noted,

> "*When examining the particular management strategy proposed to be adopted,* ***its benefits should be balanced out against any adverse effects - the balancing exercise being a relevant consideration... I am led to the conclusion***

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[144] Bornholdt agreed with comments by a witness for Council, "that the Section 32 process is an ongoing one and does not cease upon notification of a Proposed Plan or Plan Change. The policy development and evaluation process must take into account the matters raised by submissions after notifications, as well as any new information and technology which may arise as the result of further work and investigations" (Schofield, R., in Bornholdt, 1996, p46)), when he noted that another planning consultant (as witness for Save the Avenue) "did acknowledge in response to a question I put to her that this hearing in itself was a continuation of the Section 32 process" (Bornholdt, 1996, p62).

[145] Bornholdt (1996, p88) "placed no weight on [this approach] in reaching my decision" for several reasons, the key one being that s104 & s105 of the RMA, (and by inference the precautionary approach) "are not relevant to a Plan Change or a proposed Plan."

[146] Bornholdt (1996, p89) heard "that the matters before me conflict with various provisions of the [TDP, PDP, Regional Council Instruments and the Transit NZ Act 1989]." He considered that case and that of Council and wrote "I prefer the Council's evidence... I have therefore placed greater weight on their evidence in all the areas that I have just referred to. I do not accept that the evidence reveals any conflicts of consequence that have influenced me in my decision" (*ibid*, ME).

[147] Commissioner Bornholdt's approach was based "on planning for people and in so doing, not only should I take account of the expert evidence as produced to me through and by the various expert witnesses, but also that evidence as given to me by the non-experts, in this case the residents/submittors. In that approach I am conscious of the fact that my determination should be objectively based as far as I am humanly able so to do. I have therefore given careful consideration to the evidence and submissions as presented to me by all of those persons who were either 'for or against' the Council's proposals" (1996, p93).

> ***that the transportation imperative of Fitzherbert Avenue... is so important that it must take priority, notwithstanding (but not ignoring) some short to medium term adverse landscape effects.*** *Having said that, I record that the Council has acknowledged... that the most effective available mitigation measures must be undertaken in response to those effects... I cannot direct the Council in that area, but my comments carry with them a very strong recommendation to Council that it should continue to follow its [replanting] programme... As a result, it is my decision which follows, that the Council should be permitted to proceed with its proposed plan Change 11 to its TDP and that its PDP should remain unchanged in the areas, the subject matter of this hearing."* (Bornholdt, 1996, p101, ME bold added).

The Commissioner thus determined that the rules relating to the Avenue trees in the TDP be deleted, and omitted from the PDP. This hearing's purpose and therefore the terms of its 'resolution' were evidently confined to a determination on whether or not a particular rule, *as it had existed*, ought to be retained as a regulatory mechanism. Given the nature of the determination it is apparent that its purpose was not to *formulate* (new) policies in response to the comments of public participants, or to develop a more agreeable management response to address the traffic problems in the Avenue. The purpose and determination was not therefore, to address the other interests and values, or the wider (strategic) issues brought to the forum by public participants.

8.6.4 Reactions to the Commissioner's decision and ensuing procedures.

The Commissioner's decision was posted to all parties, along with a covering letter from the City Secretariat and "Information as to Rights of Appeal". In the covering letter (dated 12/09/96) and attached information, it was indicated that any appeal (officially known as 'a reference') had to be lodged with the Environmental Court and Council, "within 15 working days of receipt of the decision by you or the person who filed the submission on your behalf". No actual date was given, at which this appeals period was to close.

i Opponents describe why they did not pursue an appeal.

Public opponents suggested they did not appeal the Commissioner's decision primarily due to the anticipated costs involved in doing so, as views expressed in the decision had made it clear they would need legal counsel and also expert witnesses. Furthermore, they indicated Council had made it clear its opponents were under threat of liability for 'costs'. Some felt the nature of the case presented by Council along with that of Bornholdt's decision made it very difficult to bring an opposing case. Others suggested the conflict had gone on long enough and felt it was time to "let go" the dispute as they felt they had done all they could do to influence outcomes. Also, some indicated there was inference that they were responsible for inaction in alleviating traffic problems and it was time for Council to

take "political responsibility" for environmental outcomes.

> Public "An appeal wasn't possible because of costs and time needed to commit to it. Also because we considered it was time for Council to take responsibility for their actions because if we went on to appeal - they just kept saying 'these protesters are to blame for all these jams in the road'. So we decided it was time for them to go ahead and do what they said they were going to do. It isn't going to work, but they, Council, have got to take the political responsibility... So we thought, not just about the money and the personal impact on our own lives, but they had to take the wrap. They have to take responsibility for this thing, so go ahead and people won't like it."
>
> Public "It was pointless to appeal. The evidence presented by [Council's witness] to that hearing regarding the relevance or irrelevance of the second bridge was very carefully structured. It was unchallengeable, we couldn't appeal it."
>
> Public "I got a letter from Council's lawyers saying, more or less, don't you dare go ahead with trying to obstruct because don't forget we can sue you for everything your've got. We were warned off, it was obvious, 'any delays in this project are going to cost you'."

Some opponents indicated, however, that they did intend to appeal the decision and were attempting to do so. They describe that lodging an appeal "requires immediacy and that was the whole problem. If you have only fifteen days to come up with an appeal strategy and funds." However, there was some confusion surrounding the 'notice of decisions' and the period for lodging an appeal. Save the Avenue had written to Council (on 7/10/96) indicating that the public notice had not been served in accordance with the First Schedule (as amended 2/09/96) of the RMA. As such, a series of applications were made to the Environmental Court in relation to clarifying this confusion.[148] A group of submittors wrote

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[148] While the decision document and covering letter, were posted to parties on 12/09/96 it was not advertised by way of a public notice in the newspaper, *at the same time*, as required by an amendment to the RMA which came into force 2/09/96. An officer explained "whenever an Act is passed, there is always a delay of several weeks to allow printing and circulation. It was not received by Council until about 23/09/96." Counsel for Save the Avenue wrote to the Council (7/10/96) indicating there has been no public notification of the Commissioners decision in a daily newspaper, and suggesting Council allow the appeals period to commence from the date of 'public notice'.

The two individual participants (amongst those interviewed) who indicated they certainly intended to lodge an appeal and were organising it, thought the appeal period ran from the time the decision was publicly notified in a daily newspaper, as they believed Council could not *guarantee* that all submittors had received the decision through the post.

Council's response to the letter from counsel for Save the Avenue was to file, with the Environmental Court, an "Application for an enforcement order" (10/10/96) seeking dispensation from requirements in the Resource Management Amendment Act 1996, to publicly notify *at the same time* as it serves copy of the decision to submittors. Further-to-that, as the decision had already been posted to submittors, Council also filed an "Application for Directions as to service of the Enforcement Order", seeking dispensation from having to repeat the posting of decisions to all submittors at the time public notice was made in the paper. In making these applications it is noted that "It would be greatly appreciated if these applications could be dealt with as a matter of urgency. The circumstances giving rise to the application arose from inadvertence and it is submitted that although *no person is identified as being adversely affected by the failure* for which dispensation is sought, it is nevertheless important to the applicant Council that the matter be resolved promptly so as to avoid any potential confusion or unnecessary delay, and so as to enable the effective and expeditious continuance of the Council's

to the Mayor (on 10/10/96) stating "I understand that the City has so far refrained from formally advertising the result of Mr Bornholdt's hearing and thus have given the objectors additional time in which to consider their position and decide whether to appeal his decision." They also requested "Council's agreement for financial support to enable the objectors to mount a properly presented appeal". The Finance Committee considered an officer's report regarding this request and adopted his recommendation to decline this application for financial assistance for funding an appeal (16/10/96).

Given there was confusion, never-the-less, potential appellants did not lodge an appeal within 15 working days of the 'expected' receipt of the decisions by submittors (15 working days *from the day after the decision was posted* by Council). It is apparent in letters to the Environmental Court (dated 14/11/96) that potential appellants, who had been relying on the appeal period running from the time the decision was publicly notified in the paper, were not aware (until 11/11/96, well after Council's *expected* period had expired, on 4/10/96), that Council had applied for dispensation regarding the procedure for publicly notifying decisions. The Environmental Court granted the enforcement order sought by Council and dispensation (on 25/11/96) from serving copies of the Commissioner's decision *at the same time* as it publicly notifies the fact that the Commissioner made the decisions. At that time no appeal had been filed. Public notice of Bornholdt's decision appeared in the paper (28/11/96).[149] That these proceedings did take place supports the view expressed

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processes in respect of its proposed plan" (counsel for Council, 10/10/96, MI). That no person is identified as adversely affected appears to have been incorrect, as potential appellants did anticipate the period in which to lodge an appeal would run from the time of 'public notice', rather than 15 working days after the date of the covering letter received with the decision.

The submittors who were preparing an appeal supported Council's requests for dispensation, as they also believed repeating the postal exercise was wasteful. However, they held that the appeal period should run from the time public notice appeared in the paper. However, when Environmental Judge Treadwell made his decision, he noted "I record however that there is some suggestion in a letter on file that the time for appeal may run from the time public notification is made in accordance with rule 10(3). I have not been asked to determine that issue [by the applicant, PNCC] and expressly refrain from doing so" (25/11/96). The potential appellants were astounded by this decision as they said they had also applied, to the Environmental Court for an enforcement order, independently of Council's applications, for precisely that purpose, to allow the period of appeal to run from the date of 'public notice', as that notice and attendant 'publicity' would enable them to engender funds and other support in taking an appeal.

[149] As that notice did not make mention of 'rights of appeal', an opponent took this matter to the Environmental Court, (on 5/12/96) by making an "Application for a Declaration under S311 of the RMA 1991". This sought confirmation that the public notice did need to include notification of appeal rights, and; that the notice served was not consistent with the First Schedule of the RMA, "nor with the intention of the Act", and; that the PNCC reinsert the public notice including a statement about appeal rights within 15 days of the date of that public notice. This opponent also lodged an "Application for an Enforcement Order Under S316 of the RMA 1991" which sought a direction for compliance from the Environmental Court in respect of the observance of the requirements of the First schedule. For a number of reasons Environmental Judge Treadwell did not find in favour of these applications and thus

by participants that potential appellants did believe they had more time to lodge an appeal than they did, in the event, have. However, the fact that no appeal was lodged, meant that potential appellants had run their course in the legal and formal process.

ii Council's response to the Commissioner's decision.

The Roading Manager, prepared a report "Fitzherbert Avenue Proposed Four Laning" (dated 31/10/96) which outlined "the proposals and issues with regards to picking up the Fitzherbert Avenue Development Strategy from the time when the programme was halted in 1993 when Council failed to gain a resource consent." The report[150] presents the view that Council's right to remove trees was now unimpeded and that, as such, Council should return to its original LTDP for the Avenue.

> "*In 1993 the twelve year development plan for [the] Avenue upgrading and tree replacement programme was brought to a halt when Council was challenged as to their rights to cut down the existing mature trees given the Ordinance in the [TDP]... With the plan change and [PDP] decision from the Commissioner... the strategy commenced in 1988, should now be restarted. The strategy proposed in 1987 still holds true today and should be continued unchanged except to accommodate specific resolutions as required, by the outcomes from the [CRTWP] and Commissioner Bornholdt's decision...*[151] *The report recommended: "That approval be given to funding the $248,200 for this project in advance of the six month review to enable the timetable to be met; That the proposed schedule of works for the 1996/97 year as detailed in this report be approved; That Council note the future issues relating to the removal of additional mature trees.*" (Roading Manager, "*Fitzherbert Avenue Proposed four-laning*" 31//10/96, ME)

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confirmed that the right to appeal had expired, in line with Council's thinking, 16 working days after the decision was posted to submittors (the 4/10/96, Council's legal policy analyst).

The complexity of the events surrounding the entire rationale given for this decision preclude its discussion here. The applicant's indicated problems relating to making these applications to the Environmental Court and issues were raised in relation to 'who said and did what' in making requests of the Court, and the order of events surrounding features of the applications. For example, they cited comments in Judge Treadwell's decision, which demonstrated he thought that they had asked for a quick decision based on 'papers' alone, when they had not, Council had. The Judge had admonished the applicant and indicated he would have preferred to have taken more time to really 'consider' the issue, and to have had opportunity to question the various parties, prior to making his decision. The applicants felt that 'misunderstandings' surrounding events had 'gone against them'.

[150] The report noted that work could not yet commence as "It was our expectation that advice of the dispensation would have been received during October but this has not been the case."

[151] Further to that the report noted "In keeping with the outcomes of the [CRTWP], the completion of the works detailed from this financial year *will have met the short to medium term actions required by these outcomes.* Following the completion of the above [given, but omitted here] works, *decisions will need to be made as to what happens with the balance of [the] Avenue and when it will happen.* These works include:... Removal of the remaining mature trees between Ferguson St and Park Rd. *Once again, in keeping with the CRTWP outcomes, these works can be kept under review and dealt with on an individual basis as the need arises.*" "Fitzherbert Avenue Proposed Four Laning" 31/10/96, ME, MI).

This report indicated a desire to return to the LTDP programme, but also that this strategy could be adjusted to accommodate CRTWP and Bornholdt recommendations, particularly by allowing the implementation timeframe to be open to review as required. The Operations and Review Committee considered this report as a late item (on 11/11/96) and recommended the funding be given as advised. It also decided: "to approve the proposed schedule of works as detailed in the report; that should any tree when being pruned indicate a need to be removed, be removed; that the City Manager deem any trees to be removed to allow new trees growth, and; that the works begin only when the dispensation has been received." It also "noted: the future issues relating to the removal of additional mature trees and the additional costs of pruning as compared to removal".

The dispensation was granted by the Environmental Court on 25/11/96. A media release stated "*No legal impediment now stands in the way of [PNCC] proceeding to four-lane Fitzherbert Avenue.* Advice has been received today from [Court] that it has granted the dispensation sought by the Council as a result of its failure to publicly notify the decisions recently made by [Commissioner Bornholdt]... With the dispensation from the Court, *it is now up to the Council alone to finalise the formalities and then get on with the work*" (City Managers Office, 26/11/96, ME). At the Council meeting that night a [public] deputation was made in respect of the trees issue. Following that meeting, a report "Approval of Proposed Plan Change 11 to the [TDP]" by Council's legal policy analyst (dated 26/11/96) was presented to a special Council meeting (on 5/12/96).[152] At this meeting, Councillors concerns included:

> "*that the proposed change was against a sizeable public opposition... that it would not* ***resolve*** *the safety issues... the decision would be an anomaly with the Council's attitude to protect the environment and would continue to be an issue of Council confrontation. On the other hand, the majority opinion was that correct processes have been followed through in trying to accommodate opposition to four laning of the Avenue and the removal of trees... [the] public have had adequate opportunity to have their views heard*" (Minutes 5/12/96, ME, bold added).

While no legal impediment remained to Council implementing its strategy, (as the legal issues had been 'resolved' and as statutory procedures had been followed), Council foresaw that a public dispute was still very likely. It is therefore evident that all the participants recognised that the conflict had not been settled' to the satisfaction of all the parties. However, the state of (legal) impasse had been broken and Council was able to

[152] **It noted that two applications had been lodged with the Environmental Court that afternoon. The nature of those was outlined and legal advice which had been sought indicated they "provided no bar to the Council proceeding with the Plan Change" (Minutes 5/12/96). In the event this proved correct as Judge Treadwell did not find in favour of those applicants (as noted previously).**

proceed with its plans. Council resolved: 1) to approve Plan Change 11, 2) that Plan Change 11 become operative on December 16, 1996; and... 4) that the Council publicly notify (on 7/12/1996) the date on which Plan Change 11 will become operative. With the Plan Change operative, Council let the contract to fell the trees from the bridge to Te Awe Awe St, as it had re-confirmed (on 28/08/95) it intended to do. The date for tree felling, 7/01/1997, marked another change in the dispute.

8.7 PUBLIC PROTEST AND 'DIRECT' ACTION.

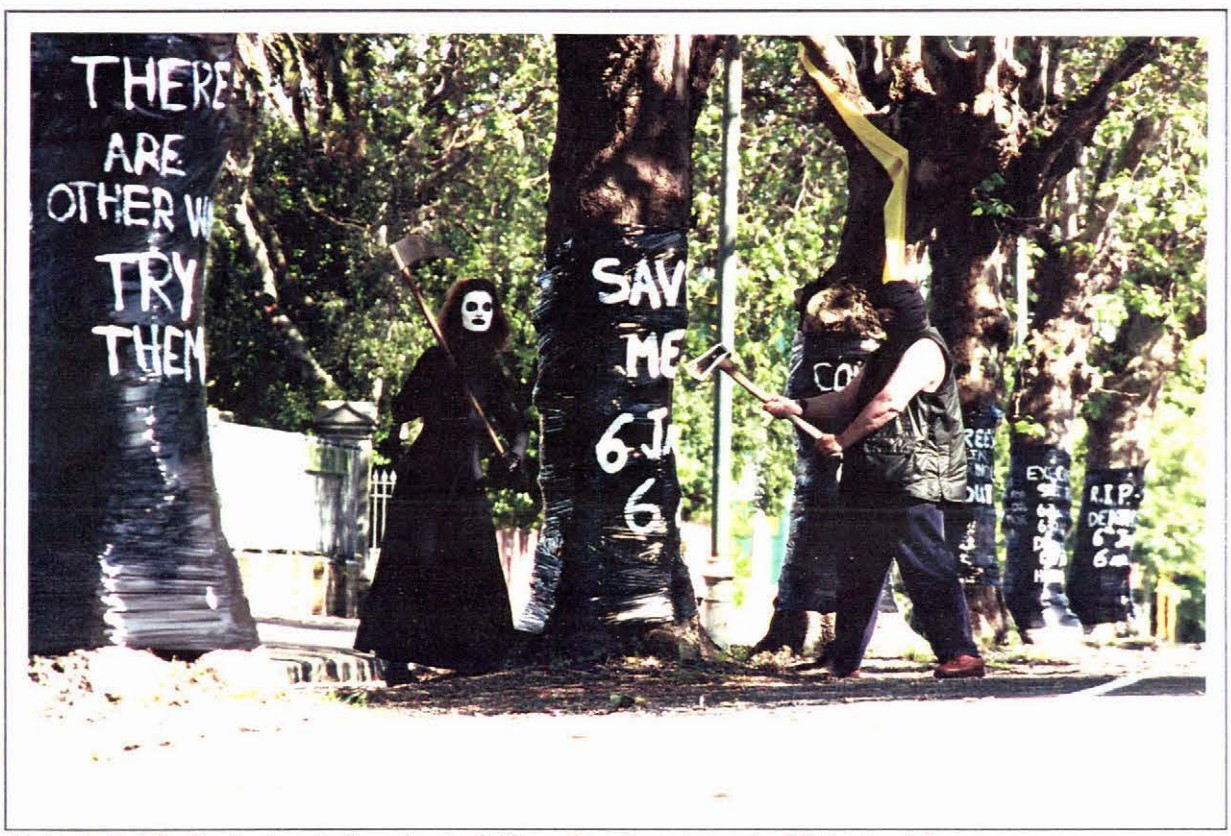


Plate 4 *Public Protest activity prior to felling of mature trees in Fitzherbert Avenue.*

Following the decisions of Council to adopt the plan change and proceed with the works in the Avenue, supporters of the works were pleased the dispute was 'resolved' as they anticipated that traffic conditions would improve once the works were completed and believed adverse effects of the mature trees removal would be mitigated in the medium term. Many opponents in the EDR processes, while unhappy with the anticipated environmental outcomes, felt they had done all they could do and did not participate in the conflict any further. However there continued to be public opposition to the LTDP. A new group was formed, "Avenue Action", which organised public protests and a 'tree sit in'. With the works due to begin there was major protest in the Avenue, with attendant national media coverage and the works were postponed. On the next occasion trees were to be

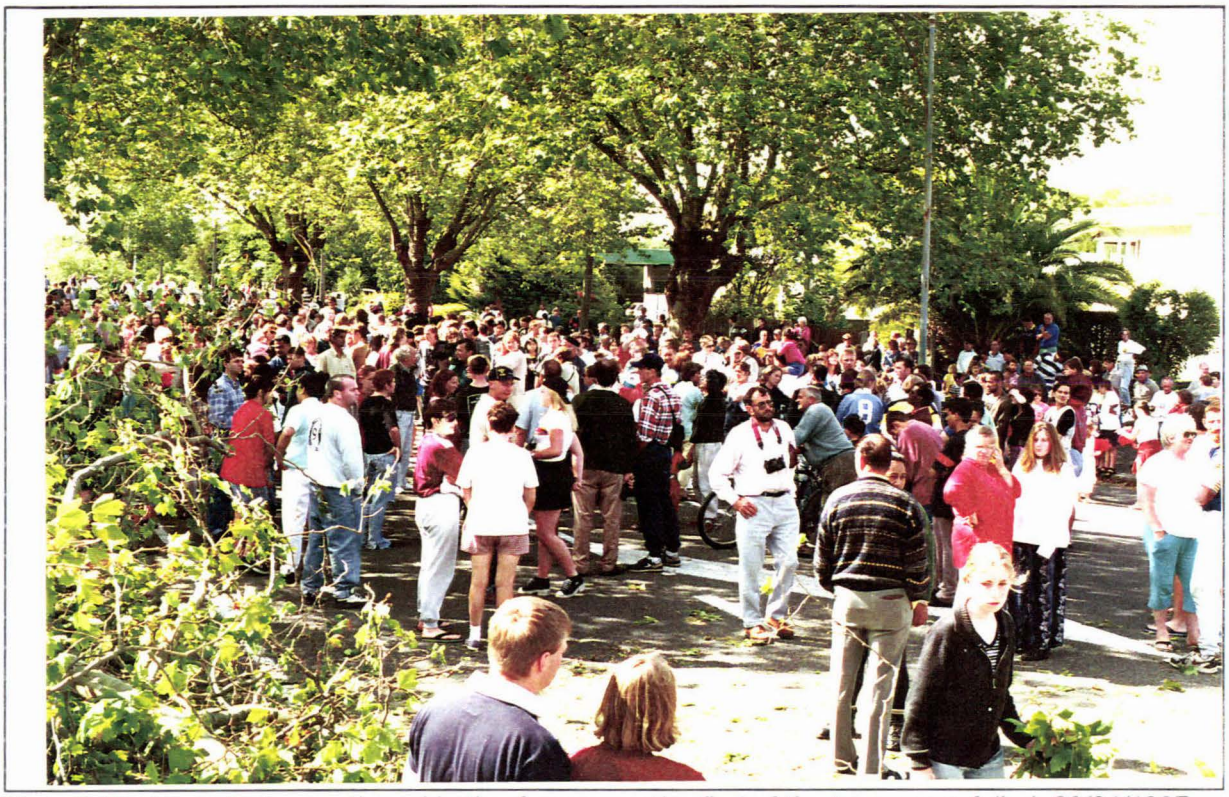


Plate 5 *Public protesters gathered in the Avenue as the first of the trees were felled, 06/01/1997.*



Plate 6 *Avenue Action set up office in a tree during 1997.*

felled, 'tree sitting protesters' were arrested and the felling works took place.[153] Members of Save the Avenue who observed these demonstrations and confrontations indicated they were surprised at the 'numbers of new faces'.[154] This new group, and arguably a more 'confrontational' form of public participation, involved a different set of individuals to those who had participated in the formal legal channels. Those participants who only began to become directly involved after the Bornholdt decision was released, indicated they did not do so earlier as they knew others were involved and had believed they would be 'effective'. They became 'active' with the realisation that others may have failed to achieve particular objectives or to prevent certain outcomes. One of these late starting 'participants' attempted to mount an appeal against Commissioner Bornholdt's decision and made applications to the Environmental Court. While this person had made a brief written submission to the proposed Plan change she did not attend the hearing and was not a member of Save the Avenue. Similarly, the spokesperson for "Avenue Action", who resided in a tree in the Avenue for six months as a protest, was previously unknown to Save the Avenue and had not participated in any of earlier or 'formal' processes. Councillors also noted a change in the dispute, as they began to receive "abusive" phone calls from opponents and they reported damage to personal property. While such activities indicated that the conflict was not settled, the actions of opponents were ineffectual as the legal processes had been completed and thus (legal) issues were 'resolved' in a formal sense. With the legal support of Council's proposal, the police were asked to intercede to remove those obstructing the Council in the course of its work. Following the 'direct' conflict between opponents and the police (interceding for Council staff), the Mayor expressed sadness at the events of that day. It was reported that Council would undertake 'reconciliation' with the community. Tree replanting was undertaken and another information brochure was delivered to households early in 1997 "*Fitzherbert Avenue: Planning for the next century*". This informed the public of Council's programme for the Avenue. It stated, "Once work on the Te Awe Awe St - Fitzherbert bridge section of the Avenue is complete then work will begin, if and when necessary, on the sections of the roadway that are still 2-laned. The earliest date that the whole of [the] Avenue could be 4-laned is December, 1998. Traffic volume, safety and availability of funding are the issues that will influence the timing of this stage of the project. Your Council is committed to the concept of [the] Avenue as a tree lined, aesthetically appealing street." All the mature trees were felled by August 1997 and the length of the Avenue had been 4 laned by October, 4-laning of the bridge is to be completed during 1998.

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[153] The Mayor, City Manager and spokespeople for Save the Avenue attempted to develop an accord as to how to proceed with tree felling while allowing public opposition to be expressed. However, the events of the day were beyond the control of those people, as others did not abide by that accord.

[154] This was confirmed by their secretary who had occasion to view the membership of 'Avenue Action' and recalled that she had recognised very few of the names on its mailing list.

PART D of the RESEARCH INTERVIEW

This part[155] of the interview prompted participants to explain why they participated in particular forums, and to describe their experiences and observations within each of the forums. They were asked to describe any benefits/strengths, and problems/limitations of each of the EDR processes. Within the analysis this information examined, '*perspectives on what the treatment of conflict did achieve in this instance and why*'. Two distinctions were made for the analysis of comments, the first between formal and informal EDR processes, and the second between observations shared by all participants, and those which show perspectives based on the role of the participants.

Distinction between formal and informal EDR processes within the analysis - Participants described that there were many similarities between the consultation/EDR processes used to determine the resource consent, the PDP and proposed plan change. The reason for the similarity is that, for most participants, the procedures involved and the 'hearing forum' were essentially 'the same'. The source of these similarities is attributed to these processes being 'formal' EDR processes, 'required' by statute. The benefits/strengths and problems/limitations of the two EDR hearing processes are discussed together in this analysis, under the banner of 'formal processes' for the purpose of comparison with the 'informal' (ADR) process that was also utilized in an attempt to resolve this dispute.

Distinction based on the role of participants: perspective independent and perspective dependent participant observations - Some observations were similar regardless of the groupings represented by participants in the research. However, in other instances there were marked differences between observations of the groups. These perspectives were attributable to the participants' roles within the process. For example, while public participants did not mention the formality of hearings as a strength of that process, a number of Council participants indicated it was. Similarly, an inability to question Council witnesses was a problem for public participants, but was not mentioned as a problem by Council participants. In some instances,

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[155] Note: the findings of the research interview are not presented in this thesis, in the order they occurred in the interview. Participants were prompted (in Section C of the interview) for '*perspectives on what public participation ought to achieve*' and their general ideas of the purpose of EDR processes, prior to discussing their personal experiences and observations of the processes they were involved in, (ascertained in Section D '*What the treatment of conflict did achieve in this instance*'). It was thought necessary to prompt participants to make generalised observations prior to being specific about their experiences, rather than visa versa, to avoid the possibility of modifying their observations through the interview process. During the analysis it became apparent that participants' views were confirming the observations presented in Section Two of this thesis, in regards to the principles informing, and purposes and objectives of public participation and EDR processes identified through the 1980's reform process. Therefore the findings of Part C are not reported separately here, but are considered within Section V, Synthesis of Findings and Conclusions.

features were considered a benefit from one perspective but were seen as a problem from another. For example, the order of presentation of evidence in a hearing and the right of rebuttal to the proponent and its witnesses was considered a benefit to proponents and a problem to opponents.

Public participants willingly pointed out pros and cons as they experienced them. Several of the Council participants were reluctant to discuss these from a personal viewpoint and preferred to generalize about how others might have experienced the process and sought to provide reasons for the experiences of 'others'. For example, Council participants described the 'unrealistic expectations' of public participants in EDR processes, as an example of a problem from Council's perspective *or* as an explanation for some of the problems the public may have encountered. Several participants indicated there were either "no benefits" or "no problems" in a particular EDR forum. In the case of Council employees an issue that was identified for this research, was that it was not always clear whether these comments represented actual experience or were suggestive of another issue, that being the willingness of those responsible to critique the practical expression of EDR processes.[156] Those participants who replied "no benefit" or "no problem" when asked directly, never-the-less provided comments and examples that indicated their perspective on benefits and problems. These observations also serve to demonstrate that participants responded to the research questions in different ways. The public tended to use it as an opportunity to air opinions on different processes and forums, while officers and Councillors tended to use it as an opportunity to explain why the EDR processes exhibited specific characteristics. However, a number of officers, Councillors and consultants described benefits/strengths and problems/limitations of each of the processes. Analysis of these comments along with those of public participants has enabled a comparative analysis of the perspectives of different groups. Within this summary of findings, analytical observations are presented along with *examples* of their derivation, the comments of participants. As participants frequently provided examples of experience and intertwined explanations for these within that example, that format is maintained in this presentation. This reflects the research approach outlined in Chapter 1.[157]

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[156] This inference is drawn as a number of Council 'employees' (consultants, legal counsel, commissioner) did not consent to participate in this research. One said he considered doing so "unethical" and implied it could involve a "conflict of interest". In essence 'potential' participants who declined consent to participate in this research, indicated "no comment". Unwillingness by some Council employees to critique EDR processes in practice, may be due to a belief that it is unethical to do so, or it may be that their role meant they were partly 'responsible' for creating the characteristics of the process and were unwilling to critique their own creation.

[157] The qualitative research approach emphasises that "the way respondents constructed and reported their views of the phenomena under investigation are crucial to the research process" (Bryman, 1988) and "it is the participants' perspective on and interpretations of the situation which are of value in understanding behaviour" (Cassell & Symon, 1994). The participants comments provided within this thesis are representative 'examples' to demonstrate the derivative quality of findings and also to

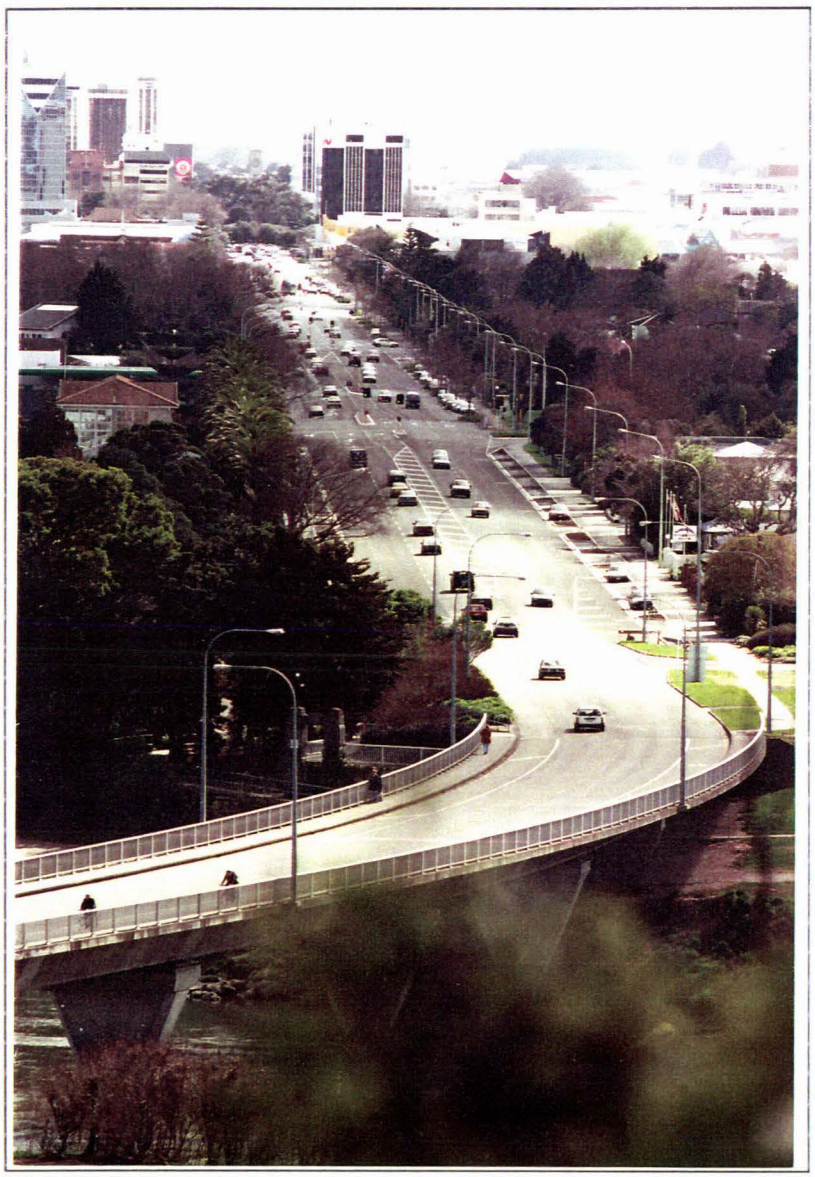


Plate 7 *The Avenue at the end of 1997, has been 4 laned throughout. The bridge widening has yet to be completed.*

PART IV

THE CHARACTERISTICS OF EDR PROCESSES IN PRACTICE

CHAPTER 9 BENEFITS AND STRENGTHS OF FORMAL EDR PROCESSES

9.1 *RESOLUTION* of ISSUES IS VERY FOCUSED WITHIN THE FORMAL *HEARING.*

As participants described the formal processes for EDR it became apparent that the mechanisms for 'resolving' issues were specific to the *hearing forum*. This contributed to a number of benefits and strengths, as well as several problems and limitations of the formal processes. How formal mechanisms for EDR came to be *contained* within (or confined to) the hearing forum is discussed here first, as it is important to indicate how that came to be the case. The issues arising during the period '*from public notification to the hearing*' are therefore, also discussed here as these issues describe how the dispute context had evolved up to the point of each of the hearings. These observations provide some explanation for a number of the strengths within the hearings, and also for some of the problems and limitations discussed in Chapter 10.

9.2 THE PERIOD 'FROM PUBLIC NOTIFICATION TO THE HEARING'

Participants were found to have reduced the formal 'EDR process' down to the actual 'hearing' of issues and consequent determinations. Written submissions, undertaking delegations to Council, talking to or lobbying Council officers and Councillors, were considered important only as a means of identifying the 'interested parties', their concerns and gauging the strength of feeling in the community. They were seen as exercises in 'scoping the effects', an early step towards EDR. None of the public participants thought making a written submission was effective participation. They believed that required an appearance in person at the hearing, to speak to their written submission. This impression was affirmed by an officer who provided a reason why they are difficult to work with from Council's perspective. The reason is, that written submissions are often incomplete in terms of what officers and decision makers require. The hearing enables completion of the missing details and a more comprehensive, comparative evaluation of issues.

> **Public "Say you make a brilliant written submission, the very strong impression I get is that unless you actually go to the hearing yourself and also make a strong verbal**

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maintain the case study research approach which emphasises the relevance of context to the observations. Also, Council records were referenced to ascertain any 'factual matters', relevant to the observations made by participants

> presentation you may as well not have bothered. It will just get lost... Everyone who wants to, gets a chance to be heard, if they have put in a submission... you have to attend the hearing to be heard, although theoretically that is not the case, if you have put in a written submission they think, 'well, we hadn't thought of that, does that mean, we better look at that'.
>
> Officer "That [written submissions] was in itself interesting because people raised what they didn't like about things but they didn't raise any relief sort. So in terms of the planning process, I think there is still people coming to grips with how you do things under the RMA. Having said that there were also people who very much knew how the process worked and presented good submissions."

The City Manager affirmed that, when Council was proponent, written submissions were not read with a view to undertake any immediate responses towards EDR. Willis (1995, MI) indicated that Council had not paid sufficient attention to community signals prior to the resource consent hearing, and stated, "We failed to take proper heed of strong public concern on the issue, and tended to be dismissive of sincerely held objections. As a result, *we missed a number of opportunities to work alongside objectors, preferring instead to be adversarial and confrontational in our approach.* In addition, we tended to tar all objections with the same brush as being just 'pro-trees', when in fact *a much wider set of issues were being raised. We lacked both recognition of this, as well as a strategy to deal with it.*" The question remains as to whether Council would have responded the same way, to informal and written submissions and the wide issues raised within those, had the proponent been a private company and not from within its own organisation.

A pre-hearing meeting occurred prior to the first hearing. Its purpose was to exchange information.[158] Submittors requested a pre-hearing meeting prior to the second hearing (letters dated 04/96, 05/96, PNCC Records file 2690). Officers discussed concerns over a pre-hearing meeting and wrote to their solicitor (1/05/96) recording that the appointed Commissioner suggested it would be appropriate for [legal] counsel to respond to such requests or to advise officers on how they should respond. It was decided no pre-hearing meeting would be undertaken.[159] The reasons were: "Council left the question of a pre-hearing meeting to the Commissioner;... There is no provision nor requirement in the RMA for a pre-hearing meeting in relation to submissions on the [PDP] or plan change... The Council in any event does not consider that there is any need for [one] in these

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[158] The Commissioner noted the pre-hearing meeting was "useful in identifying those areas where opponents to the application sought further information from the Council. It also enabled me to alert all parties to a central legal issue, namely whether the activity for which consent was sought was a controlled, discretionary, or non-complying activity" (Tizard, 24/02/94, p2).

[159] Following failure to get resource consent in the first hearing, Council did conduct an ADR process in the form of a working party consensual approach (its characteristics are discussed in Chapters 11 and 12). This ADR process was integrated into Council's decision-making processes, but was isolated from subsequent 'formal' processes, and had little influence in the second formal hearing process.

circumstances. The Commissioner has also advised to the effect that he will not be calling [one]" (officer to counsel for Save the Ave, 9/05/96, 16/05/96 respectively, ME). A further reason for not utilizing other forums for EDR in response to written submissions was indicated by an officer who demonstrated that when Council is the proposer of change, the mindset primarily becomes that of an applicant, and its roles as regulator and/or policy maker (enforcing role), and as overseer of the process (judge) become secondary concerns. Furthermore there was a sense that any efforts undertaken prior to a hearing, may be wasted efforts, as the hearing would have to occur anyway.

> Officer "Here it is not just Council consulting because it thinks it is a good idea, it is consulting because it is obliged to. Consultation in a loose sense, on a local government issue... the Local Government Act, in its section on public consultation, s716, sets up a model of public consultation which applies terms for instance in preparing draft annual plans and also other significant matters. But that consultation is somewhat different to the legalistic consultation which you have with resource management matters where it is fairly circumscribed with legal requirements. You have to fully observe rules of natural justice."

In the second formal hearing, (a result of Council being both the proponent of change and receiver of written submissions and regulator), Council put effort into preparing a strong case in support of its proposal and against its opponents, rather than focusing on possible alternative means for resolving the conflicts between the proponent and objectors. In effect, the formal processes for EDR became not a matter of choice, but a prescribed process required by the RMA. Opponents, on the other hand, indicated that once conflict emerged in the public arena, their Council had a political obligation to 'consult' the community and emphasised democratic rights rather than statutory requirements.

That Council could not be objective in the circumstances, was given by all participants as the reason an independent commissioner was appointed to hear issues and make a determination. Council's responsibilities as regulator and policy maker, and also as overseer of formal EDR processes (i.e. judge of the integrity of these processes in giving effect to the principles and objectives of the RMA) were assumed (as it was not actually stated in the Commissioners' briefs) to be delegated to the appointed commissioners and were carried out within the hearings. The appointments of independent commissioners was clearly in the capacity of 'enforcer' and 'judge', as the Council as applicant considered it must rescind those roles during the formal EDR process.[160]

[160] As Council normally has these roles vestiges were carried into the hearing as Council shows how its decision-making processes (in the context of serving the public interest) led to it becoming a proponent of change.

The City Manager identified after the first hearing, as a result of problems experienced, that "the roles of policy maker, regulator and applicant need to be clearly understood and rigorously applied" (Willis, 1995). Therefore he suggested a project manager ought to appointed "in applications such as this, so that coordination of effort occurs, *but more importantly to ensure that there is an appropriate level of objectivity being applied.* Such a person needs to be both senior and experienced, but distanced from the actual project" (Willis, 1995, MI). No such project manager appears to have been appointed during preparation for the second hearing, presumably as the situation was different, it was not an "application", but a proposal for the 'future' management framework.[162] Therefore, within Council there appears to have been no person or group responsible for overseeing Council's trichotomy of roles, as those directly involved in the process were active in the capacity of preparing a case in support of Council's decision.[163] This affirms two analytical observations already made, that the Commissioner is assumed to have been delegated two of those roles, and that the EDR process is very focused within the hearing itself and is not evident in the period preceding it.

The City Secretariat was responsible for carrying out formal procedures as required. However an officer in this unit said it "was only indirectly involved in the process". This unit had a focus on the practical requirements of the RMA, (e.g. complying with 'natural justice' principles, recording the receipt of public submissions, and sending out information about the hearing). It did not undertake any analysis of submissions or suggest any other processes be initiated.

Prior to the PDP and plan change hearing, consultation was undertaken in accordance with the First Schedule of the RMA. Consultation with public authorities included, the Minister for the Environment, who responded "The Ministry does not intend to make a submission on this matter" (29/11/96), and the Minister of Conservation (as required by s32), whose response was not located in Council records. Council also consulted with the Manawatu-Wanganui Regional Council, which responded "We are neutral on this issue" (MWRC, 24/11/95), the Ministry of Transport which responded "Transit NZ no longer has any role to play in administration of this section of roadway and no comment to make on this

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[162] A core group of staff were established to coordinate Council's efforts in relation to the working party process held between the hearings, however, no such group was set up for either of the hearings.

[163] Council overcame coordination problems (discussed in Chapter 10) in preparation for the second hearing, through the selection of a strong team of officers. "The strength of the team... owes a great deal to the dedication and involvement that you and other officers of the Council have shown to the project", (Counsel for Council to an officer, 22/07/96). This again indicates Council's focus as a proponent of change or sponsor of a project.

proposal" (undated letter in PNCC Record file 2690), and tangata whenua (letter outlining proposed plan change, 28/11/96) two of whom met with officers. The record of this meeting (undated) shows two (of three named) kaumatua and officers met, and noted all three kaumatua were "not particularly concerned", with one observing "the trees were exotic and therefore heritage issues are of more concern to Europeans". It is possible to describe these consultation efforts as 'bi-lateral consultation', between the proponent and individual 'interest groups'. As such, it did not enable these groups to acquire complete knowledge of the alternative interests, views, values, information *as expressed* by 'others' involved in the conflict.

Public consultation through the earlier resource consent hearing and the working party. can be identified as 'tri-lateral' ('fors' and 'againsts' address a third party) and 'multi-lateral' (all interested parties address each other with the aid of a facilitator), respectively. Each of these consultation efforts were 'noted' as having occurred in the s32 report for Plan Change 11 and the PDP. While the evident lack of 'interest' of those 'required' to be consulted (by the First Schedule) is reported in the s32 report, the views of the public 'interest groups' were not, nor were the conclusions and wide ranging recommendations developed by the CRTWP, presumably as those consultation efforts were not 'required'. The CRTWP's report, was instead introduced by a planning officer as a witness for Council (in evidence), and was also referred to by opponents of the proposals. The summary analysis of submissions was also a record of public views, as a distinctive requirement, additional to the s32 report.

Before the hearing the s32 report was criticised by opponents. Counsel for Save the Avenue wrote to Council (29/04/96) indicating that the information presented within its s32 report was not balanced as it selectively reported information presented in earlier consultation forums and omitted many of the conclusions of earlier forums. He suggested that aspects favouring Council's position were reproduced while those favouring opponents views were omitted from the s32 report (for example the evidence of opponents' witnesses on amenity/cultural/heritage values, tree health and safety measures, 'sustainability' issues, urban design). It was also suggested that the conclusions and recommendations of the CRTWP needed to be reported more fully. Opponents did not believe the s32 report was an accurate record of information, or assessment of environmental effects or consideration of alternatives, benefits and costs.

In response to these and other assertions, it was pointed out by officers to submittors that as proponent, "Council has the right to call what evidence it considers relevant in keeping with its obligations and duties and will do so. This may or may not include what you

consider to be all the relevant evidence produced at the hearing of February 1994. You and your clients also have the rights to call all relevant evidence as you see fit. The question as to whether the Commissioner will direct that evidence from the 1994 hearing be presented is one for [himself] to determine. The Council would be likely to oppose any such direction and assert that it is up to any party to call any relevant evidence direct" (officer to counsel for Save the Avenue, 16/05/96). This affirms that this s32 report was prepared by an applicant, not by Council as regulatory/policy-making authority, as Council would not be presenting *all the evidence* from earlier processes, only that which it now considered relevant. While the Council recognised it was acting as proponent in the case, public participants were confused by that, as they were less able to differentiate the distinction between developer and 'their' Council. The correspondence between Council and members of the public, describe that Council was consistently having to reiterate to public participants that it was not working for them as individuals, but for the politically determined general 'public interest'.

In relation to access to information, issues were also identified as relevant to the process prior to, and in preparation for the hearing. These issues are linked to others mentioned by opponents as problems within the hearings. Submittors requested information from Council (held as regulator and policy-maker, as these roles require it monitor and keep records) in order to prepare their oral submissions. It was indicated that information contained in Council records was made available to submittors at a cost of 20cents per photocopied page in excess of 20 pages and that staff time to retrieve it was given free for the first half an hour and charged at $28 per half hour thereafter (officer to submittor, 31/05/96). No such charges were made of consultants preparing evidence on behalf of the proponent. These were supplied relevant material, often without prior knowledge of it or having to request it through the Official Information and Meetings Act, 1987. While this might be quite reasonable given that the proponent and regulatory authority were one and the same, never-the-less, it led to inequitable access to information held by local government, to prepare respective cases for the hearings.

Some submittors also requested the 'details' of Council's evidence (information held as proponent) to be presented in the hearing in order to prepare their 'counter' case. One such request noted they would "appreciate [Council's evidence] circulation 5 days before the hearing. An acknowledgement of the inadequacy of the statutory 2 days... is contained in Clause 10 of the Bill being considered in Select Committee which proposes to amend [RMA], by providing Council reports should be received by submittors at least 5 days before" (Public letter, 21/05/96). To this Council responded "Circulation of Council Evidence

- It remains our intention to send out the Order Paper some 5-7 days before the hearing, but the Council reserves the right to send it out later if necessary. Although it may be proposed to change the legislation in this regard the Council is quite entitled and should operate under the existing law and not that law which may be proposed" (officer to submittor, 24/05/96).

Issues of access to information and pre-circulation of evidence are linked to problems experienced by the public within the hearings. Opponents indicated that they were not 'allowed' to bring up new issues they had not mentioned within their written submission.

> Public "It is very legalistic too, the whole thing. You are not allowed to bring new things up. Anything you didn't write in your submission, which is a real big problem. Unless you mentioned it earlier, you can't bring it up later, you are stuffed and that is pretty bad. So you also need to run it all past a lawyer just to get your written submission ready to deliver... People wouldn't know that either. I was lucky I had put things very broadly in my submission so I could add things under each of my broad points [in the hearing]. I nearly slipped a couple of times with things I hadn't really thought about enough, but I did get them in, in the end. But lots of people didn't or wouldn't and they just get knocked out. It is a very strict forum."

Public participants implied that submittors were expected to have accurately speculated as to the evidence that might be presented in a hearing, when writing their original submission, as they needed to have made some mention of a subject to be able to comment further on it in the hearing. They also indicated they and their consultants did not have an adequate length of time to prepare their evidence to counter the proponent's comprehensive evidence (a week), particularly given the time the proponent had, (over four months) in which to consider submissions during their preparation for the hearing. A problem described by all participants was the work load required to participate in formal processes. The comments of officers were discussed in Chapter 8 with regards concerns about having to undertake work for the plan change, in addition to the PDP process which was underway. Opponents also had adverse reactions to the call to participate again.

> Public "What I saw of that Plan Change 11 was, it is a big burden to put on people - to have to keep putting in submissions. Having to go through the process all the time and go to hearings and meetings and all these things. Especially if you had already done it once. I had put in about 10 submissions and I had just had a guts full of it and then we had to do it again. Always to Council's deadline, always to 'yes we are going to listen to you', and always ignoring us. Anyway, I felt this was really oppressive and, as I said, they could have fast tracked that part of the PDP and had it operating earlier than the rest. You have to go the Court and ask them to have a priority hearing, but Council chose not to do that. They chose to go through this double procedure of changing the TDP, which is very expensive. It must have cost them... This is leaving aside the hearing and all the work for their officers, all the work for the community, just so they could advance this little bit when they had a procedure in train, already going."

An officer commented on the amount of work they were required to do on behalf of certain

submittors as a result of their frequent requests for vast amounts of information. These features of the process leading up to a hearing indicate that in terms of EDR, written submissions in themselves did little to resolve key issues. In fact, events prior to the hearing forum were found to have exacerbated the conflict, by circumscribing the relationships between the parties, as they developed perspectives as to the character and motives of other protagonists. All groups demonstrated they did develop perspectives about others as a result of comments and conduct during this early phase of the process.

In Chapter 7, the type of reaction indicated by the comments of the public above were identified as 'tertiary' sources of conflict, as they did not relate to the substantive issues, but instead related directly to personal involvement in the processes employed ostensibly to 'resolve' the dispute. Consideration of the participants comments indicated that such sources of conflict were as critical to interpreting perspectives and thus effectively 'resolving' *all* the issues within the EDR process. The City Manager implied an awareness that these sources of conflict were part of Council's problem in relation to the first hearing when he wrote, "Public relations - Despite admonitions from Councillors and staff alike, we seemed unable to formulate any sort of positive public relations strategy until quite late in the piece. In part, this was a consequence of our, 'we're in the right - we can't lose - let's tough it out', approach, but it also reflected a failure to understand that the public was perceiving the issue in a much wider fashion than the Council" (Willis, 1995). As written submissions were not key to resolution, what transpired within the hearing forum was.

9.3 DIFFERENCES BETWEEN THE TWO FORMAL HEARINGS

While it has been noted that there were many similarities between the formal EDR processes undertaken to resolve this dispute, participants also described that there were differences between two hearings. These differences stem from three sources:

1 The purpose of the hearings was different. One sought to make a determination based on an established policy framework, while the other sought to determine an appropriate policy framework which would describe the envelope of opportunities/restrictions to guide future activities and decision making;

2 The dispute context also changed. The conflict had evolved and this produced different features in each of the two hearings, and:

3 The 'character' of the hearings was different in ways which can be attributed to the behaviour of 'protagonists', given the circumstances of their involvement or context on each occasion.

It was found that the 'winners' of the first hearing described benefits of it, while 'losers' were

less likely to have observed benefits but willingly recounted problems. This might have been expected again of the second hearing, but by contrast, that hearing attracted less comments about benefits from either the 'winners' or 'losers'. The reason for this is attributed to it being described as a more formal and adversarial forum. It is apparent that while there were strengths in the second hearing, (in that it resulted in 'breaking the impasse' by legally 'resolving' the dispute), few participants saw their experience in those terms. The 'winners', while describing satisfaction that they had won, also recounted negatives of the process as they were still experiencing 'fallout' (particularly from the public demonstrations against felling of the trees).[164]

9.4 BENEFITS AND STRENGTHS OF THE HEARING PROCESS

9.4.1 Statutory prescriptions describe when the formal process must be used and guide decision makers as to what must be considered.

Statute (and plans prepared under that statute) prescribe when consultative forums for EDR are necessary. The RMA dictates that there must be opportunity for public input so that diverse interests, values and 'perspectives' can be taken into account in environmental management. Public participants suggested that as they had no effective access or ability to influence decision-makers by informal means they took formal opportunities to do so, when these arose.

9.4.2 The necessity for the process gave rise to a high level of 'formality' and also respect for the process.

The formal character of hearings was linked to the statutory necessity for a hearing. Public participants described that they felt they had a right to present their information in a forum which would be considerate of their interests and views. Participants indicated that a high level of 'formality' provided an *opportunity* for an equitable airing and consideration of issues. As the hearing commanded respect as a formal process, participants were at notice of the importance of both the process and of its results. Council participants considered that the level of formality within hearings was a benefit to EDR, as it encourages certain types of responses from participants. They described that public submittors to hearings make more effort to provide their rationale, evidence and to describe what they do want, rather than just presenting criticisms.

> Councillor "If it isn't sufficiently formal people might not have prepared well enough

[164] Given the currency of the dispute, research participants tended to focus on the negative aspects of conflict and its EDR processes. As such, few participants 'accentuated' the positive at that time. During the research interview attention was paid to identifying and eliciting 'positives' as well.

> and don't say everything they should. One of the virtues of formality is that it really sets people at notice that this is the time when you have your say. You are entitled to say whatever you want but make sure you get it all down... It is very important in this, that the commissioner... has all the evidence and views in front of it, to make a decision. You can't expect a commissioner to sort of surmise or divine what someone is actually wanting - they have got to be told fairly clearly."

Furthermore, Council participants indicated the importance of achieving a conclusive legal determination (subject, of course, to appeal), as Council decisions were rarely considered 'conclusive' by the public, and opponents continued to debate issues as though Council had not made final determinations.

9.4.3 A well defined purpose and the 'straightforwardness' of the procedure used to achieve it, enabled participants to comprehend the process.

The purpose of the process was well defined as the issue to be resolved was stated succinctly in the brief that delegated authority to an appointed commissioner, to 'hear' and decide 'certain' matters. The roles of the participants in the hearing were clearly defined, as arguments 'for' and 'against' the proposal were presented. Participants indicated they get "one chance" to present their case, they were therefore at notice to be well focused on what is important to them and what must be said.

9.4.4 Transparency as to what the proponent intended.

Participants indicated that a benefit of the hearing forum included transparency as to what the proponent intended to achieve as a result of the process.

> Officer "In terms of the plan change I think the benefit was that Council was totally transparent about what it was doing. It said that it wanted to pursue this course of action, that it had made a decision about it and the clearest way of doing it was not only to address it through the [PDP], but also through a plan change to the [TDP]... we were quite open about what we were doing and encouraging people to make submissions if they were concerned."

> Officer "The very fact that a plan change was proposed has been a means to inform the public that the Council is going to take this step... When you have a proposed plan change or a proposed plan, the Council has already expressed its indicative view on things, so the decision maker at this stage ceased to be Council and was a commissioner. "

9.4.5 Open standing allows any interested person to have input.

While anyone can make a written submission, hearing forums are open to those interested parties who make a written submission *and* indicate that they wish to be heard. Open standing or *allowing* any interested party to participate was assumed by public participants to mean they were provided a venue to air their views on the range of issues that they

considered relevant to the issue.[165] Following open standing, the conduct of the process was in public view, so that anyone who wished to attend was at liberty to observe every issue and argument that was presented. The media also had opportunity to attend and could report the process as it unfolded.

The statutory requirements prescribed for the process were thus seen as a strength of the process. Allowing the public to speak to their concerns and to provide their own evidence to a commissioner was considered a high order of 'consultation' by Council participants. It was frequently stated that Council had "consulted to the nth degree" on this issue.

9.4.6 The conduct of the forum is at the discretion of an independent third party who 'manages' the process and has the power to make determinations.

The characteristics of 'formality' were also suggested as enabling this process and forum (and thus also the analysis of issues and determinations resulting from it) to be seen as having been undertaken by an independent third party.

> Councillor "There has to be a considerable degree of formality between the commissioner and the parties because he/she can't be seen to be partisan."

Features associated with formality are considered, by some participants, to have enabled thorough and independent appraisal of all information presented.

> Consultant "I think that [the Commissioners] critically appraised the evidence presented by the Council's experts in what I found a satisfactory way... [hearings] were well conducted."

> Public "I would say the [first] hearing was run in such a way that people were able to present their views and the alternatives and the Commissioner was listening to both sides and I can say having been through it, I had no idea what the outcome was going to be. He was good enough to actually ask everybody all the right questions but not give away what he was thinking. He didn't sort of show any bias during the presentations and I don't think anybody knew what the outcome was going to be."

As such participants experienced a sense of empowerment at having been able to present views to an independent decision-maker, in hand with the independence of that authority lending to a greater sense of having been heard and that diverse views would be considered fairly.

> Public "You felt that you had represented your case and it had been heard for the record by somebody independent. So you didn't just feel you were talking to people who weren't going to listen to you on principle, because they had already made up their mind. I think that is what comes over in things like the Annual Plan or any of those local hearings. You are actually talking to the people who originally came up

[165] That assumption was brought into question by their experiences and is discussed in Chapter 10.

with the proposals and that I think makes it very hard for the public in whatever you are presenting. When you are talking to the Council over the Annual Plan you may be bringing an objection to what they have proposed and in the hearing sense you have actually got someone independent there who is trying to listen to both sides."

It was apparent that these characteristics of hearings, associated with a high level of formality, were conducive to participants forming an impression of independence and thus also of neutrality and objectivity. Therefore, the achievement of 'equitable consideration' was thought to be linked with delegating decision-making to an *independent* third party.

9.4.7 Personal learning, and positive reinforcement of views and rights as a citizen to be involved in environmental decision making.

A number of participants indicated personal benefits from participation in hearings. For example, they met other like-minded people, experienced personal learning, or knowledge of planning. Some indicated they felt empowered by their involvement in the process as they observed they did have an effect on decision making.

Public "It has been a learning curve. I have to attend other hearings, so it is good to have some experience of them... You grow with the information."

Public "As I went to the hearing I got to know people, it was the first time I had met people from Save the Ave. who were more organised... So you felt you were part of a collective thing, you had gone out and made the effort."

9.4.8 Apparent simplicity of the procedure.

The key explanation for the benefits and strengths of the hearing process lies in its 'apparent' simplicity. While the arguments and issues brought to bare within the process may be complex, the process itself was not, it was straightforward. Hearings are referred to as using an 'adversarial' model, however, protagonists argued their case not with each other but to an independent third party. The protagonists themselves did not have responsibility to 'resolve' the issues, the Commissioners did. Proponents were responsible, prior to the hearings, for undertaking research and preparing evidence for the hearings.

9.4.9 Familiarity with this type of process and forum.

Some participants indicated that they were familiar with that process or model for dispute resolution, and as such they had a sense of the proper conduct expected at a hearing.

Officer "I am reasonably relaxed about [hearings] because the Council does recognise the formal process and we do skill our people up on it, I guess. We have mock hearings and training sessions on presentations to hearings. Being a local authority we are regularly at hearings either as a 'for' or 'against', whatever it is. There is hardly a month goes by that someone isn't up before a hearing so we are reasonably

comfortable that staff are capable of putting our information across and if it goes against up, well so be it. We gave it our best shot."

Officer "I think it comes down to peoples own experience. Whether they have worked in that type of area before and some people are happy when things are formal and more cut and dried rather than open ended. Whereas others are more into wanting to explore and work around things which you can't really do in that type of formal hearing. Your've got to have your case and put it forward rather than an opportunity for dialogue which you get in something like the CRTWP."

Public "I can well imagine that someone who had less experience [in hearings] might find it all a bit daunting and the process is sometimes criticized for being too formal."

Participants however, observed differences between the two hearings. For example, a strength of the first hearing was given as its relative 'informality' by comparison to the second. A feature of this was seen in that the first Commissioner allowed submittors to seek guidance on procedure from him. A greater degree of formality led to a problem arising in the second hearing in relation to submittors seeking procedural 'guidance'. Even given the observed differences between the level of formality between the two hearings, participants stated both hearings were 'conducted properly'. It is evident that while formality is considered a strength of these processes, the level of formality needs to be such that it can adjust to accommodate the needs of the participants (in the circumstances), as adherence to 'codes' of formality can hinder the process.

9.4.10 Perceptions of the process were linked to perspectives on the integrity with which it was conducted and the impartiality/objectivity of the third party decision maker.

Benefits and strengths of the hearing process were found to be linked to perspectives on how it was managed and heard by the Commissioner. Perceptions of neutrality, objectivity and independence increased participants trust in the integrity of the process.

9.4.11 Satisfaction in having participated in the process, when one's side 'won'.

Participants were more likely to recount positive recollections and a sense of achievement when they did 'win' as a result of the hearing. They experienced benefits associated with being successful or 'effective' in their endeavours. For public submittors a benefit of participation also related to a sense of achievement when they believed their views were respected and that their witnesses were respected for their expertise.

Consultant "I think [the opponents] found it a very interesting process to be involved in and they did win in the end [of the first hearing], so they felt they got the benefits in that."

Public "[In the first hearing] Our expert witnesses were recognised for their expertise even though they were retained by an interest group. I think that in a sense gave us our strength. They were recognised for their expertise."

A further personal benefit was the sense of pride all participants described when they had achieved a comprehensive and well presented case. Opponents indicated this in relation to the first hearing, while Council did so of the second. Participants from all groups observed that preparedness and good presentation enhances 'credibility', while a lack of preparation is detrimental to credibility, which can cause their views to go unheeded, which in turn was damaging to the moral of those involved.

> Public "Save the Ave really tried to mount, what I think was a professional, well coordinated and disciplined presentation to [first hearing]. Presenting reasons why Council should not be given that resource consent. We did not do badly in our presentation. We were not rank amateurs. We were not unprepared. We were well briefed and we were presenting well. So from that point of view our case was credible and that was very important, to present a credible case... It went pretty smoothly.""
>
> Officer "With the [second] hearing there [was] a lot of preparation, but we had actually done a lot already because of the [CRTWP] process."

It was evident that satisfaction in 'winning' also related to the knowledge that one's preferred outcomes would prevail. The flip side of winning however, is that others have lost and the comments of participants indicated they had experienced annoyance, despondency, self-deprecation and/or blaming others, to varying degrees after 'losing'. Participants from the 'losing' side, in both hearings, demonstrated aggravation that their interests and values had been subjugated to the interests of those who had 'won'.

Conclusions on the benefits and strengths of formal EDR processes are provided in Table 10. A summary of explanations for these characteristics is provided in Table 11.

TABLE 10 CONCLUSIONS ON THE BENEFITS AND STRENGTHS OF FORMAL EDR PROCESSES

* Statutory prescriptions describe when the formal process must be used and guide decision makers as to what must be considered. The necessity for the process gave rise to a high order of 'formality' and also respect for the process.

* The formal resolution efforts were very focused within the hearing forum. This put participants at notice of when the issue would be heard, so that they coordinated their efforts to prepare a comprehensive, structured case.

* Open access allowed any individual or group from the community an opportunity to air their views, have input and attempt to influence the decision-making process. The 'openness' of the forum also allowed interested parties to observe the procedure used, which facilitated comprehension of the process by all the participants in it.

* The process followed the procedure normally used by this Council, the implication is that standardised or 'normal' approaches to hearings have been developed. Some participants know what to expect and 'skilled up' for their participation.

Table 10 continues....

Table 10 continued....

* The conduct of the forum was at the discretion of an independent third party who 'managed' the process and had the power to make determinations. This allowed an assumption of neutrality to be made, which in turn led to an assumption of objectivity and that an equitable, even-handed approach would be used in considering the diverse evidence, interests and values presented.

* Transparency as to what the proponent intended. The *contest* between the protagonists competing objectives was thus also clear.

* The 'tone' of the forum was at the discretion of the Commissioner who influenced its level of formality, moderated or directed participants' behaviour during presentations, and consequently 'managed' the process. The ability to 'communicate' effectively was described as having being under the influence of the Commissioner, who chose whether to allow for individual differences in the ways people expressed themselves, chose when and how to moderate or influence the behaviour of submittors or observers during presentations, and decided what questions to ask submittors. These features point to some flexibility as commissioners exercised personal discretion in managing the process.

* The formal hearing process was described as being well defined. Its purpose was clear and stated succinctly as the 'certain matter' to be decided under delegated authority. This streamlined the process (and issues to be considered) and introduced efficiency for those involved in preparing evidence, and also in the process of decision-making undertaken by the Commissioners. A well defined purpose and the 'straightforwardness' of the procedure used to achieve it, enabled comprehension of the process by all the participants in it. The hearings' *'stated' purpose* and *process* were considered transparent.

* Commissioners were described as having a role in isolating fact from opinion, which was thought to reduce subjectivity and thereby increase rationality in the planning endeavour. As each side was able to present their case to an individual who they believed was fairly evaluating the information presented to them, and who would make a reasoned decision, along with a transparent rationale for the determination/s (or formal resolution/s).

* The time needed to participate in the hearing process itself was brief (no more than a week at a time), although the Commissioners did take up to two months to make their determinations and preparation for the hearing had also been undertaken over a period of months.

* Participants described personal learning and positive reinforcement of their rights to be involved in influencing civic affairs and environmental decision-making through involvement in formal processes, and satisfaction in succeeding to have an effective influence was evident when a side 'won'.

* The rationale for the decision was clear to all participants, as, even when participants disagreed with the decision-making approach used, the rationale presented, or the findings of the Commissioner, they certainly understood these.

* That results were considered 'binding' on all the parties, subject to an appeal, led to a sense that decisions taken in 'required' processes were final and 'legal'.

TABLE 11 SUMMARY OF EXPLANATIONS FOR THE BENEFITS AND STRENGTHS.

* Once the decision on which of the formal processes would be used had been made, what the procedure would be and what the process would entail for each party was relatively certain. This was particularly evident in relation to the resource consent application, as the process introduced a simplified and streamlined resource allocation procedure and process, thereby avoiding complications.

* This removed some uncertainty in the dispute context, as to how the *conflict* would be considered (and addressed), how long it would take to achieve a determination, and the type of result the process would produce. This in turn increased effectiveness and efficiency, not just within the process, but in terms of the parties preparation for their part in that process, as an explicit 'purpose' and procedures were established in relation to each of the formal hearing processes.

* The apparent simplicity of the process, despite the complexity of the issues presented within the forum, was attributed in part to the clear procedure used to hear evidence. It was also attributed to the nature of 'decision-making', as considerations revolved around interpreting and applying legal principles and arguments, and issues of policy. This narrowed down what was relevant to the resolution of the dispute, to those aspects which could be dealt with in legal or policy terms. Anything not able to be pinned to a policy or some aspect of the statutory framework was filtered out of the analysis in the decision-making stage. This provided a perception of rationality in evaluating the issues.

* This type of process and forum was 'familiar' to Council participants. Even though the circumstances changed, the structure and procedures used in hearing forums was the same. These participants 'knew what to expect' and skilled up and prepared for their participation. These people, in the line of their work, frequently participate in such forums, also the hearing procedure was 'established' by Council. This was the case in both hearings, even though it has been noted that 'decision-makers' (those with delegated authority) do have discretion in determining how a hearing process, or the EDR forum itself, will be conducted.

* Perceptions of the integrity of the process, in terms of it being reasoned and equitable, were linked to perspectives on the integrity with which it was conducted and also on the impartiality and objectivity of the third party decision-maker (the Commissioner). When participants observed fair and impartial treatment they believed their views were given fair and equitable consideration.

CHAPTER 10 PROBLEMS AND LIMITATIONS OF FORMAL EDR PROCESSES

10.1 PROBLEMS AND LIMITATIONS OF FORMAL PROCESSES.

Overall more problems and limitations were identified in relation to the second hearing. This was due to that hearing being more overtly adversarial. The sources of that were outlined previously (on p186).[165] Participants indicated relatively fewer problems experienced by supporters of the proposals in comparison to opponents.

10.1.1 Proactive and reactive participation in conflict and EDR forums

Proponents were proactive in initiating change and thus engaging in conflict, and the EDR processes used to resolve issues and conflict. The City Manager identified this as an element of the problems Council experienced when he noted that, "Council's objectives were exceedingly plain. So much so, in fact, that some staff consciously or otherwise distanced themselves from the process and did not want to be seen as being on the wrong side of political determination" (Willis, 1995).[166] The strength of political determination was an explanation for some problems experienced by Council in relation to the first hearing. The City Manager (Willis, 1995, ME) described problems from his perspective, stating,

> *"[Council] had taken a blinkered approach to the issues... The resource consent was seen... as a simple narrowly confined issue of a controlled use resource consent. This was despite: strong public opposition at the draft Annual Plan stage to the Council's proposal; legal advice that there were potentially more appropriate courses of action in a planning sense; mounting public criticism of the Council's handling of the issue. As a result we lacked any real ability to stand back and review our position. Any attempts to do this (either from within Council, or by other parties) were quickly rejected."*

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[165] This hearing sought to determine an appropriate policy framework to describe the envelope of opportunities/restrictions to guide future activities; The conflict had evolved, and; as a result the 'character' of the hearing was different to the first.

[166] A Councillor described reluctance to be on the wrong side of *political determination* in terms of a problem of "contestability" within Council. It was suggested, in this conflict, that the dominance of some Councillors (and senior officers) meant a strong political determination over-rode what he considered was the 'correct' ways for Council to function. When asked whether consultants employed by Council, in hand with officers work, would provide this participants preferred level of 'contestability', it was thought not. This Councillor suggested consultants do only what they are directed to do and are not necessarily critical analysts of their employer. However another Councillor believed that there was contestability in Council. "I have said to the City Manager, do not suppress views of officers that you think will not be politically acceptable, if they are their strongly held professional views. We will make the political judgement, but we must know what their professional opinion is and I think we get that pretty often because we tend to create a climate where people can say, within Council, unpopular political things, but technically correct and survive. It's imperative. *It's got to be a culture of Council.*"

Opponents acted in a reactionary way. They objected to a particular proposal as it adversely affected them/their environment/interests and as such saw themselves as being drawn into conflict. This was the case regardless of the formal processes initiated to resolve issues. Opponents were 'surprised' by events, showing that they were not able to anticipate what would be required of them. Public participants' ability to predict Council's actions was found to be clouded by what they 'believed' *ought* to happen. Having little warning meant the public had no influence on the timing chosen by the proponent (in applying or initiating certain processes). They also did not contribute to the 'design' of the formal EDR forums. Public submittors indicated they then had to react within the limits or to the time frame established by the RMA. For example, it was indicated that notice of the proposed plan change was "a shock" to opponents, not just because they had not anticipated having to make a third submission in one year, but because of when it was notified, less than two weeks before Christmas. The decision by Council on whether to proceed with a plan change occurred as a late item to a meeting (12/12/95). This led some to believe it was "sneaked in" by a "cunning Council".

> Public "A lot of the public don't even look at the [PDP], or comment on it, let alone compare it the current one and figure out the implications of the changes... Everybody was incensed that they had to put [another] submission. They put one in, in May and then they were expected to do another in December and we felt this was power gone mad. To keep making people go through these hoops and go through these hoops - to wear the opposition out basically. Because they could keep on paying consultants and legal representation and so on. They have a totally open purse of our money. But we have to do it in our spare time and we don't have unlimited resources. So we were pretty incensed by this. So to stop us actually having to [attend two hearings], the [PCE's Office] suggested hearing them together."

> Consultant "I know there was a real shock when the [PDP] came out... Then a real shockwave went round when Council got this legal advice and sort of sneaked through at a Council meeting that they should do a plan change to the [TDP]. I think people felt they were being really hit then and that was pretty unexpected, and in retrospect I don't know how they could have got around that. It was just the way the Council was more cunning than the community."

Council had initiated preparation of the plan change in late August and it was introduced for Councillors' consideration only when preparation was completed. That preparation was undertaken under pressure to match the schedule outlined for the PDP. Officers indicated the process was a continuous stream of events having, in a sense, its own momentum. That this phase was completed when it was, was coincidental to the time of year and, as such, no consideration was given to delay because of the topicality or public interest in it. In contrast, the public saw these events as isolated rather than as part of a continuum, and suggested there was choice or control over decisions on when to initiate a process. Some suggested the choice of timing was a tactic to disadvantage opponents, although a lack of information and the ability to forewarn participants could also be a valid explanation.

10.1.2 Different abilities to prepare and coordinate evidence, submissions and witnesses into a comprehensive, structured case.

The differences in abilities to prepare arguments prior to hearings, in making written submissions (discussed in Chapter 9.2) also applied to different abilities to prepare thorough, comprehensive cases for the hearing itself. Council had experienced coordination problems in relation to the first hearing. The City Manager identified,

> *"Staff had been hindered by an overall lack of a project coordinator", which had resulted in a "lack of effective co-ordination" and a "confusion of roles" within the staff. Some staff, "at various times were uncertain or oblivious to their roles in the process. Thus at various times Councillors and staff alike were acting concurrently as applicant, regulator and policy determinant. Further in some cases, more than one person was seen as being responsible for a particular role. One consequence of this was that staff were prone to making contradictory statements about the same issue, while Councillors sometimes saw their political objectives as overwhelming the roles that they needed to play within the process. Thus confusion often reigned as to who was doing what, when and for whom*" (Willis, 1995).

These were also problems experienced by opponents in relation to the second hearing, and in some ways for similar reasons. Participants suggested that Council's case in the second hearing was well coordinated and prepared, while the opponents' case(s) were not.

> Public "[in the first hearing] I certainly thought they were caught by the extent of our evidence and its professionalism."

> Consultant "In [the second hearing] Save the Avenue was much worse prepared and hadn't foreseen some of the tricky things that were going to be thrown up - legally in particular. [*Were they not forewarned that certain legal arguments would be presented?*] No, because there was a whole lot of problems about designations and the status of different provisions in the plan which we didn't foresee... One of the things that happened to the community group, that really undermined it was, I hadn't had time to check everyones' evidence. The lawyer hadn't had time to check everyones' evidence. I think [members] were critical of themselves as well in not being as prepared as they could have been, but then they understand why that had arisen."

Lack of coordinated preparation led to other problems for opponents. One being that some submittors were less 'tactful' in their criticism of Council's expert evidence, than was diplomatic in adversarial circumstances. Some poor choices of words led to threats of defamation suits, evidence being "struck out", questions of credibility and an undermining of the integrity of opposing submittors and their witnesses alike. Participants indicated that 'loose lips do sink ships' as they described that a few ill-placed comments, by two submittors, who were speaking in 'expert' capacities, led to all opponents being tared with an 'advocacy' brush and thus an assumption of bias, as they were partisan in approach.

All groups indicated that forethought and foresight in preparation were essential parts of

presenting a convincing, well structured case. Part of this is knowing when to 'dress up' language and when to dress it down, and also how to exercise diplomacy in criticising the analysis and conclusions of experts. The public were less able to employ such skills, as they were inexperienced and had limited resources (time and money) with which to prepare and critique what each other were to say or do.

> Officer "Experts 'up' everything rather than bringing it down to a level that all can understand. It almost seems a bit of a game sometimes... kids in a sandpit saying my truck is bigger than your truck, forgetting to play and enjoy themselves."
>
> Public "Save the Avenue had some serious... had one incident that I think was a very bad set-back in terms of one of [its] witnesses, because of a lack of coordinated preparation. [Consultants] hadn't been able to thoroughly critique evidence being presented on [Save the Avenues] behalf, which is a matter of time and resources."
>
> Consultant "Some of the witnesses for Save the Ave had things in a slightly slanderous way in the evidence and normally you would let it go. In this case the Council lawyers and [some] consultants threatened to sue if certain words weren't struck out of evidence and that is a very heavy situation to create within a Council hearing [*Did it set a tone?*]. Very much so, yes, and it really got the community group on the back foot. I don't think the Commissioner handled it very well either. He is a litigious person at the best of times and he really allowed counsel to build up on that."

The opponents were individuals, some of whom had joined together under the banner of an 'interest group', rather than a singular opponent. 'Save the Avenue', contained a mixed bag of skills and variant degrees and focus of interest. Other opponents had no or limited relationships with each other or with 'Save the Avenue'. These characteristics limited the opponents' ability to coordinate a 'comprehensive, structured case'. Repetition as a result was believed to have aggravated other participants in the process.

10.1.3 Information uncertainties and a disparity in resources to retrieve data and purchase professional analysis of information.

Public participants and consultants indicated that some information was unavailable to inform analysis of the substantive issues. Opponents did not have data and analysis they felt they needed to evaluate the proposed solution, the alternatives that were considered, or to design new alternatives. Opponents indicated they had to work with incomplete information or information that was given too late to prepare well, as their limited budgets meant they were dependent on Council for information. This led to uncertainty surrounding the sources and causes of problems which had instigated the LTDP proposal.

> **Consultant "The traffic engineer was the one where there was the biggest disparity because the traffic engineer for the opposition was entirely dependent on information being made available from the Council, and there were some key pieces of information that were never made available, such as... There was other information [about the trees]... that was given to us in such a poor format it was unreadable. Again if we had it in more advance we could have actually assessed it and evaluated it and prepared a rebuttal of information on that, but we didn't have it."**

> Consultant "When the consent application was made, there was not a lot of good data. There wasn't good information as to how bad the congestion was."
>
> Public "It [the first hearing] was data free."
>
> Public "I had to research all about... [among other things] the trees myself."
>
> Officer "I think access to information can be an issue for some people, although in [the second hearing] they were given almost too much."

While public opponents pointed to a lack of information, officers pointed to information overload. This highlights an issue, (related to 'perspective'), that the information Council (and its consultants) generated did not necessarily address the issues the public thought were relevant to the analysis of 'the problem' or the resolution of the dispute.

Budget constraints also led to problems, for opponents, in commissioning professional expertise for the amount of time needed for their thorough evaluation of the proposal and the s32 report, and to prepare a comprehensive analysis. It also limited the time in which their experts were employed to prepare for hearings, and also to cooperate in presenting a well coordinated case. Much of the "leg work" was done by lay-people.

> Consultant "I had a very minor role in [the second hearing]. I was called at the last minute by one of the submittors, just to give a review and it was put together quite quickly a few days before."
>
> Consultant "It was patently obvious. [named consultant] who was the consultant for Council had had ages to prepare his evidence. I had a day and a half to prepare mine. Same with [the other consultants]."
>
> Public "I had done a lot of work on it and it was a big job and very complicated. I couldn't work out how legally to present it for a long time. We were still working to put it together at 1am the night before, so we were really pushing it. [named Public] had to fit it in to his normal extremely busy schedule, so then he took three days off work do his thing. So it is very different to just being paid to do it."

Urgency in preparing a case led to a lack of coordinated, thorough preparation. While opponents experienced this in the second hearing, Council had faced similar problems in the first hearing. "The political objectives of urgency also exacted a toll on the quality of staff advice and actions. One effect of the need for urgency was to draw even more people into the process, thus engendering even greater confusion as to who was responsible for what" (Willis, 1995). Council took time to prepare for the second hearing and employed legal advice and expert consultants in a more effective way.[167] The proponent's ability to afford top quality legal advice, consultants and expert witnesses for the second hearing

[167] "[Consultants] use [in relation to the first hearing] was uncoordinated and not clearly thought out in terms of an overall approach to the issues. Questions about the use of consultants in such an extensive manner was not the subject of any formal advice as part of an overall strategy either to the Management Team or to the Council" (Willis, 1995).

underlined a disparity of resources between the proponents and opponents in that hearing.

> Consultant "The Council was absolutely determined to win and it had put a huge amount of resources in... I think money was a problem for [public participants]. If they had had money for professional people then those people would have put in the required time into it. It was a straight funding issue."
>
> Consultant "Unfortunately when individual interest groups or citizens are dealing with either local authorities or large companies then they can't possibly get a fair hearing because the financially able litigant can buy expert evidence for a very long time. The only limitations on rights these days is cost which tends to limit accessibility."
>
> Public "A considerable amount of money had been spent by Council to fight its own citizens. It was draconian and obscene quite frankly... The Council has all the advantages that you or I don't have, [access to experts and professionals] and they exploited that. Now I'm not saying that all Councils would at all times or that even this Council would at all times, but as far as this case was concerned, they did."
>
> Consultant "The Council's case was very slickly presented. I mean they could throw money at it."
>
> Public "So [it was] Council versus the people and we will use our superior power and our superior access to resources and rely on the fact that we can just keep going and paying people and so on, to wear them down."

In relation to any disparity of resources, a problem for Council was indicated in relation to some public requests for funding to gather evidence and to present their opposing cases. A Councillor said, "I don't think Council can be expected to have an open cheque book to fund everyone's case. Having said that, if the Council is persuaded - particularly in the pre-hearing meeting that certain information should be brought forward that the Council hadn't entertained - the Council officers may well go and get it." This indicated that it is the responsibility of all parties to fund their own research and case presentation.

10.1.4 Limited ability to undertake thorough analysis of evidence within the hearing.

All participants described that there was an inability to undertake comprehensive analysis of data and other information presented within the hearings.

> Public "There were data sets that required analysis and you can't do that sitting in the court, or in the hearing. So you have to go away and work on it overnight. The element of surprise caught them."
>
> Councillor "The difficulty can be, if one party or other prefers to run the thing by ambush. In other words, instead of pre-circulating material - you get great wads of it dropped on you at the hearing... I would much prefer that as much technical evidence be pre-circulated. But parties, often for their own good reasons, prefer to cause some discomfort to the other side by producing wads of technical data which can be difficult to assimilate and argue against."

10.1.5 Adversarial model and character of the hearing forum

All groups indicated that a hearing is an adversarial forum, as it is based on an adversarial

model, that results in 'winners' and 'losers'. However, the second hearing was also described as an "aggressive" forum. Some participants indicated that a PDP hearing did not have to be 'adversarial' as the RMA does allow those responsible for running it discretion as to how they will run it. As such the Commissioner was thought to be responsible for controlling the 'climate' or 'tone' of the forum.

> Public "[The hearing] was a more adversarial forum because of the lawyers."
>
> Consultant "I think the second hearing was much heavier than the first. It was the most aggressive hearing I have ever been involved in. The second hearing, I think no one was happy about. I think they felt they had been really, not dragged through the mud, but pulled through a gorse bush. I think it was painful for everybody... All the dirty tricks in the book were used."
>
> Public "The whole thing, leaving aside the specific personalities and so on, well the RMA sets this approach up as possible and this is the adversarial model, although it is possible under the RMA for the Commissioner to actually run it as an inquiry under the Commissions of Inquiry Act, which the RMA is linked to. He could run it as an inquiry and just ask us questions and say, 'look there is a gap in the evidence here, can you go and get this information for me because I can't really assess what the truth is because you havn't given me all the information'. [But] it was just totally adversarial, just go in boots and all, absolutely and that's that."
>
> Public "The Commissioner could have stopped it, could have ruled people should not keep badgering the public submittors. I am used to standing in front of people and presenting evidence, but I found presenting my evidence very difficult because they were constantly harassing me and we even had comments from the public gallery. In particular at one point [a senior Council officer] made a very misplaced comment and I felt like turning to the Commissioner and saying 'can you please restrain this person, he is not doing the right thing,' but [he] just let those sorts of things go on. Now whether he was just worn out by the fact that it clearly was nasty. But I think the way they treated other people, the way they attacked people was appalling."

10.1.6 Forum and related occurrences intimidate participants.

The hearing forum can be intimidating to participants. An officer suggested the rules, regulations and formality can make people nervous, so they can "muck up" their presentations and as they "only get one shot in a hearing, this can wreck your case". Therefore, officers rehearse and skill up on participating in a hearing to reduce the chances of that happening. In the event officers and the public supporting Council did not experience the same problems as the opponents, in or while presenting their evidence. For example, a public supporter stated "I didn't find it so adversarial... I was asked just a relaxed couple of questions."

> Public "The two hearings were completely different in tone. It was clear at the second hearing that certain people had decided that they were going to win this one. It didn't matter how they were going to win it and they employed professional people whose reputation is that they win at any cost - having spoken to people who have employed these same people that I was up against, and these people would badger members of the public with cross questions and objections."

> Public "It was very intimidating. Council's two main expert evidence people sat there with stern looks on their faces... and objected during presentations."
>
> Public "The hearings were intimidating. For a community group mounting campaigns in that forum is extremely difficult."
>
> Public "The only thing I achieved personally from attending the second hearing is [knowing] how adversarial and nasty these things can be. I was there the whole week and literally at the end of the week I just went home and collapsed. I felt sullied by the whole thing. The week had been exhausting and I couldn't imagine how anybody would be willing to go into that situation, knowing what it was like. I think that is were the process has failed. I think whether you win or lose, you should not run hearings like that. You should not come out, almost crawling out of the room, and watching them destroy people... when I watched them destroy [public] I just thought it was wrong and they should have been stopped from doing things like that, whether they agreed or not. I would say it was totally unfair. I went to the whole hearing and the way they ran it was just not nice."

Some participants described overt intimidation. Several participants recounted being "threatened" with defamation suits if they did not apologise for comments made in the hearing and that Council would seek costs if they made an appeal.

> Public "We put forward a statement saying various things were ultra vires and the Council's solicitor leapt up and said, that the Council was going to get full costs against us if we dared to bring this forward and that we were vexatious litigants... They were very into threats and nasty letters saying they would bring defamation suits... [public] made a submission about [a consultancy] report in which he had said that "despite the fact that it had been shown by the Stats. Dept. at Massey Uni. that this weighting was incorrect, that it continued to be put forward by [consultancy] as though it were true". So counsel objected to this and the Commissioner had it struck out of the evidence. But also [a senior Council officer] said this was defamatory and we had to apologize to him abjectly for saying this... He wrote another [similar letter] in relation to a statement made in the hearing when we tried to get them to withdraw Plan Change 11... half way through the hearing [public] received a letter saying [Council officer] was going to bring a defamation action against us with Council's money, in relation to a statement made by [public] a statement nobody would even have noticed. It wasn't defamatory and anyway it was covered by absolute privilege, and to use Council's money to do this. All this is threatening and intimidatory stuff."
>
> Public "We would have appealed had we not been warned off... from doing so. The Council made it quite clear after the outcome of the hearing that if anyone appealed the Council would seek costs against any of those appellants, if the appeal wasn't successful... We did feel we had a case for an appeal but we were warned off it. If we had funded it and been unsuccessful, and I'm not saying we would have been unsuccessful, but if we had lost, [Council] made it quite clear that they would seek costs against every member of the Save the Ave. So in other words as individuals they were scared off. On top of that, [they] simply couldn't fund an appeal... [given the requirements indicated in/by the Commissioners decision]."

Conversely, while officers and consultants did not describe intimidation as part of their experience of the process, threats of defamation and the seeking of costs reflect their adverse reactions to the comments of some public participants. Public opponents discounted these responses as extreme reactions to what they had said or done, and suggested these threats were deliberate tactics to quash opponents. They also saw these

activities as intrusions on what they saw as their 'rights'. However, the threats were taken seriously and were influencing factors on them in deciding not to appeal the Commissioner's decision.

10.1.7 Mismatch in the experience and expertise of protagonists

Participants described a mismatch in experience and expertise of the two sides. Some indicated those representing Council were aware of this mismatch and amplified the inexperience and limited budgets of their opponents, thereby exploiting their superior position to full advantage. Officers and consultants confirmed that quality (or the most 'credible') external consultants were brought in to prepare and present the case for Council, as solving this problem was very important to Council at that time.

> Officer "The unit was pretty heavily involved. It was a pretty high powered thing so [we] engaged the services of an external consultant to deal with our traffic and engineering issues, as did Council engage the services of an external planning consultant and external counsel. It was a big issue with us."
>
> Councillor "They put up one of their own [technical experts], not the most credible [expert] in my view, relative to those we employed. We regarded the problem as so important and so complex that we got what we thought (and I still do believe) were probably N.Z.'s leading [consultants] and when you really want to be sure of what you are doing is right, then you are in a bit of trouble if you get somebody less than that."
>
> Public "Counsel had a very different approach to [the counsel in the first hearing] and [he] has a reputation of knowing how far to go without breaking the law. That is his expertise area and I think what seemed unfair was putting up people like that against the public. Now clearly those people have a professional role in a professional area, but that is the mismatch, it was clear."
>
> Public "The Council had changed tack. Brought in different legal counsel. It was clear they were going to rack up the anti to win at any cost. They had more and new experts and they took some new angles in the law that took us by surprise. You know [a high powered law firm] versus the residents of Palmy, for goodness sake. I mean your've got the resources of [Council] versus 'Joe Public' or Save the Avenue. I mean there just was not the fire power. It was like the Battle of Crete, they just dropped more parachutes and landed more ammunition and we had to capitulate."

While there was a mismatch in the resources available for the full range of professional expert consultants, opponents believed their experts were suitably qualified to present substantiated, credible and independent evidence which could challenge evidence presented by the proponents. However, opponents indicated a key problem was not having adequate legal representation to comprehensively address all the legal issues, with skills to match the proponents counsel in an adversarial forum. Save the Avenue was the only submittor represented by counsel. However, environmental law was not his area of expertise or experience.

Consultant "I think Save the Ave. was hampered by not having experienced legal support and that was a difficulty because they had people in the group who had some legal ability who were involved up to a point. I think when you are up against lawyers on the other side it is essential."

Councillor "The most difficult hearings often are those where one adversary is well or competently represented and the other is inadequately represented or poorly prepared. People who ask me about taking part in these proceedings ask, "should I get a lawyer or should I do it myself?" My answer usually is, "if you are used to putting a case - writing down what are the points, speaking in public without getting tongue tied - then yes you can probably do it. But if it is of some significance to you, then you are probably well advised to seek legal advice."

A lack of adequate legal representation led to numerous difficulties for opponents. The most crucial issue revolved around how to present and argue their case given the purpose of the second hearing, and the complex legal issues that were involved.

Consultant "The statutory tests the first time round were relatively easy for them [opponents] to win on... The second hearing was much more difficult, because it was part of the PDP and a proposed plan change and the legal issues actually became much more significant then, because the legal tests are much less clear."

Public "The second hearing was a different ball-game, more open to subjective views on the arguments made. The decision was less legal."

10.1.8 Confusion and uncertainty about the scope of issues that could be considered, given the purpose of the hearings. The scope of the decisions were considered narrow as they were based on interpreting and making determinations on the legal issues. Commissioners did not comment on some issues that participants thought important.

Public participants indicated that there was confusion about what was of priority and relevant, given the purpose of the second hearing was to resolve issues surrounding policy to do with protection of certain trees.

Public "The whole thing legally about that hearing was, it was about what should be put in the district plan. Now there are all these things about integrated management... [but] they looked on it as a consent hearing, basically they just wanted permission to cut down the trees and it wasn't as to what kinds of things you should put in a district plan and you should exercise management which should be integrated and which should be in accordance with the principles of the RMA."

Public "You are talking about two distinct things - planning for the future and what you should put in a district plan, tree protection criteria - and planning for now or undertaking evaluations according to the criteria and listing these trees or not, and all this other stuff which was brought up about the decision made in 1988 in same ways is completely irrelevant to what should or shouldn't go into the district plan. The whole approach and emphasis was askew."

Consultant "[In a hearing] there is *one* advocate and that was Council's legal counsel... lots of others advocate alternatives [*If they grouped together and also had one strong opposing advocate would it make a difference?*] I think not because of what hearing decisions are based on - Council's right to make the political decisions - Council should win every time."

Council's evidence began by outlining substantive problems in terms of the traffic situation in the Avenue and then demonstrated why Council's preferred solution to these was the best option. Evidence in relation to the trees followed which was presented with a view to support the Council's preferred solution to the Avenue.[168] Council's [proposed] policies on amenity, cultural, heritage values, and tree protection and transportation policy generally within the city, were not discussed by the witnesses for Council.[169] That is, within the proponents evidence, the trees issue/s were secondary to traffic issues. The proponent's case had clear direction, was well structured and effectively communicated. It demonstrated how roading and landscape features had been incorporated into the design of the project and so argued that an integrated approach had been used.

Opponents by contrast, presented a case which was multi-directional as it was presented, in essence, by a series of individuals, focused on their particular interests. The effect was a confused structure which detracted from effectively communicating major points. Submittors and their witnesses variously highlighted their interests in terms of positive values associated with the trees (as well as other interests potentially affected by removal of the trees) and argued for their protection on that basis. They also tried to counter the evidence of Council's witnesses in support of Council's project by demonstrating differences of (expert and lay) opinion, partisan characteristics and weaknesses in Council's evidence. They described the adverse effects of the project on interests other than (but also including) the motoring public and argued that other options were needed. Some tried to convince the Commissioner of the appropriateness and feasibility of various alternative solutions to traffic problems. They argued legal issues including some over Council's rights and obligations.[170]

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[168] The Commissioner uncovered that this evidence was in support of Council's project and included transcript of dialogue between himself and one of Council's witnesses in his conclusion (1996, p41). This expert witness, a landscape architect, concluded the trees should be removed. Enquiring as to how he arrived at this conclusion the Commissioner records the following dialogue. Witness "I am not a traffic engineer, but having been exposed to the problems on the Avenue, I am convinced that any other options to retain the trees would not satisfy the traffic solution." Bornholdt, "Do you believe that eliminating the option to retain the trees was a traffic solution, not a landscaping solution?" Witness, "From a landscape point of view, the option would be to retain the trees, but the Avenue would be restricted to two lanes." Clearly this witness accommodated traffic issues into his assessment of the values and sustainability of the trees, in arriving at an amenity/streetscape value of the trees.

[169] However, the s32 report does list, by number (not in their entirety) related (PDP) policies and includes some discussion on these, along with providing the summary of submissions which outlined many of the other values, interests and issues.

[170] Counsel for Save the Avenue had written to the Commissioner (13/05/96), noting from the programme for PDP Hearings, three matters which "we submit are inseparable and regarding [Council's view of them as] individual decisions... These three items are not only related but are within the scope of the integrated management of the effects of the use requirements in s31 of the RMA." The matters

Officer "I don't think there were too many problems, probably disappointments would be a better word. We did have a problem in the hearing where we had spent a day and a half talking legal issues from one of the submittors who got tied down in legal argument - that was above my head - and way above 90% of others there. It was a real specialist issue and the Commissioner, the submittor and our legal counsel were the only people in the whole room who knew what was going on. It was a real problem for me, because I thought, 'where the hell are we going now - we have actually lost sight of what we are here for', and I saw that as a problem. I mean we were there to sort out the Ave, not to sort out the legal fraternity - that is quite a separate issue. [*So you thought bringing it down to a legal debate wasn't conducive to resolving the issue?*] It did absolutely nothing as far as I am concerned.

Opponents also described arguments pertaining to 'integrated management' that were put forward in the second hearing, but which were not commented upon within the Commissioner's decision. Therefore, the Commissioners did not comment on or seek to 'resolve' all the controversial issues brought to the hearing forums. Both of the decisions were based primarily on consideration of legal issues. On making determinations on these, the first Commissioner did not consider it necessary or appropriate to comment further, although he also recognised this could disappoint some participants.

"*In this decision I appreciate I have not dealt with some matters that the parties, and no doubt some of the witnesses too, would consider of great, if not prime importance. Traffic safety is an obvious example. The fact that I have not done so is not intended to demean the importance of these matters or to show any disrespect to the witnesses concerned, the quality of whose evidence was generally of a high order. There can be no question of the bona fides of the application and of the reasons which prompted it. It fails because it does not meet the statutory criteria which govern what I have found to be a non-complying activity.*" Tizard, Feb 24th 1994, p25-26.

There was also a change in approach to consideration of the issues between the two hearings. The first Commissioner made the following comments.

"*The weight of expert evidence alone is that the adverse effects of removing the existing trees are not minor. However, an existing streetscape is not just a matter for expert opinion. Streets are the province of citizens. Whilst some will be indifferent to the amenity which the trees provide, others, as the opposition to this application demonstrates, will not. I would have thought that, excepting the indifferent, the majority of Palmerston North citizens would recognise the amenity of the existing trees of Fitzherbert Avenue. I suspect their loss would be mourned. That may be justifiable, but not if the adverse effects alone are considered*"...

"[A witness for Council suggested that] *the effects [of tree removal] should not be looked at in isolation but collectively, as a bundle of effects, the significance of which must be no more than minor... Whilst I accept I am to*

Save the Avenue thought should have been considered together but which were scheduled for separate hearings included: the Avenue trees (11-14 June); Transportation (6,8 August); Cultural Heritage (10,11 Sept). The opposition then also thought integration of issues was important, but indicated they didn't believe the scope of integration, as Council saw it and had set out for the hearing, was sufficient.

*have regard not only to each effect in isolation, but also any cumulative effect, **I may have regard only to adverse effects** when considering s..105(2)(b)(i) of the act. [Witness also suggested] that a change in effects did not equate to adverse effects.*" To which the commissioner agreed. Thirdly, the witness maintained that "*effects need to be examined in their long term context - the concept of sustainable management required the needs and requirements of future generations be brought into consideration.*" The commissioner noted, "*I do not see that is relevant when applying s105 (2)(b)(i) of the Act. I am equally obliged to have regard to temporary effects if they are adverse.*" (Tizard, 24/02/1994, p18-19, bold added).

In contrast the second Commissioner noted,

"*When examining the particular management strategy proposed to be adopted, **its benefits should be balanced out against any adverse effects - the balancing exercise being a relevant consideration... I am led to the conclusion that the transportation imperative of [the] Avenue... is so important that it must take priority**, notwithstanding (but not ignoring) some short to medium term adverse landscape effects.*" (Bornholdt, Sept/96, p101, ME, bold added).

As such the Commissioner undertook an analysis in which he weighed up both adverse and beneficial effects of the two sides preferred roading layout, and decided which 'on balance' produced the most gains.

10.1.9 Problems evaluating alternatives and 'formulating' policy in the second hearing.

A number of participants indicated they were confused about the purpose of the second hearing, and described an inability to differentiate between 'policy issues' and the substantive conflict. This confusion is thought to be rooted in the fact that while the hearing Commissioner's brief and delegated authority was succinct in stating the purpose of the hearing, it was not necessarily an accurate job description.[171] The result was that the Commissioner made a resolution on substantive issues, and determined the policy issue be resolved accordingly following that, rather than vice versa as is more commonly anticipated of the policy formulation process.[172]

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[171] The Commissioner points to a change in his thinking about his role when he wrote (1996, p6) "I have kept in mind that the hearing basically relates only to the protection or otherwise of the Fitzherbert trees", and later writes (1996, p94, MI) "In its simplistics, the argument before me, revolves around the use and development of Fitzherbert Avenue resources *and* the protection of [Avenue] trees." He indicates his problem had become one of *balancing* the pros (positive effects) and cons (negative effects) of Council's road widening proposal, which involved him undertaking a weighting exercise and determining which, to his mind, came out on top, which would lead to a decision either to accept or reject Council's project. He used this approach to making a determination as his interpretation of the legal framework (RMA) given in his decision, indicated this was how he ought to make it.

[172] The planning process for EDR described in the RMA was discussed in Chapter 4. Policy formulation was anticipated to guide future activities and is considered an early phase in EDR, as the mechanisms thus designed and established are to act as pre-emptive means which can lessen the likelihood of conflict emerging. Thus, in establishing plans, EIA are employed to foresee the likely effects

Participants suggested that within that process, some interests were given 'minor' consideration by comparison to others. Those interests which appeared to be less well considered were those generally described as difficult to quantify (or more esoteric) in nature.[173] Some participants indicated that such 'values' are not unquantifiable as there are means by which degrees of quality (value) could be placed on them. However, within such analysis some measures could be considered more subjective than those quantified, for example, in relation to some aspects of transportation planning.

Participants also described difficulties associated with exploring options and alternatives in an effort to resolve the conflict as well as the legal issues. They considered these hearing forums were not conducive to an exploration of alternatives to road widening. Several alternatives were briefly described and rejected by Council's witnesses, while others were presented by opponents. Criticisms, by opponents included: that consideration of some options was fleeting; the rejection of some was cursory as the reasoning was not always well collaborated by objective evidence; some were evaluated in ways which showed a desire to preclude their being seen as feasible options; reasoning was inconsistently applied or arbitrary,[174] and that options were not evaluated in a thorough, independant or balanced way. Opponents frequently referred to an "absence of data" and an inability of Council to provide information which could show that in depth evaluations of alternatives had been undertaken.

Council participants, on-the-other-hand, suggested public participants had "unrealistic

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of policy, rules, regulations on all interests and values in the community. Thus the process for formulating and finalising plans includes public consultation as it attempts to identify those interests and values and thence set up the mechanisms by which to protect or enhance important positive values while describing the envelope of future opportunities generally for the community. It was not noted in the reform documents that this phase of planning was also anticipated to be employed as the last phase of EDR, presumably as policy formulation was not expected to be based on resolving conflict surrounding specific controversial activities. Rather, such conflicts were expected to be anticipated within plans, so that the resource consent process would deal with possible conflicts. Within Chapter 4, it was noted however, that theoretically conflict would also need to be resolved within forums establishing 'appropriate' plans.

[173] Historic, cultural, aesthetic, amenity, symbolic values were provided as examples of less easily quantifiable or esoteric features. Similarly 'safety' and 'convenience' are open to subjective interpretation until described quantitatively through data analysis.

[174] For example, "safety concerns" is cited as a reason to reject particular options. Opponents indicated they thought these concerns, while important, were not always well qualified, but that stating there were some was sufficient to have the option rejected. They indicate they believed Council's preferred option raised numerous quantifiable and proven 'safety concerns' (to their minds), that had not caused a similar rejection. Another example related to the evaluation of the second bridge provided in the s32 report and to the hearing. Opponents argued that problems surrounding it were amplified with a view to exclude it as an alternative. Similar comments were made regarding other options, such as the provision of public transport and parking policies at Massey University.

expectations" surrounding how thorough evaluations of all the suggested alternatives ought to be. Officers indicated many options were "variations on a theme" and it was not necessary or warranted to comprehensively explore each. They also implied that overview or cursory critiques can be sufficient for professionals familiar and experienced in the field, as they know "what works and what doesn't". Officers explained that within their fields they keep abreast of experience outside of their City and they compared the Fitzherbert Avenue situation with the experience of others and incorporated it into their intellectual appraisal of what could be appropriate.[175] This was linked to reasons why it is not always apparent that objective data had been considered, as some analysis had been applied 'elsewhere' and officers learnt from the experience of others in their field. The inference was that the findings of others may be transposed but the data can not be.[176] Such 'short-cuts' in Council were in the interests of economic efficiency and were accepted practice. There were limitations on how many options could be evaluated and on the information base and feasibility studies needed to evaluate options. Officers considered that the key credible options were evaluated thoroughly, but conveying these analyses to the public had proven problematic. Furthermore, officers indicated there was insufficient time and mechanisms to describe and explain the procedures of fulltime professional work to the public, particularly as enquiries were often made by people who had no expertise in that area.

Some participants indicated generating new options was not a prescribed function of the hearing, or a Commissioner delegated to arbitrate a resolution on the protection of trees. Council showed that alternatives had been considered and why they were rejected, to the satisfaction of the Commissioner in the second hearing.[177] This view was contested by objectors.

> Public "The Commissioner was not the slightest bit interested in creative and simple alternatives. They could have used the hearing forum in that way, even under the RMA. They could use it as an inquiry. It is not a criminal trial."
>
> Public "No, there were no benefits. There was no feedback at all and the detailed suggestions I made were ignored."

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[175] For example it was indicated that the circumstances in Hamilton and Wanganui are different and so those cities experiences with a number of bridges don't apply to Palmerston North.

[176] This can be described as sharing a 'body of knowledge' similar to 'case law' applied in the legal profession/system.

[177] For example, the CRTWP, through a different type of forum and process had recommended a second bridge as a result of considering the same problems the Commissioner was asked to address. However, within this forum, the second bridge issue was outlined by proponents as being a 'red-herring' to the issues under consideration, as time to build it along with its likely siting would preclude it being a solution to traffic problems in the Avenue in either the short or long term (Bornholdt, 1996, pgs 18-35). Therefore that 'alternative' was argued to be, not in fact an alternative. The Commissioner agreed.

Another set of alternatives related to the legal/statutory mechanisms, which included policy options. Several were considered in the s32 report and the plan change option in the form proposed (delete the tree protection provisions) was recommended, while others were rejected for various reasons. Again protagonists have different perspectives as to the adequacy of these 'options' evaluations and the reasoning provided for rejecting alternatives.[178] However, within the hearing, policy options came down to just two: the status quo - to continue to include protection exactly as it was in the TDP, or; 180 degree change - to not protect any trees along the Avenue. Given the second hearing was formulating policy as it related to interests and values associated with the trees, and considered the related (traffic) interests that could be effected by any such policy, the possible effects of any other policy do not appear to have been considered (e.g. a 90 degree shift in policy - maintaining those trees not effected by 4 laning proposals shown to be 'necessary' within the hearing). Whether there was a demonstrable need to 4 lane the entire length of the Avenue, in either the short to medium term or in the long term was not addressed within the hearing.

It is apparent that the forum was not seen as an opportunity to negotiate alternatives or agreements surrounding Council's preferred solution (and the preference for no policy), which might have been more acceptable to all the interests/parties. It was used as a forum which would result in a decision for or against the proponents. The policy was considered *as it was proposed* and was to be accepted or rejected in its entirety. The Commissioner did not make any alterations to the proposed lack of policies on the trees. The reason for not doing so, was that such an approach was not considered a function or purpose of the hearing. The Commissioner stated, (p101, MI) "The most effective available mitigation measures must be undertaken in response to those [noted adverse] effects... *I cannot direct Council in that area* but my comments carry with them a very strong recommendation to Council that it should [undertake its tree replacement programme]". The lack of policies, in the PDP, for maintaining or enhancing any perceived values associated with the trees was thus confirmed. One effect of this decision was that the *entire length* of the Avenue

[178] For example, it is noted that a working party option had been pursued. The s32 report (p88, MI) states "The results of this [CRTWP] process, amongst other things, were that modification of Fitzherbert Avenue was required to assist with the traffic congestion and safety problems. Although *no consensus was reached*, there was only one major area of disagreement, that being whether three laning tidal flow or four laning was required *along Fitzherbert Avenue*. The working party also acted as a consultative mechanism on the wider issue of [CRT] and an important step in explaining where the Council is now in its strategy for [the] Avenue. Conclusion: This option has been pursued and although it cannot solve the traffic and safety problems along [the] Avenue on its own it has proved to be a useful option which has allowed Council and the community to work together in addressing the issues." Such summaries caused some consternation to opponents of the LTDP and supporters of the CRTWP strategy as it contains, in their words, "demonstrable untruths" as well as "deceit by omission".

could be widened despite the agreements reached through the CRTWP.[179] The policy inferences arising from the CRTWP report do not appear to have had an influence in the second hearing. Nor was an attempt made to ensure that opponents interests and values could be accommodated or *would* be catered for in any way. They were, in effect, rejected, when the Council's case was preferred.

The fact that other policy alternatives[180] did not 'fall-out' of the process demonstrates that, in this case, policy 'formulation' was not seen as *having* to cater for all of the interests/values brought to bare in the hearing. While the hearing forum was used overtly as an EDR forum, in that it intended to 'break the impasse' and resolve the dispute, it operated in a way which would accommodate only one set of interests rather than a combination of interests to the satisfaction of all interested parties. Given these characteristics, this forum was not described as a consultative process within the policy formulation stage of planning, it was considered more like a resource consent hearing.

10.1.10 Perceptions of the 'impartiality' of witnesses and 'expert evidence' favoured Council's consultants.

Consideration of the second Commissioner's decision indicates that he appeared to have thought that opponents presented evidence designed specifically to support their case, as there were references and inferences to unsubstantiated assertions, questionable expertise, opinion, leanings and partisan characteristics.[181]

Opponents considered that much of their evidence (countering Council's case or in support of their own case) was rejected in cursory ways. For example, several described the issue of "being partisan" or "biased" in a conflict and EDR process and the way the Commissioner addressed the issue. They explained that the assumption of opponent

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[179] Opponents suggested that having no policy on the trees could allow 4 laning of the entire length of the Avenue. That was precisely what some opponents feared when they suggested the way the issue was couched as 4 laning only to Te Awe Awe was "the thin edge of the wedge". They no longer believed Council was committed to pursuing the CRTWP strategy at that stage, but had a "hidden agenda" to pursue the LTDP.

[180] Speculation about other possible policy options includes: retaining protection for those trees not affected by the proposed widening to Te Awe Awe Street (the focus of debate and its resolution depended on the need or otherwise, and the pros and cons of widening the Ave only to that intersection, even though the TDP policy for trees had referred to trees in other sections of the Avenue as well); or those remaining at the other end of the Avenue; the possibility of a policy for the new trees perhaps to manage them to recreate an 'avenue' amenity in time.

[181] Consultants who appeared as expert witnesses for the opponents indicated they felt they were respected as professional witnesses. One stated, "I think we were treated as well as anybody else, we were treated quite courteously and it wasn't the experts who made the faux pax."

submittors having 'leanings' was correct, as they were involved in a conflict so obviously held other interests and values in higher regard than those whom they were opposing. However, they did not accept what they regarded as an inference that Council's case and its witnesses were not also partisan.[182] Furthermore, that the Commissioner then gave less weight to the evidence presented to support or validate opponents points or to criticise the proponents case, they did not accept as a fair approach.

> Public "I am as well qualified as [he] is, but because I am a submittor, I am regarded as having lost my brain - as not being able to put forward a reasonable and balanced argument as against those who are actually paid by the Council to be unbalanced, [lawyers and consultants] have to be partisan when they argue for their client."

> Public "I think [Council's expert witnesses] gave a lot of views or opinion, and go to a lot of hearings, so I think they thought they are bush lawyers, and [one consultant] in particular would leap up and protest, and he is not allowed to, but as soon as someone said something he didn't like, he would jump up and then [counsel] would leap up to cover for him and say he objected. But you are not allowed to interject or object or anything at all, but he did this and he would also put forward legal arguments, in relation to the RMA, 'I know the ropes' and so on. [Another witness] acted exactly the same way at times."

Opponents suggested that evidence should be assessed on its merits, not on the basis of who presented it. They anticipated that would be the case and so used the skills contained within their personal networks.

> Public "So we spanned fairly wide, using our network of local people which enabled us to keep our costs down to a level we could afford, or what could be sustained."

> Public "If you look at the decision he makes comments like, 'I prefer the professionals evidence in this case'. It sort of defaults to that. I mean in one particular case where professional evidence had actually been proven to be wrong and evidence was presented that it was wrong... that evidence was still presented and he writes in his report that he accepts the evidence of the professional witnesses. Even though it had been peer reviewed...[he] had much that greater tendency to say the public really had to...they were almost in an impossible position, because they were not professional witnesses. He almost said they had to lose and that didn't cheer up the public."

> Public "A lot of people got the impression their expertise was questioned. In my case I presented expert evidence, in the sense I am a mathematician and could prove that certain evidence presented was mathematically incorrect and on that grounds they can't challenge me. Although, the opposition tried to rule it out, because I was not allowed to give the evidence in the first place [he hadn't mentioned it specifically in his written submission]. They [also] tried to claim it was irrelevant and then Bornholdt ruled that a) they had brought the evidence in, and b) I was a mathematician so clearly I was able to comment on it. But he then makes the comment that... and when I was actually giving my evidence he made the comment that, 'you are now speaking

[182] Several argued that proponents were equally or even more partisan in relation to a different set of interests and values, and that the Commissioner did not seem to consider or acknowledge that might be the case. Reasons were proffered by participants who commented that the proponents witnesses were paid well and as they want to maintain a good 'working' relationship with Council, they will 'say the right thing'. These people indicated opponents expert witnesses had less personal incentive to please their employer and were thus more credible witnesses than Council's.

> in an area which is not your professional area', after the opposition had complained when I had brought some point up. There seemed to be an inability to accept that if I was talking about maths, I was talking professionally, if I was talking about something else I was giving an opinion. They said because of that, that clearly makes the whole thing tainted, as it were, by my opinion. It put me in a very difficult position, as I was not there as a professional witness, but as an opponent."

Opponents thus described it was difficult to validate their views as these were discounted due to an assumption of partisan bias. They considered discrediting tactics were used to reinforce that, as they were partisan, therefore their evidence was of questionable value or was less credible. They also described it was difficult to argue against a case when so much of the proponents evidence was presented as '*expert opinion*'.

> Public "[Counsel] kept objecting, I assume on the grounds that he thought they were being defamatory, as they were casting aspersions on the evidence... of his expert people. It's pretty difficult to put forward your evidence in an opposing submission if you are not allowed to point out the weaknesses in some of their evidence. I was pretty shocked at all this."

> Public "They used discrediting tactics, to discredit people and tried to show how stupid or ridiculous we are."

Public opponents attempting to make countering points or alternative interpretations and consequent conclusions could not actually come up to the task of 'challenging' the experts, as the Commissioner weighted consideration in favour of the expert as a rule of thumb. Public participants came to a conclusion that only paid experts, with similar qualifications and experience can seriously challenge experts. Opponents pointed out, to their minds, this approach was overly dismissive as they believed they did have a high calibre of evidence and qualifications to support their evidence and opinions. Also some questioned why a process would invite public views, when what the hearing process seemed to require was a panel of independent 'experts' to debate the issues.

> Public "Another problem is the way you view the evidence... you have a very well educated population and it was quite noticeable. In the [first] hearing, a Council witness stands up and says who they are and they reel off their qualifications and they are there as a professional. The opposition actually changed tack at that point, they also stood up and reeled off their qualifications. But they are not treated as professionals because they are expressing an 'opinion', whereas the professionals are meant to be presenting 'fact and science'. So things then can be dismissed because you have a personal interest, even though as a scientist or whatever you may have very good factual knowledge of the situation."

Opponents suggested aspersions were cast on the integrity of all their witnesses on the basis they were in the employ of an 'interest group' or public opponent.[183]

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[183] They suggest an assumption of at low cost and thus also some sort of philosophical agreement with their position was made by the Commissioner. In this research, consultants for the opponents were asked why they had appeared. They indicated they had not done so on a basis of philosophical agreement with the clients interests. They indicated they had personal philosophies that meant requests

> **Public "Well you don't have to tell them whether [consultants] have done it voluntarily or for less than usual, but I think they always assume they have, as they know you have to be doing it on a shoestring, because we don't have access to the unlimited ratepayer purse. We have to be doing it as cheaply as possible and they know that."**

Opponents suggested it was assumed their expert witnesses may have acted as advocates rather than independent professional analysts, on the basis they were not well paid. One of Save the Avenues expert witnesses was described by others as 'scathing' in his criticism of a Council expert's analysis given in evidence, and was therefore considered 'blatant' in his advocacy. Both the nature of his criticism and consequently this witnesses 'expertise' drew sharp criticism from the Commissioner, who concluded "I placed little weight on [witnesses] evidence" (Bornholdt, 1996). As such a lack of diplomacy essentially meant the relevant observations that witness did have on the matter of critiquing expert evidence were lost to the case. However, several other witnesses were not advocates but independent experts and several of the opponents were also expert in some of the areas on which they commented within their submissions. In that capacity they believed they too offered analytical expertise and professional opinion. The Commissioner commented on the credibility factor in terms of 'expert evidence' stating,

> "*[Counsel for Council] submitted that a great deal of evidence was presented by submittors on subjects... from persons who had no qualifications in those areas... That a number of those persons who spoke were quite frank about that and spoke as advocates. [While] he had no criticisms of that, [he] agreed with me that, it was then a question of 'weighting' that I might give to such submissions and/or evidence... A simple rule followed by the Planning Tribunal and which he submitted was appropriate for me to follow was that when lay evidence is contradicted by expert evidence by a person qualified and experienced as such in the relevant field; the expert evidence must prevail. I agree... However that is not the end of it in a hearing such as this, where there a number of resident concerns involving a consideration of areas such as... which carry with them, subjective views, where a great deal of emotion is generated (from either side) and where anecdotal evidence is also high - again, where in my view a balance has to be struck and weightings made by the hearing authority*" (Bornholdt,1996,p91, ME).

It is evident that different interpretations were brought to bare on the 'facts' informing the issues. The opponents perspective was that their interpretations were rejected, not because they were shown to be incorrect, but because the alternative opinions and views were preferred on the basis of *acknowledged* 'expertise' or "by default" based on an assumption of bias as opponent submittors (and possibly their expert witnesses) were partisan, and an implied assumption that Council's witnesses were not. Opponents indicated that the analysis of submissions undertaken by the Commissioner became a subjective weighting

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for expert advice and representation in a hearing deserved a response and therefore they do vary their fees according to the client's ability to pay.

system which ranked partisan submittors (and their expert witnesses) against professional expert witnesses, less worthy interests against more worthy interests, and also positive effects against negative effects. They did not accept this approach was fair or appropriate in the circumstances and in the context of the RMA.

Officers and Councillors provided a different view on these problems, when they described the hearings from their perspective. They believed that the integrity of professional experts was constantly challenged by members of the public, who they considered did not have comparable expertise in the area they were criticising. The criticisms of experts and their evidence were also, on occasion, considered defamatory. Council participants expressed disappointment that the integrity of experts was brought into question and at what they saw as unsubstantiated claims being made by opponents in trying to argue against expert witnesses evidence. These participants suggested there has been a gradual undermining of the concepts of 'professionalism' and 'expertise'. They indicated that they trust consultants, but some members of the public don't.[184]

> Officer "Another thing that I saw which I was saddened by also, was that people who give advice from a technical or professional point of view, really having their professional expertise not just questioned but actually defamed in a number of cases, and the Commissioner did make comment on it. Somehow there is a demeaning of what it is to be a professional and that people in a professional position can somehow either be brought or are not professional in their approach.
>
> Councillor "[Officers] have plenty of responsibilities... to ensure that they themselves remain objective and don't become one eyed. By that I mean they don't lose their professionalism and start adopting courses or beliefs that can't in fact be justified professionally. That is their absolute role... [Consultants] I don't think have anything like the same responsibilities, but they have different rights that enable them to be heard. The problem is that because they don't have the same responsibilities they can say almost anything and the campaign in many areas is the campaign by assertion - if you say it often enough and strongly enough then it must be true... Expert integrity is challenged constantly, but critics don't have to produce any [evidence?] of their own."

Public opponents expressed similar disappointments, that their expertise and ability to present reasonable evidence, arguments and rationales for their assertions were not respected by those they opposed. It appears that disputing parties held to the saying "he who pays the piper calls the tune" in relation to their opponent's expertise but found that an extreme insult to the integrity of professional expert opinion when implied of their own experts. That such sources of conflict arose in this dispute underlines the benefits and difficulties of generating and presenting an objective data base and analysis, to assist EDR.

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[184] An issue of 'contestability' of professional work has been noted in footnote 166.

All groups indicated a role of the hearing forum was to isolate fact from opinion, but described problems implicit in doing so. Opponents indicated that the arguments presented by experts and submittors, *for both sides alike*, involved subjective elements, opinion, conjecture, speculation and matters of preference. Opponents suggested that differentiating facts from other 'evidence' appeared to have been controlled mainly by counsel for Council who objected, to indicate when a speaker was giving opinion or was speaking outside their area of expertise, throughout the presentation of the opposing case. There appears to have been less highlighting of fact from opinion in the proponents case, as it was presented first and the opponents counsel was not active at objecting during presentation of that case.

> Public "The hearing environment was intimidating. I suppose it has to operate that way because its dealing with matters of fact, isolating fact from opinion."
>
> Consultant "It was the most aggressive hearing I have ever been involved in. Because I knew all the parties involved, I knew the Commissioner, I knew the lawyer for the other side. Normally I would make a few jokes and things, but this time, if I tried to mention the law myself as a planner, the lawyer on the other side stood up and pointed out I wasn't qualified to make those comments."

10.1.11 Conduct of the hearing, its tone and impression on opponents. Some came to believe the forum was not 'user friendly' or equitable.

i ***Perspectives on the 'proper' conduct of a hearing.***

There were variable views on what constitutes the 'proper conduct' of hearings. Some participants' view on the degree of formality *necessary* and *appropriate* in a hearing differed from the approach they considered the Commissioners applied, while others conferred with their approach. It was also apparent that the degree of formality was thought to depend on the individual presiding. The formality, rules applied and general tone of hearing was intimidating mainly to the public opponents. This conclusion is drawn as proponents and their supporters, expressed greater levels of 'comfort' in that forum than did opponents.

> Officer "In terms of peoples comfort levels, I think that for some people [it was] certainly a more formal hearing, they were tenser and they felt fairly intimidated. Others seemed to actually lap it up and enjoy it, they felt that was their role and I guess that depends a bit on the type of person you are and the experience you have had. But there certainly a number of submittors who really performed very well in front of the Commissioner and obviously that was a forum they enjoyed."
>
> Public "It took me by surprise to a certain degree. Admittedly I attended a couple of submissions before mine, so I actually had an idea of how it was going before I gave evidence. But if I hadn't done that, I would have got quite a shock as far as my rights of participation in the hearing. In other words understanding that the Commissioner basically had the power to over-rule or exclude information that wasn't of a quantifiable or of legal significance. [*That surprised you, had you thought you could present any evidence you liked in your own way?*] Yes, and because my submission was based very much on opinion, (which I wasn't expecting to be seriously considered but at the same time I voiced it), but there was also factual information in it as well. It was just the clash tied up with the legal attitude of the 'counterviews' and the lawyers being there present that sort-of-uneasy scenario."

These last comments of a public supporter of Council's proposal indicate he came to believe that it was the formal rules of hearings, with regards the Commissioner's powers, that led to opinion or unquantifiable information being 'over-ruled' or 'excluded'.

> Public "My presentation was very short - five minutes - compared to others who were trying to get their personal views, or views that couldn't be backed up by factual information across, and basically a lot of that was just disregarded. So they would have felt aggrieved because of it and they probably would have put a lot of work into providing that information. Now whether that could have been resolved by some sort of information pact beforehand, I don't know. I think it's an opportunity for those people to express their views. Whether they are considered in decision making or is written up in the paper the next day, I guess it is an exercise for people to get their views across." [*So it depends on the type of information as to whether the Commissioner is able to take it into account or not?*] "Yeah... I saw it as an opportunity for people to state their case at the hearing, but it didn't really come down to that information that was provided. He made the final decision, it came down to whether it was legal or not. So you might say it was a bit of a wasteful exercise."

ii ***Perception that the procedures or rules for hearings were unclear***

Participants from all groups indicated there were lengthy legal arguments that went "over their heads". These related to how the hearing ought to be managed, whether evidence could be struck out or not accepted for the record, and over issues relating to the 'admissibility' of evidence.[185] A participant suggested the whole hearing appeared to them as "real Raffity's rules, make it up as you go along." Legal debate to determine what could be considered within a hearing and what was the 'proper conduct' of a hearing contributed to perceptions that there was uncertainty as to what could and ought to occur within a hearing forum. Participants described that they didn't understand the lengthy legal debates. Some questioned why such debate occurred at all, and asked why there weren't clearer guidelines for the conduct, and protocols of local hearings. Linked observations related to formality. It was indicated that the hearing forum was "like a criminal court".

> Public "They ran it like a criminal trial. The Council is innocent until proven guilty and I was pretty shocked at that - instead of an inquiry, of sitting people around and actually talking about the issues. It is supposed to be a more user friendly atmosphere or less formal, it didn't have to be like that."

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[185] Public "A plan change is an extremely complicated process... I had raised an argument in passing, as a sort of throw away comment, that I thought this particular thing was 'invalid'. But I hadn't put it in my original submission so [the Commissioner] had no jurisdiction to consider it. But despite that he had allowed the Councils solicitor to give a rebuttal of it, so he shouldn't actually have heard that either... In relation to another matter he said he wasn't going to hear me and said I would have to withdraw it or take it to the Environmental Court. So I agonized for about two weeks preparing a case saying I didn't have to withdraw my comments and he accepted that finally. [Opposing counsel] because of this stuff that I had found out, supported this (the fact that we didn't have to withdraw it or go to Court). But then [the Commissioner] said, "you don't have to withdraw it and I will hear your argument which I had previously said I wouldn't". That was the one I had to prepare on the spot. So, I had half an hour to prepare a case in relation to the 'invalidity' argument he had said he wasn't going to hear. He said, "right, I'm going to hear you now", and I said, "Well, you said you weren't going to hear me, so I'm not really prepared", and... he gave me half an hour to sit down and prepare it. But wasn't that great I mean you are on the back foot."

Public "I did find it a very formal process... I understand the basis now, of the hearing and how its not a legal court of law, but how it is obviously very close to it."

10.1.12 Perception of inequitable treatment or imbalance in the forum

i The order of presentation of evidence and right of rebuttal

The order of presentation of evidence and the right of reply, with no ability to question witnesses was seen as a disadvantage to opponents, as they were not able to explain misunderstandings and misinterpretation of their evidence, shown by the proponents team during the rebuttal evidence. Opponents suggested that this promoted the proponents interests and downgraded others, as they had no opportunity to clear up misinterpretations. They suggested these problems could have been overcome in an informal forum.

Public "There was another imbalance, in the sense that the [Council's counsel] gave their view first, then the objectors gave their view, then his team came back for a second bite at the objectors. So they were able to have two sets of submissions, like a cross-examination, but without people being able to respond. So to our minds, that really unbalanced the whole process. But that was the way it was done."

ii Interrupting submittors during their presentations.

Opponents indicated it was a problem for them and their witnesses to be 'interrupted' during their presentations and suggested it was a deliberate tactic to put them off and fracture their argument, as some objections were for 'pedantic' things. A participant said, "the constant rain of objections totally detracted from the interesting and informative detail."

Public "I thought there was going to be giving evidence and having an opportunity to present your views and your case, but the Council's solicitor was leaping up all the time and objecting"

Public "It [the second hearing] was very adversarial, and I can understand them doing that because they were allowed to get away with it and it helped to denigrate the oppositions' arguments"

Public "[Counsel] was constantly interrupting people as they presented their submissions and that was threatening to some."

Public "There was one time when I felt like standing up and telling them to stop it when [Public] was speaking. Now he doesn't have experience in these things and they hassled him non stop throughout the whole thing when he was giving his evidence. They kept badgering him and kept making quiet comments - back comments were being made while he was speaking. They would question his judgement, they would question him."

Public "[Counsel for Council] also intimidated people by objecting to all sorts of things they said. Leaping up all the time and he said at one time, 'If I may Mr Commissioner continue to make these objections", and the Commissioner said, "Continue to do so [counsel], you need the exercise", and so on and they had this kind of humour going. But I saw it as very rude to the people being constantly interrupted, and it showed a

camaraderie between the two."[186]

10.1.13 Perception of inequitable treatment or imbalance in the decision

i The relevance of perspective and feelings in EDR

It has been noted that some opponents suggested that the Commissioner favoured Council as they saw the way the hearing was conducted as inequitable, and the variable treatment of submittors as a disadvantage to opponents.[187] Supporters of Council did not experience many of the problems other submittors said they experienced in the hearing. This was found to be largely due to the approach of counsel for Council. With regards this combination of 'problems' to opponents minds, it is important to note that they are the perspective of opponents interviewed, and that it was their perceptions and experience of the hearing, as well as the 'tone' of the written decision, that led them to their perspectives. Other participants made no mention of any 'equity' issues[188] or any 'issue'

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[186] It is not clear by what criteria Council selected a particular commissioner for either hearing. Although a skeleton of the process for the appointment of the Commissioner, for the second hearing, appears in Council's records. A solicitor based in Wellington introduced himself to Council, and put his name forward to act as commissioner. This person had applicable experience and Council replied that "while another solicitor was to be used, Council would keep his CV and avail him some other time" (date not recorded). The solicitor who was appointed was invited by Council to act as Commissioner. This person was recommended by Council's solicitor and in the letter enquiring after his services, it was noted that "Our solicitor... has we understand informed you of summary details on the subject... We have contacted you following [counsel's] recommendation" (Officer to Commissioner Bornholdt, 12/03/96, ME). This Commissioner replied that he would accept the invitation. The appointment was confirmed (Officer to Commissioner, 27/03/96). The appointment of the recommending solicitor as counsel for Council in the hearing was confirmed (Officer to Solicitor, 19/03/96). That the appointment was made in this way was not recounted by participants but appears in Council files, and so are the facts of the matter. Council participants indicated that appointments of Commissioners are often made on the basis of recommendations of officers and other professionals. It is also of interest to this research to determine how the EDR processes are established and implemented. Therefore, it is relevant to note that the Commissioner who was acting on behalf of the regulatory and policy-making authority does appear to have been selected on the recommendation of the solicitor representing Council in the capacity of a proponent of change, or applicant. While no inference of bias is being made from that fact here, it is questionable in terms of Council's concerns about 'natural justice' and 'public interest' whether appointments ought to be made in this way. Participants' suggestions for future EDR processes are provided in Chapter 13.

[187] It is important to note that the Commissioner and Counsel for Council would certainly provide a different rationale for their activities, from their perspective. However, neither consented to participate in this research (for ethical reasons) so their perspectives are unknown to it. It has been stressed that this research is interested in participants' perspectives as it is these that produce conflict and which must be reconciled in EDR. Furthermore it is perspectives of public participants in EDR processes that must be considered in any evaluation of the effectiveness of EDR processes in achieving what it is they were intended to achieve, by being open to the public within the context of the RMA. That some of the perspectives and rationales for these may not sit well with other perspectives does make there existence any less real.

[188] A difficulty in undertaking this research was that, as it was seeking *participants perspectives*, only limited or generalized prompts were used to encourage them to recount experiences 'in their own way'. This was also to preserve anonymity of other participants. Therefore eliciting comment on specific observations of other participants was difficult. For example, when prompted to discuss 'equity issues' in the hearing, an officer participant refused to discuss "that side of things". It has been noted that the

with regards the neutrality and independence of the Commissioner, presumably as they did trust the integrity of his appointment and of the process used in coming to decisions.

It is also of note that while participants representing the proponents perspective did not mention such events as problems or limitations within the hearing, neither did they refer to them as benefits or strengths of the process. Such factors also serve to illustrate again the role of perspective in 'dispute resolution'. In the interests of on-going relationships and reputations, it may not be enough to comprehend substantive issues and to concentrate on resolving those alone. The perceptions and feelings of others are also important.[189]

ii The result of the hearing, and 'scope' of hearing decisions.

Participants indicated that not all their concerns were acknowledged in the decision, nor did the hearing deal effectively with the range of competing values. Opponents indicated that it was not clear how their evidence had been considered by the second Commissioner in coming to his decision, as it was not always addressed directly within his report. This also meant they were uncertain exactly why it was rejected and why the Council's case was accepted.[190]

> Public "In the summary... he neglected to note many important bits of information [witnesses] had said. So I don't think the decision even provides a permanent or accurate recorded. Not putting it in the decision, had the effect of making it as if it had never been said. At least when you say something you would like it noted for the permanent record."

Opponents comments with regard what they considered an absence of analytical discussion on their evidence (as presented in the forum) within the decision, raises an issues in relation to the 'official' permanent record made of all 'submissions' presented to the hearings. Participants questioned if their submission may have been neglected or forgotten by the Commissioner while making his deliberations, as they were followed by

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currency of the conflict did lead to some sensitivity by participants. Such reactions did make it more difficult to research the alternative views on these events.

[189] In recognition of that, later in the dispute having felled the trees, the Council did endeavour to undertake 'reconciliation' with the community.

[190] The decisions summation of information, along with comments by the Commissioner in which he indicates some views on it, includes: a 36 page summary of information presented by Council's 7 witnesses, a 23 page summary of information presented by 22 opponent submittors (and their witnesses), followed by 4 pages on 6 submittors in support and 5 pages on the rebuttal presented by 3 witnesses. The record of the hearing then, contains 45 pages of supporting evidence (summary of 14 individual 'submissions'), and 23 pages of opposing evidence (summary of 22 'submissions'). Some of the Commissioner's views on evidence is contained within those summaries of submissions.

rebuttal evidence and do not appear "on the record" within the decision.[191] The official 'record' appears to be the written submissions made some four months prior to the hearing, the summary of Council's evidence circulated with the order papers to all submittors appearing in the hearing and the Commissioner's decision itself. These papers are not a comprehensive summation of all the arguments brought to the hearing.[192]

iii Attendance during the presentation of all evidence in the hearing in order to have criticisms of evidence seriously considered.

Opponents gathered from statements in the Commissioner's decision that they were expected to attend the hearing for the duration of the presentation of Council's evidence in order to have criticisms of it taken seriously.

> Public "The Commissioner even said something like, you need to be present for the entire hearing to be taken seriously."
>
> Public "I mean [Commissioner] said he gives less weight to our evidence because we didn't sit through the whole hearing. Some of us actually have to earn money, but I had someone taking notes. He said, 'It's a very sad thing, but you just have to be here all the time or I really can't give as much weight to your evidence'.
>
> The Commissioner stated that while he "understood the difficulty of residents/submittors being in constant attendance... However it makes it difficult for a commissioner... if parties in their submissions and /or evidence make criticisms of others or expert witnesses who have themselves given evidence, without the party making the criticism having been present during that other party's or expert witnesses' submission or evidence. As a Commissioner, that *absence does have a bearing on the weight that I might give to that particular submission and/or evidence*." (Bornholdt, 1996, p90, MI)

In essence the inference taken by some participants was that their presentation was not well considered, if it was based on the written evidence pre-circulated to participants. They needed to also base their critique on a consideration of others' oral submissions.

10.1.14 Personal time and money spent through participation.

Participants commented on the amount of personal time they had spent attending to participation in the formal processes. Participation had been at some cost to their personal lives as they continued to maintain jobs, and family relationships. Public "I mean it has personally taken about one year of my life away, not to mention others." Most of those

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[191] The Commissioner comments, in his decision, that he made notes during the hearing. He also requested notes made by the City Secretariat taken during the hearing (letter in Council records) which were provided to him. No transcript was made of the hearing. The most comprehensive notes were made by an officer but were not retained in Council records and were not made available to the public as a record of the proceedings.

[192] In undertaking this research submittors were approached independently and individually for their submissions as these were not retained individually or as a complete set, in Council's files on this issue.

interviewed had participated in every process, which spanned a period of four years. Public participants also indicated participation had come at considerable personal financial cost. One individual submittor calculated the personal cost of research, preparation and presenting their evidence (with expert witnesses) in one hearing at approximately $3,000. This person pointed out all of the proponents witnesses had been paid well to participate. Further-more attendance at hearings requires time off work, for public participants, that is why most were not able to attend for the week.

> Public "I know it has done me personal damage. I lost my holidays and I spent a lot of time on this and have been very frustrated by the process. Whether it is doing me any professional damage I can only wait and see. There is a possibility relationships can get strained if people hold a different view to those I have publicly stated... One of the things that has been absolutely tragic is that there are people of goodwill and knowledge who could help the Council reach wise decisions or show them ways of reaching wise decisions and the Council doesn't want to know. It is sort of generating a gown and town antipathy. It beats me why the institutions can't work together more closely."

10.1.15 Unrealistic expectations of public participants

Council participants referred to unrealistic public expectations. Commonly these related to a misunderstanding about the level of consideration that can or ought to be given to public input into planning and decision-making processes. They suggested the public expect their views to have 'a priori' influence, whereas Council considers this one stream of information amongst several.

> Officer "Since the 1989 reforms, Council were made to consult on a whole lot more than they ever had to before, and there is nothing wrong with consultation, it is a very important undertaking. But, one of the things that seems to have happened, in my view is, that in terms of the balance of the things that you need to make a decision, (of which public consultation is a part of, there is also professional advice, there may also be other historical things that you need to know about, plus the political view in terms of political decisions), that there is a real imbalance beginning to occur in that people expect if they are consulted that somehow these other streams of information and advice that you would normally use to make a decision - that these take a much lower priority and the consultation takes a much higher priority and I think Council needs to do some work and say, 'this is how we make decisions and this is where consultation fits into that process'."

> Officer "My impression was that a lot of submittors felt that the hearing was like a democratic process - the weight of numbers would mean a particular outcome - whereas the hearing is actually about a summing up of the points of law and what is appropriate under the law. It's not - well, you may have hardly any submissions in support of something, but if the weight of the law and the interpretation of the Act is in support then that is what the outcome will be and I really think that is something that is very poorly understood. So while I believe peoples' views are sought I think that the people who gave a view have a different opinion, because of that non-alignment. [*So is that the nature of the forum or how it makes decisions?*] Yes.

Tables 12 and 13 present the conclusions on the problems and limitations within formal consultation and EDR processes as described by participants.

TABLE 12 CONCLUSIONS ON THE PROBLEMS AND LIMITATIONS WITHIN FORMAL OR REQUIRED CONSULTATION / EDR PROCESSES

* Written submissions were not thought to be effective forms of public participation.

* A pre-hearing meeting was held prior to the resource consent hearing, its purpose was to exchange information and clarify the relevant legal issues. It was not an ADR forum. No pre-hearing meeting was held in relation to the second hearing. Council's trichotomy of roles caused co-ordination problems within Council in relation to the resource consent hearing. This was not the case in the second, as Council focused on the task of supporting its case and winning its case...

* Consequently, written submissions were not analyzed with a view to assess the scope or nature of the issues (as this would occur within the hearing) or to design a forum for resolving issues to the satisfaction of all the parties. While it was anticipated that submissions would be analyzed by the regulatory authority with a view to identifying issues and establishing an appropriate EDR forum, in this case they were found to have been analyzed by a consultancy which worked for Council as proponent, and as regulator and overseer of the EDR process simultaneously...

* This raised questions relating to whether that analysis was conducted as an independent review of the issues and to design an appropriate EDR forum, or on behalf of the proponent. It was identified that the responsibility for independent evaluations of all submissions and the conduct of the forum lay with the Commissioner, who had powers to request further information if it was thought necessary, or to establish an ADR process.

* Council's roles as regulatory authority (police) and overseer of consultative and EDR processes (judge) were effectively passed over to the respective commissioners in each hearing, (although it was noted that vestiges of these roles were carried into hearings). However, it was not apparent that the Commissioners had taken a hand in setting up the hearing process. For example, the Commissioners had no role in establishing the 'stated purpose' of the hearing or in defining the 'certain matter' to be determined, Council as regulatory authority did. Council's consultants, prepared the reports as necessary for each of the formal processes. These were not perceived as independently or objectively prepared reports by all the participants.

* Commissioners were also found not to have had a strong hand in 'designing' the EDR forum, for example, the decision not to hold a pre-hearing meeting in relation to the second hearing appears to have been made by Council, in accordance with the advice of their solicitor, and not by the Commissioner who asked Council to advise if a pre-hearing meeting should be utilized, rather than telling Council (as proponent) whether he thought it would be a good idea in the circumstances.

* The protagonists became involved in this conflict in different ways, which affected their abilities within the formal EDR processes. Council acted in a proactive way and so had prepared for the dispute and EDR effort prior to initiating a particular process, while opponents acted in a reactive way as they responded to events initiated by the proponent

Table 12 continues...

Table 12 continued...

* Opponents had to comply with the timeframe established in the RMA, while the proponent was able to exercise choice in when to initiate those processes and become involved in formal processes. The effect was that, in essence, the proponent chose when to initiate the process and so started the time schedule set within the RMA only when they were prepared, while opponents were unaware a particular process was to be formally initiated.

* Protagonists had different circumstances in which to prepare for the hearings. This led to different abilities to access information, prepare and coordinate evidence, submissions and witnesses into a comprehensive, structured case.

* Inequitable access to information was found to have been a problem for opponents. Issues of access to information were caused in part by Council being both the proponent of change or applicant *and* regulatory authority, as all the parties participating in the hearings relied on Council as regulatory authority for information in preparing their case. While both sides were provided that information, it was available to opponents for a shorter time than to proponents, and at a cost not levied on those working on behalf of the proponent. Similarly, information generated by the applicant or proponent was not available to opponents until just prior to each of the hearings.

* Inequitable access to information led in turn to different abilities of the experts, presenting evidence on behalf of the two sides, to undertake their analyses and to prepare their evidence.

* These problems were compounded by a disparity of resources between the protagonists. This gave rise to different abilities to commission expert analysis (including 'data' retrieval), and to employ the support services of professional experts in presenting a case within the hearing process. These disparities gave rise to problems for public participants within the forums.

* Some information was not available to inform all the issues participants believed needed to be addressed within the first hearing, and a lot of information remained controversial within the second hearing. 'Information issues' were not resolved to the satisfaction of all the parties.

* Employing expert witnesses, together with experienced legal counsel, was considered critical to the presentation of a case. However, the opponents did not 'know' this until after they had participated and most indicated an unwillingness to participate again, knowing that was the case. They had relied on personal networks and taken short-cuts with their expert witnesses and legal counsel as they could not afford to employ professionals and experts in a fuller capacity.

* There was a mismatch in the experience and expertise of protagonists which gave rise to problems within the hearing forum. The hearing forum and process did not minimize the importance of this mismatch, rather it was described as highlighting it, as the more experienced and expert side was able to exploit their opponents' comparative weaknesses to their advantage.

Table 12 continues...

Table 12 continued...

* While the purpose of the hearings was clear in that the 'certain matters' requiring resolution were succinctly stated, participants described that this constrained the opportunities for evaluating the issues and excluded important related issues from consideration. Some thought that this was a benefit of the forum, as it focused the terms of the resolution onto key legal issues, while others indicated that approach precluded an holistic, comprehensive-integrated approach to EDR.

* In relation to the first hearing, the streamlined and explicit purpose constrained the ability of the forum to consider issues thought relevant by the applicant (for example, the positive effects of road widening, problems with traffic and securing a second bridge). The resource consent hearing was described as being unable to balance the positive effects, as perceived by supporters of the LTDP, as it focused on the adverse effects associated with felling the mature trees and establishing a new alignment of young trees (as these were the matters specified in the TDP over which the regulatory authority had retained control). Similarly, issues considered important by opponents were not directly relevant to the decision, because they were not able to be linked to the policy framework which guided resource consent decisions, even though that policy framework was established in 1988, prior to the RMA. That the Commissioner did not comment on these issues or did not seek to 'resolve' them was a limitation of the process.

* Similarly, while the stated purpose of the second hearing was explicit, which simplified the 'decision-making' process (as the determination was related to that purpose), protagonists disagreed over whether it aptly described the priorities or range of policy alternatives, or underlying reasons the policy changes were sought.

* The stated purposes of both hearings were described as having constrained the ability of the consultative (EDR) forum and process to undertake a comprehensive-integrated approach to *formulating* policy (in the case of the second hearing) or to *formulating* a satisfactory solution (to all participants minds) or strategy (in either hearing forums).

* Confusion among public participants as to the priority and relevance of issues, given the stated purpose of the second hearing, arose from different perspectives taken on the purpose of that hearing. The forum involved consultation at the 'policy formulation' phase of planning as it intended to describe the 'envelope of future opportunities', in respect of amenity and cross river transportation. However, this hearing was also, a consultative forum in which to evaluate the pros and cons of a specific project, which required a consideration of whether there ought to be a policy, that would determine if *that project* could be implemented or not. The forum did not, (and could not due to the approach taken by the proponent and to constraints on the process), evaluate wider policy issues, or evaluate the pros and cons of alternatives.

* These features of this process confused issues and led to problems for public participants, who endeavoured to introduce these approaches into their evaluation of Council's proposals.

Table 12 continues...

Table 12 continued...

* There was a lack of agreement on how to measure (and weigh up the importance of) all the values and interests brought to the hearing forum. There appeared to be a discounting of values and interests that were not well quantified or 'provable' with scientific evidence. Starkly contrasting conclusions were drawn by protagonists (and their witnesses) and the final determination appears to have been made in part, on the basis of assessing the level of subjectivity and partisan qualities of witnesses.

* Rather than seeking to determine an agreed set of data and method of analysis of the issues, both hearing forums selected which set of evidence (data and analysis) and conclusions was 'most credible' and accepted those as the facts of the matter.

* The selection of evidence and conclusions depended on the level of expertise, or professional integrity, of those presenting the evidence, but also on the basis of the Commissioners' personal consideration of the detail of the evidence. In the first hearing the Commissioner appeared to find applicant's witnesses partisan, while in the second hearing the opponents' evidence was considered partisan. The credibility of 'partisan' evidence was doubted in both cases. Public participants described this approach as a subjective evaluation on the matter of credibility of evidence, and described the approach as inequitable. They asserted evidence ought to be assessed on its own merits (not that of the witness) and did not believe that had been shown to be the case in decisions.

* A number of issues were identified by participants in relation to considerations of contrasting evidence, including that of expert 'opinion'. These issues highlighted an imbalance in the 'contest' between the two cases. These issues included questions about: the 'integrity' of witnesses (partisan characteristics and disclosure of subjectivity in the analysis) and assumptions relevant to how evidence was considered by the Commissioner; an apparent disrespect of professional expert witnesses, their integrity and thus their expert opinions as each side critiqued the work of opponents' witnesses, and; problems in isolating fact from opinion when different expert interpretations and conclusions are drawn from the 'facts'. Participants described having to prove others' views wrong and the validity of one's own interests and views rather than seeking to reach agreement that there were different views, interests and values each valid and worthy of consideration.

* These issues arose, in part, as a result of the adversarial model and character of the hearing forum.

* There was a perception of intolerance to public submittors for various reasons, which gave rise to views of inequitable treatment or imbalance in the forum.

* Adversarial characteristics presented problems for public participants, as did the fact that the formality of the hearing and related occurrences intimidated participants. The 'proper' conduct by which hearings 'ought' to be run was variably perceived, with some believing the 'rules' associated with the process disadvantaged opponents in presenting their case, and others believing the procedures helped to clarify the way in which the issues were heard. Participants described the hearings tone and impression particularly on opponents.

Table 12 continues...

Table 12 continues...

* Some came to believe the forum was not 'user friendly' or equitable. The procedures or rules for hearings were not always clear to opponents. Participants described a number of issues relating to their perceptions of inequitable treatment of the two sides within the hearing forum. These included: an inability to question witnesses during or following their presentation of evidence as no cross-examination was allowed; the order of presentation of evidence and the right of rebuttal to the proponent was described as disadvantaging the opponents, and; interrupting submittors during their presentations was described as a tactic to distract from the detail of the submission and to intimidate.

* Public participants described that their attendance during the presentation of all evidence in the hearing appeared to be essential, if their critiques of evidence presented by others were to be seriously considered. They came to believe that they should not have relied on appraisals of the written evidence disseminated before the hearing, to prepare their cases. Participants described this as inequitable as they were voluntary participants, not paid to attend and had prepared their counter-evidence under pressure. They also identified that considerable personal time and money was spent participating in these forums.

* There were difficulties in exploring options and alternatives within the hearing forum, as that forum was not considered conducive to problem-solving or to thorough appraisals of alternatives presented.

* There was not a concerted effort to 'resolve' the *conflict* by formulating a more agreeable solution, to the satisfaction of all the interested parties. The hearings focused on allowing or disallowing the proposal as presented by the proponent.

* Primarily determinations were made on the basis of interpretation of legal issues relevant to the proposal but also, in the second hearing on the basis of an evaluation of the pro's and con's of *a particular project.* The pros and cons of alternatives did not undergo a similar assessment within the making of a determination, although many were proffered by both sides.

* Neither Commissioner appears to have had a role in *formulating* alternatives to the proposal presented by the applicant or proponent. It was considered that their role was to either approve or disapprove of the proposal *as it was presented.* Formal consultation processes were therefore seen as a means to monitor the effects of a specified proposal and the EDR process was seen as a means to determine whether or not that specific proposal was acceptable. As such public consultation in these forums was not seen as a step in the development of a proposal, but as the penultimate step in approving a proposal.

* The scope of the decisions were considered narrow, as they were based on interpreting and making determinations based on the legal issues. That the Commissioners did not comment on some issues, that participants thought important, led to perceptions that not all the interests and values had been able to be taken into account. The hearing can not be described as 'formulating' policy as it either or approved or rejected policies formulated outside of the EDR forum, and prior to the comprehensive consultation efforts the hearings represented. The hearings did not formulate policy as a result of that consultation, it made a determination based on a proposed policy.

TABLE 13 ADDITIONAL EXPLANATIONS FOR PROBLEMS and LIMITATIONS.

A Most of the problems described by public participants can be attributed to a combination of the following factors.

1 Limited resources for undertaking a comprehensive, coordinated, structured case supported by professional experts and represented by legal counsel.

2 Information surprise caused public participants to act in a reactionary way. Public participants were not prepared for what was required in terms of being involved in the dispute and its resolution processes.

3 Information uncertainty with regards to what the facts were when describing and identifying sources and causes of problems, the feasibility of alternative options, as well as what all the consequences of different options could be.

4 Lack of coordination between the opponents in presenting an 'opposing' case. The opponents were in essence individuals, some of whom had joined together temporarily under the banner of an 'interest group' in reaction to a proposal. Their 'case' was therefore disjointed as opponents were multi-directional in terms of what they wanted to consider within the process and also in terms of their preferred outcomes of the process.

5 Difficulties in conforming to the timeframe established by the proponents and the RMA. Opponents did not have enough time to prepare their cases.

6 Inexperience with the processes and limited guidance on how to participate effectively or on how to present a structured comprehensive case to a hearing.

7 The adversarial nature of the forum and features associated with 'fighting' a case.

8 Discretionary elements of the process gave rise to variable approaches within and between the hearings. Participants observed what they considered 'random' characteristics in the conduct of hearings. This contributed to perceptions of inequitable treatment within hearings.

9 Certain characteristics of hearings were prescribed in setting up the process. These defined to some extent how the forum would consider issues and the type of outcome possible in each of the hearings. The succinct purpose of the hearings had an effect of constraining or bounding considerations that were relevant to making a determination. This led participants to a perspective that the forums had not been able to take full account of all the diverse interests and values they considered relevant to resolving the issues.

[Note: Several limitations of these formal processes and forums can be related to the fact that the process is *prescribed* to some degree, either by the RMA, the formal policy documents or by the constraints established by the regulatory authority in setting up the process (e.g. in setting a succinct well-defined purpose for the hearing, to streamline the process. This led to perspectives that not all the issues were addressed effectively or *resolved* satisfactorily within the forum). While some of these features are not highlighted within this analysis, they are discussed within the conclusions, in Chapter 14].

Table 13 continues...

Table 13 continued...

B ***Most of the problems described by Council participants can be attributed to a combination of the following factors.***

1 Difficulties maintaining distinction between Council's trichotomy of roles. This caused some functional confusion within the organisation of Council. Diverse views about contestability within Council and the use of consultants led some participants to question the integrity of planning processes.

2 A lack of clarity between Council's roles exacerbated conflict with the community as some public participants challenged Council's willingness to consider the views of citizens or to be directed by 'the public'. Of significance were the assertions of some participants relating to the concepts of representative democracy or 'government for the people, of the people, and by the people', as some suggested these concepts were threatened during the evolution of these EDR processes as they described an inability of Council to demonstrate it had taken into account alternative interests and values, or had a public mandate.

3 There were diverse perspectives on the mandate and role of Councillors while governing. Some participants described problems in measuring the strength of community feeling or opinion, and in assessing whether Council does have a public mandate, or the support of (majority) 'public opinion' on specific issues. There were diverse perspectives on what was in the 'public interest' and in setting the priorities of Council, (which reflected concerns about 'mandates' as indicated by elections, when individual Councillors did not necessarily comment on particular issues or provide their views during election campaigning). Also there were those with a view that Council does not, in fact, need the mandate of citizens on specific issues, as Councillors are elected to make determinations on these. The public in electing Councillors were described as having given Councillors the mandate to make the important decisions on the communities behalf. Therefore, Councillors need not consult with the community on particular issues as they have already been appointed to the task of making decisions.

4 Difficulties in restraining strong political determination to pursue a project against mounting public criticism and escalating conflict. This caused problems in relation to managing the conflict and in preparation of a coordinated comprehensive approach to reassess the situation or attempt to resolve the substantive issues and conflicts evident in the community...

5 A consequence was the difficulties caused by pursuing an adversarial approach to dispute resolution. This gave rise to a number of problems relating to a breakdown in public relations. Of significance was a perception of 'mistrust' of Council, which Council found difficult to redress. Difficulties overcoming mistrust of 'Council' motives contributed to information uncertainty as participants questioned the accuracy and interpretations of information generated by Council or consultants in Council's employ.

6 Limited consideration given to how to effectively and appropriately manage the conflict with the community. A breakdown in public relations was suggested to be likely to cause on-going repercussions for Council.

Table 13 continues...

Table 13 continued...

7 Difficulties informing the public about planning and decision-making processes and about specific Council projects. Insufficient time and effort put into providing explanations for decisions, to the public, caused on-going problems (e.g. a lack of understanding or misunderstandings in the community about how Council operates, and about the specific rationale for a particular project. Difficulties relating to public perceptions about what can be realistically accommodated though public consultation or public participatory planning processes. There were problems relating to the expectations of the public.

C ***The limitations of the hearing process can be attributed largely to a combination of the following factors.***

1 Some uncertainty among submittors about what was allowable or appropriate in a hearing forum. There were variable perspectives on appropriate levels of formality and what were appropriate 'strategies' given that the forum aimed to *resolve* an environmental dispute.

2 Variable views on the forums ability to resolve issues equitably.

3 Focus on interpretation and resolution of legalities; giving rise to perceptions that not all the issues relevant to the dispute are considered (or were well integrated) integral to the resolution of the dispute.

4 Decisions of Commissioners confined to certain matters to which they had been delegated authority to consider; gave rise to problems in relation to perspectives on the 'permanent record', treatment of evidence and views and the scope of the decision when resolving the dispute.

5 Difficulties in catering to diverse interests and values. Some of the interests and values promoted in the forum where difficult to qualify in absolute terms which could be agreed to by all the parties. When subjectivity is evident, the views of professional experts prevail over those of lay people.

6 Difficulties in relation to the established policy frameworks as participants variably interpreted how policies ought to be applied in practice and also sought consideration and resolution of issues additional to those circumscribed by the formal framework. Issues not circumscribed within the established framework were effectively excluded from consideration.

While some of these limitations are suggestive of means by which they could be addressed, a number appear difficult to overcome, as they suggest contradictory needs e.g. greater discretion would lend to more comprehensive consideration of diverse interests. Greater discretion would allow the decision making authority opportunity to generate a more satisfactory resolution of issues, to all parties minds. However, discretion exercised by commissioners gave rise to perceptions of subjectivity and also inequitable consideration of diverse interests, which infers formal guidance as to how to 'properly conduct' a hearing or more *prescriptions* would be an advantage. Suggestions for EDR are givien in Chapter 13.

CHAPTER 11 BENEFITS AND STRENGTHS OF ADR PROCESSES

11.1 BENEFITS AND STRENGTHS OF ADR PROCESSES

11.1.1 *A 'problem solving' forum which aimed to 'satisfy' all interests.*

The working party forum presented an opportunity to resolve issues by reaching agreement between all the interested parties as it was set up as a collaborative problem solving process.[193] It incorporated: problem framing, objective setting, analysis and the development of a consensually agreed 'solution'. In this way the protagonists in the dispute became parties to the planning process and were not merely observers and critics of it. The working party members themselves were responsible for the 'conduct' of the process and for generating the outcomes of that process, although an independent party 'facilitated' their endeavour. The facilitator indicated there were no formal procedures for the meeting. It was flexible and adaptable in its approach due to the informality of the process.

11.1.2 *Recognition of the legitimacy of the parties and of their interests as these contributed directly and 'influenced' the process and the design of a strategy.*

In Chapter 6 it was noted that, theoretically, the voluntary use of such an approach, "implies recognition of the legitimacy of the demands of other parties and of the parties themselves" (Bacow and Wheeler, 1984). Research participants indicated such an assumption was influential in choosing this ADR approach, when they described their rights of participation within the process. The features of this process, given above, along with the efforts of the facilitator in conducting a consensual approach in practice, also suggest this assumption applied in this situation.

> Public "I believe the process of bringing all the major interest groups together to define the issues and seek mutually acceptable resolutions was an excellent concept. I believe that initially there was a common resolve to make the process work."

11.1.3 *Diverse interests and views incorporated into a new planning process.*

The facilitator commented, "there was wide publicity of the process prior to it starting and in fact the way in which the working party membership was set up, I think, was very

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[193] The purposes of the working party approach were described (in Chapter 9) as the reasons this approach was chosen to be used. In that chapter, the problem to be 'solved' was identified, the agreed goal was established, along with 'ground rules' for the process (refer to Appendix IX). Part of this undertaking was that the CRTWP was to develop agreed criteria against which options would be evaluated. That is, the CRTWP was to develop the objectives which would underpin evaluations of alternatives and then would attempt to design a strategy to meet those objectives, to the satisfaction of all the interested parties.

healthy." Participants suggested the CRTWP contained a more diverse range of views (by implication) than was expressed either within Council during design and approval of the LTDP, or within the original analysis undertaken to solve the problem/s.

> Councillor "I thought it was very beneficial to get all these people, with opposing views,in the same room at the same time."
>
> Officer "There was a genuine effort to involve a wide range of people and to have an independent chair to facilitate that."
>
> Consultant "There was a wide range of people involved, some of which were representing interest groups such as the police and emergency services. They were not partisan in their approach, they were there to add their view to the process."
>
> Officer "You had quite a diverse representation of people there [CRTWP] and people who were not familiar with the planning process, planning jargon etc, and it was quite a challenge to explain planning process, methodology, jargon to those people, your community. Although Councillors are representatives of the community, most have an understanding of the planning process."

A reason Councillors had not articulated as diverse a range of views, as expressed by the wider community when conflict emerged, was that they had *understood* the processes used to analyze the problem and develop solutions.[194] When Councillors adopted the LTDP proposal, as Council's project, they also endorsed the process used to derive it. As such Councillors did not express diverse views about either the process, its objectives or on its outcome as they had seen deriving a solution as a technical problem for professional advisors to solve, rather than as a political process. A Councillor also thought that a lack of understanding in the community was a source of the conflict when he indicated that, "the difficulty is keeping the public as informed as we are, because we are getting little bits of subliminal information, impressions and technical advice all the time. It is very hard to convey that and get every member of the population as informed as we are."

> Councillor "...So you loose a little bit of your say when it is 100% funded under the [NRB]... Most Councillors approach a problem, a technical problem in a lay way. Then they listen to the professional advice and often, when you understand the mechanisms of such things you know that your superficial lay opinion just wont work... Politicians can not peer review professional work. If you are uncertain whether you have got the level of expertise to finally justify the solution the staff have proposed, then you get in the consultant to ask them the question - is this adequate?"

The public (in 1993) which did not have such thorough understanding of the earlier process, found it more difficult to accept the LTDP strategy. A further indication of this feature of this conflict was given by a Councillor who considered the reason a public

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[194] In Chapter 9, it was shown that influential Councillors had placed this problem (in need of a solution) high on Council's agenda. However, it was not Councillors who defined the problem, described the objectives of the problem solving process, or who circumscribed what considerations were brought to the analysis, or how these were dealt with within the analysis. Participants indicated, Council officers in conjunction with the NRB who had carried out these tasks and thereby developed the LTDP.

dispute emerged in 1993 was "because the time between the decision and the time to actually do things wasn't kept sufficiently alive... It lapsed totally and the justification that people had understood up until 1988 had gradually faded." This Councillor indicated that Council came to a view that "things had changed" since 1988 and therefore considered a re-evaluation was necessary. As strong opposition to the LTDP emerged, it was thought that a reconsideration of what was relevant to the *analysis* of issues[195] would be best achieved by adopting a process which facilitated an open dialogue with all the interested public. The new analysis undertaken by the CRTWP was indicated to have been more comprehensive and integrated, in part because this process directly addressed the political dimensions of the planning process as well as the technical dimensions.

11.1.4 *Educating the public about the nature of planning processes.*

An anticipated benefit, from Council's perspective, of including a diverse public in a new planning process was that the general public would become better informed. A re-evaluation of the issues in an inclusive way was a strength of this approach to EDR, as the direct involvement of all interested parties gave rise to other benefits in the process. For example, that it was considered educational. Inclusivity did mean that public interest groups came to understand the technical issues as well as Councillors had in the earlier process. It was also evident that 'informing' the public involved not only a new analysis of issues and diverse perspectives, but also explanations of earlier processes and rationales for past decisions. That such education was achieved, to some extent, was indicated by the comments of CRTWP members who said they came to understand how Council had come to make certain decisions in the past.

> Public "I think there was sharing of information. I myself over time gained an appreciation of just what the Council had been through, by going back through the records, by arguing with people like [Councillors], all those sorts of people. You begin to get some understanding of why they had generated the present policy which has created so much havoc. I gained an understanding that probably wouldn't have been there before. In fact, I made a submission to Council, about leaving the rest of the Ave, and as I now understand why they did what they did, I was able to go back to the 1970's and say, 'well in the 1970's you did this, and we can understand why, but we think its wrong'. We were able to get a much better overview than we probably could ever have had, because of the amount of communication that goes on as people sit across the table and argue with each other."
>
> Officer "[There is a] better understanding of the issues involved and how complex these are."

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[195] The discourse in planning theory (for example, about the 'policy analysis' approach to planning) provides debate about the 'political' nature of planning processes in framing, defining and analysing planning problems. While this area of theory is beyond the scope of this research, it has been noted that a source of problems in EDR was a lack of public understanding about 'planning processes', as Councillors and officers frequently mentioned that feature.

11.1.5 *Wide representation of diverse views enabled consideration of a wide set of interests and values, which were to be seen as objectives to be catered for within the solution to be developed.*

The result of a brainstorming exercise in the first CRTWP meeting, was a list of "criteria for outcome". This was a list of 'interests' to be catered for within the solution, that the CRTWP would develop. These 'criteria' were not ranked or weighted. This approach then, allowed interested parties to identify objectives, which would circumscribe the analysis and option evaluation phases which followed. The facilitator stated "we were doing it all the time - trying to get all those criteria out as early as possible. It's not something left to develop by accident." In this way the forum provided a conceptual framework of the problem to be addressed, which was considered more integrated than in earlier processes.

11.1.6 *A comprehensive and integrated view of the problem helped to turn the focus of protagonists towards collaborative problem solving.*

The forum turned the focus of protagonists from preferred positions to collaborative problem solving. This was achieved by including a diverse range of interests, as criteria that the solution was to cater for. Participants also described the overt efforts of the facilitator to get participants to 'leave their baggage behind' or 'step back' from the 'conflict', and by not allowing members to discuss preferred solutions at the outset. Instead he encouraged participants to focus on interests and values and on desirable outcomes in terms of those, rather than on positions on alternative solution/s. This encouraged participants to reframe the problem and their personal approaches to resolving issues and addressing the problems.

> Facilitator "You have got to distinguish between what the outcome they want and the value they want and it's a very simple process. I would say what the things that are important to you that need to be satisfied in regard to any particular outcome. Let's not talk about what the outcome is, but about what it will do for you and we wrote them all down. They were all identified and included in some of the minutes so that you get people to focus on that they want safety for cyclists, rather than that they want a cycle lane X meters wide."

11.1.7 *A collaborative forum defused the dispute context*

A number of the benefits identified by participants were attributed to it being a "collaborative" forum. The process was considered less adversarial relative to the hearings and to the debate in the public arena. Prior to the CRTWP, media commentary had tended to report the state of conflict and associated conflict activities, (for example, criticisms by each party of the views and conduct of their opponents). The media participant indicated that such 'stories' are both interesting and easy to report by comparison to the details of debate. In addition this participant suggested

better public access to information has changed the role of the media to a degree, in that, as people are better able to undertake research themselves, the media role as a key informer to the public has dwindled.

> Media research participant "Sure, [the media had reported personality conflicts or the sensational] that's because it is easy. That's very true. But I have an expression that certain stories are 'worthy but dull', therefore stories are done on them. Sure the stories where people get up and accuse each other, I can't afford to ignore them. The confrontations are more exciting stories but that doesn't give us any excuse to ignore the others that go on behind. But the other aspect to is, if people want to find out information, in this day and age, it's relatively easy to find out things that you want. The role of the newspaper now is probably not to go into the things in as much depth as what they did 20, 30, 50 years ago, because there are other sources of information. They can research it themselves and with the amount of information that Council puts out in terms of its brochures and so forth on major issues, they actually do go to a lot of effort to do that. I think people have to take a bit of responsibility for themselves. If they are interested in something, they need to find out about it."

This ADR approach defused the dispute 'context' to the extent that it reduced the level of conflict behaviour of and between protagonists. For example, a participant described protagonists did not have to be appear "as tough", while working in a collaborative process. Behaviour associated with *conflict* all but vanished from the public arena as the ADR process itself became the focus of media attention.

> Public "The [CRTWP] was a much more collaborative approach."
>
> Public "It did diminish the dispute. It was a less adversarial approach."
>
> Public "We saw it as less confrontational and less expensive. Anything done through the [Court] is very expensive because you are hiring lawyers, there is the possibility of appeal and as just a community group, financing is a major problem. We had hoped we would influence the decisions. That was certainly very much on our mind, that the process would create the possibility of alternatives. It was more on our minds that that might occur than it was on the Councillors minds, I'm sure."
>
> Officer "By the time we got to the plan change hearing, the battle lines had been pretty well drawn. Where as the [CRTWP] wasn't like that."

Reports in the media described the process as it was undertaken, and information considered by the group. The change in media coverage reflected a change in the relationship between the protagonists. Therefore, this process interrupted the "spiral of conflict" (Carpenter and Kennedy, 1988) and prevented escalation of the conflict for the duration of the process. Participants all indicated their approach had been collaborative within the CRTWP process. Some indicated they didn't believe others always were.

> Officer "Collaborative definitely, even though I had views. In other words I was open to having those views changed as long as the end result gave, achieved the objectives we wanted."
>
> Public "I went into the process very optimistic that it was going to be an open [forum] that would develop solutions in a cooperative manner."

Public "We worked through over the months in a very cooperative way. In my view the whole group worked well."

Public "I think that 'collaborative' can be said about all the members, they came in with an open mind and were able to make decisions based on the evidence presented, except the two original protagonists - Save the Ave and the Council - I don't think at the end of the day they would change their views. So they were there to try to find a compromise and I think the only compromise was 3 laning and the City didn't want that and the engineers didn't feel that it was workable."

11.1.8 *An opportunity for mutual learning about different perspectives*

This forum was considered an opportunity for mutual learning about diverse interests and values, as well as the rationales for these, so that participants could develop better understanding of, and empathy, with interests and values important to others.

Officer "Understanding of the participants personalities and objectives."

Public "An ability to put myself in others places, willingness to see others viewpoints."

Public "We all have a better understanding of others views and positions... Other members of the [CRTWP] now have a better appreciation of [my interest groups] responses and problems with traffic on [the] Ave."

Consultant "I think they got to know and understand each other a bit better... I think each others viewpoint was better understood even if not agreed"

Councillor "I can see where Save the Avenue were getting to - I have perhaps more empathy with them than [with] this Avenue Action group whose sort of evolved out of it. But certainly I can see what they were on about."

Councillor "It's very hard to be angry if you have actually sat down and listened and spoken to them and exchanged views. I mean this is the whole business about 'peace courses' isn't it. Once you have heard their views, you think 'yeah, that could stack up. Yeah, I see where they are coming from'. Then it does give you a better perspective I think."

Officer "There was certainly the opportunity for people to hear each others views - whether that was what happened well I'm not sure but the opportunity was there"

The opportunity for learning about others views may not have been taken up by some members of the CRTWP. The reasons for that perspective are explored later.

11.1.9 *Improved communication flows between interested parties enabled better comprehension of issues relevant to solving the problem/s.*

This forum was said to have enabled better communication, as there was an ability to question each other directly. This lessened misinterpretation and encouraged debate, which allowed participants to achieve a better understanding of the issues from different perspectives. Part of the benefits of this direct communication was that participants

identified that they learnt to speak a common language, to some degree.[196]

> Public "So it is quite educational, in that people get a chance to communicate directly and get better understanding."
>
> Public "The [process] is a good way to get different groups talking together."
>
> Officer "From my point of view the [process] was a lot less formal, more relaxed. So you have the chance to cross talk more. You can talk about things without the rigid process that a hearing goes through. When the opposition makes a comment, you can also comment - no, you have misinterpreted that and bring it round right and actually get things clear rather than having to wait until it's your turn."
>
> Public "Obviously there was a lot of disagreement, sometimes they got heated but that's what happens when you have an open forum and with differing parties. But that's OK, that is their democratic rights.
>
> Public "It has made me a lot more politically aware about how the Council works. I was young and naive and just sat and watched for a while. But now I know where they are coming from and we know how to speak the language to each other."
>
> Officer "A strength of [CRTWP] is bringing together different groups, who have to evaluate their own position and prove their thinking to others which widens the shared knowledge base of the group. They do have to understand themselves pretty well, so by putting them into the negotiation realm they get to appreciate each others views a little more and appreciate how making a decision can be a difficult thing when your've got diverse views being presented."

Improved communication and information flows contributed to perceptions of a better mutual understanding through *shared learning*, as the group developed a common understanding of the problem/s and about alternative options for addressing these. The facilitator referred to efforts he took to improve this aspect of the process, "as people talked I summarised their comments [on big sheets of paper] and then we put them up all around the wall so everyone could see them, [and that] at least I understood the key points coming through. This helped the group memory, which compliments the minutes."

> Officer "It was very much an educational process... The flow of information, I think, for the Council was better. As far as the transfer of information from the meetings and also I suppose their willingness to open up and discuss the issue of CRT whereas not a lot of information, I think during that [earlier] period, was that well transferred to the public. I would say more people were aware because of the participation - that is the general public were more informed."
>
> Public "It [was] easier for everyone to grasp how 'facts' are being interpreted to show different things. The analysis is clearer and its less confrontational."
>
> Councillor "Effective listing. [An] ability to negotiate... Personal benefits, in terms of mediation skills and listening to what others have to say and those sorts of things."

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[196] 'Social learning theory', as a field of planning theory, is beyond the scope of this thesis (refer to Friedmann, 1987) However participants descriptions of their experience indicated that phenomena described within social learning theory did arise in this process. 'Social learning' was applicable to interpretation of several features of 'group processes', for example in describing the concepts of 'common language', 'group mind', agreement on aspects of a 'common' or shared information base.

11.1.10 *An open and inclusive forum was conducive to 'transparency'.*

As the forum provided full disclosure of information and perspectives on it, the CRTWP did improve transparency of not only the information, but also of its analysis, and of the process of formulating a solution, as more people were aware of what was involved. Meetings were open to the public, officers and reporters. The process, groups deliberations and the rationales of each of the contributing participants were observable and therefore able to be understood by others. The CRTWP process and group deliberations were reported in the media, thus also informing the wider community about the rationales brought to the forum. By contrast, it was suggested that the Council decision-making forum does not always disclose the personal rationales of each contributing decision-maker, as their views were often not stated prior to voting on issues.[197]

Some participants suggested transparency can be a disadvantage politically. In 1996 (prior to the second hearing) participants suggested wide public knowledge of issues, as a result of the CRTWP, was a problem for Council in pursuing the LTDP.

> Public "Its given them, politically I'm sure, a lot of trouble because we now have so much information about the problem of the traffic and the trees that I think the Council has actually flagged away the idea of trying to change the district plan in the normal way. I think they have realised now, with the information we have and the publics understanding of what is going on, I think they may have realised that they may not be able to further their project through normal resource planning activity."
>
> Public "We had a lot of information. Information is power."

11.1.11 *A balancing of influence (or power) within the process allowed interests and values to be considered as equally important objectives to be catered for within the collaborative problem solving endeavour.*

That the CRTWP members had equal access to information together with each being accorded equal importance in responding to information, contributed to participants' views that this process facilitated efforts to *balance* the interests of the parties. As the CTRWP members had direct and equitable input into the planning process, and that Council was less dominant within the forum, supported the notions of 'power balancing' or 'power sharing' through ADR, found in EDR theory. Participants' comments indicated the effect of these features was a strength of the process, as no one set of interests could over-ride other sets of interests and values brought into consideration of the planning 'problem'.

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[197] Similarly, it was suggested that personal views (on individual issues) were not always stated during election campaigning.

Officer "Another pro was that the Council stood back from it a bit. Not at arms length, because there were a couple of Councillors in it and [officers] involved, but it was something that we handed to somebody else to run - and did say this is the outcome we were hoping for - to get a joint decision or a generally supported decision there."

Officer "That in fact was the benefit of having a facilitator. There was no over-riding group and occasionally having to be brought back to the question or task at hand. There was no dominating effect because of the facilitator."

Public "The power I felt was very much that it was an open forum for discussion and I suppose I didn't feel at any stage that that was hampered by anybody else's views or the facilitator. So I felt as though I was empowered from the perspective of who I was representing and also that I could voice my opinions without any problems at the meetings we had."

11.1.12 *The independence/neutrality of the facilitator heightened perceptions on the integrity and fairness of the process.*

Part of the perception of 'power balancing' was attributed by participants to the fact that an independent professional facilitator was brought in to manage and oversee the process.

Councillor "[Council] brought in an independent facilitator and he really did come in with an open mind - he didn't have any baggage."

Public "The presence of a 'neutral' chair or mediator denied the Councillors and their staff the opportunity of colluding to block or hide relevant information. They had to respond openly and completely. Sins of omission or commission were not accepted by the chair."

Public "Also it gave us a voice, a direct voice on the [CRTWP] as opposed to, individuals that normally wouldn't voice their concerns. In other words the silent majority. A lot of talk has been made of the numbers who were in favour of retaining the trees. It is never actually mentioned, to a great degree anyway, that there are many people in favour of the trees coming down."

Perception about the integrity of the process was linked to perceptions about the integrity of the facilitator. These in turn, were linked to what participants observed as his impartiality, which was indicated by his consistent treatment of the participants.[198] Participants described that the facilitator did intercede on behalf of participants, in ways which helped to balance the power to influence the process. For example, by critiquing the work of

[198] However, one participant expressed some doubt about the facilitators impartiality and provided the reason was that he had concerns about private meetings between the facilitator and officers and Councillors. The facilitator on-the-other-hand, indicated part of his role was to maintain Council committment to the process. He mentioned some concern over events which occurred during the process and had acted accordingly as facilitator. He also indicated "A lot of my work in developing a framework to hang things on was done in the background and not made explicit to other people what I was doing or why I was doing it... [I had a role] in reviewing reports and all the things I used to do behind the scenes to get the quality. I would encourage them to provide a draft to me first and I would critique them and then send them back to the author and let them decide whether to incorporate my comments or not, so they were more likely to meet the [CRTWP's] objectives." Private meetings between the facilitator and Council officers, were therefore likely to have been in that capacity and were not necessarily related to any 'impartiality' as perceived by one participant.

advisors to ensure information provided to the group was objective.

> Public "The working party approach itself doesn't give effect to principles, but the rules set up for the CRTWP do. Those rules were also reflected in the style of the final report to Council."
>
> Officer "[CRTWP] on the whole were facilitated well, in that [the facilitator] did try to ensure everyone got a chance to be heard and that people who had issues which wanted more information then that was followed up."
>
> Public "The facilitator was very professional and very good and quite a few times, occasionally, all of us were put back in our places by the facilitator and he did that pretty impartially. He was hardest of all on the Council's technical experts who put up their ideas as the only reality, the only possibility. As an engineer himself, by background, he was able to argue that there may be other ideas or perspectives or approaches - other principles - he was very supportive in helping us to fight for peer review of those technical experts because of the combination of the Councillors with all of their policy knowledge and clout and the Officers with all of their technical knowledge. It was a very hard team to try to combat. So with their resources, their knowledge, their corporate memory if you like, is so much larger than the individual can bring to that process and it is only through being able to have peer review consultants and [the facilitator] acting as a mediator in the middle, that made the thing as open and positive as it was. It was very good."
>
> Public "Nothing about [the facilitator] was manipulative, nothing about him was not transparent. [He] was committed to getting everyone to agree."

Participants indicated the CRTWP process promoted an equitable approach, in the EDR context. A number provided reasons which indicated it was the presence of an independent facilitator and his resolve to make the process work that promoted an equitable approach.

11.1.13 *Comprehensive analysis of information enabled a 'reframing' of the problem.*

The range of information brought to inform analysis of the problem and related issues was more extensive in scope, and in depth, than in processes preceding it. This occurred as participants brought new information to the forum (in the form of diverse perspectives) and requested more information to directly address the issues that concerned them. Inclusivity of diverse perspectives also led to a more comprehensive *analysis* and *evaluation* of all the information brought to the process. These features enabled the forum to 'reframe' the problem, as participants suggested the CRTWP addressed a wide range of concerns and was not confined to narrow considerations (for example of legal or technical issues).

Part of addressing a diverse range of issues was a need to retrieve and debate the accuracy and relevance of information brought to the process. To this end, peer review consultants provided information and also contributed their perspectives to the process. Debate over information issues, in turn, facilitated reaching some agreements on the information base used to inform analysis of issues.

> Officer "A plus of the [CRTWP] was you didn't get that kind of legal debate represented there. You don't go hiving off into those kinds of things. Even if, say you do introduce expert traffic issues, I wouldn't call an expert because you have to be able to bring it back into layman terms and talk about it and that is why I think you get a greater understanding."
>
> Officer "All the opportunities were there for them to bring all their information to the table and to discuss it at length"

Participants indicated it was significant to them that the information base generated during the process, to inform all the issues, was extensive. This was part of what participants described as this forum being very educational.

> Officer "I think it generated a heck of a lot of information which was really positive... Information coming out was more accurate."
>
> Public "Much information and opinion was bought out into the open that would otherwise have remained hidden."
>
> Public "Look at all the information we have been given. That is the best thing for us."

11.1.14 *Peer review consultants enabled different perspectives on how to analyze the issues to be incorporated. Peer review also increased participants sense of integrity of the process.*

Council funded independent, peer review of technical and scientific information so that different expert opinions could be explored openly. Experts were able to address each other (over analytical issues) directly in the forum, to clarify where they agreed and differed. This enabled a better comprehension, by participants, of the ways experts apply their expertise. Their different interpretations and how they drew their conclusions contributed to the CRTWP participants' analysis and encouraged both a greater range and better quality of information to be utilized within the process. Peer review also enabled participants to overcome perceptions of partisan characteristics of reviews undertaken by interest groups, as participants evaluated 'information issues' together.

> Public "Hearings take account of facts, not opinions - but you also had experts giving opinions, but they are supported by facts, so it is the interpretation of those that varies and must be supported... In a hearing, if you have expert witnesses in say traffic management - they are at each others throats, trying to discredit the others data sets or to prove a point. 'You have got it wrong because you can't say that because of this'. In the [CRTWP] it is different, they have to work through it together and agree on the data sets and work right through developing the model and running it - until they both agree they have got it right... because it is in a working party's interest to arrive at a common destination whereas in a hearing, I'm going south and aerie going north and one of us is going to get there and the other is going to be left standing at the station."

Independent peer review consultants also provided participants with a sense of the integrity of the process as it was thought to have demonstrated Council commitment to the process and a willingness to openly explore the issues. This effect was anticipated by Council, for

example, the City Manager noted, "It may be necessary to give the [CRTWP] the services of an independent engineering and other consultants. Again this is an expense but it may be necessary to reinforce the neutrality of the process", (Willis, 22 August 1994).

> Public "It was a good move, to have an independent traffic consultant peer review the traffic reports. Then we sat around and discussed the different viewpoints presented. Basically if the Council had not accepted to have and pay for this person, they would have defaulted right there"
>
> Officer "An independent consultant was available to give advice to the [CRTWP] so the council paid for that."
>
> Public "One of the major advantages was that the Council, as part of the brief for [CRTWP], agreed that peer review activities would be permitted. In other words when technical experts were produced by the Council, we would have the opportunity to bring our technical experts along as well. So some technical peer review did occur. When the Council engineers were there, we had a peer review engineer. The Council planners were there, the people associated with the aesthetic effects and concerns of the city, we were able to bring our people along as well. Professional, technical, independent experts were able to bring their perspectives into the debate."
>
> Public "More expert opinions were made public."

Participants suggested that widening the range of perspectives brought to the problem-solving process, enabled the scope of the problem/s to be seen more broadly than it had been in earlier considerations. This in turn, described that a comprehensive-integrated (or holistic) view of the problem was taken, as issues were not considered in isolation.

> Public "Through the arguments of the peer review consultants, the engineers and the environmental ones, I think that the idea that it was a little bit broader that just 'don't cut down this tree', the Avenue [conflict] was broader than that. So we were able to move forward through the CRTWP process in that area."
>
> Public "That is why we came to the second bridge. The traffic engineers although they couldn't provide us with the information data, certainly provided us with enough guidance and hints you might say, to say that 4-laning would not solve the long term problems. All it would do is put more and more traffic into the Ave and the solution really was to look for a new bridge to split the traffic flows and you would get a much better traffic pattern within the city itself, which made a lot of sense."
>
> Public "We believe that through participation much more information was able to come into the public domain and people made decisions on the basis of that new information. The new information is represented by the fact that we are now working on a second bridge, that we are debating 3 versus 4-laning and so on. I think there is a much broader understanding in the city of the fact that the traffic jams and the trees are a symptom of something else, they are not the problem. They are a problem if you are stuck in the traffic of course, but that is a symptom of the bigger problem."

11.1.15 *Some of the information uncertainty as a source of conflict was removed through this forum.*

Peer review enabled any gaps or 'uncertainties' surrounding information to be identified quickly and effectively, as evaluations were not left in the hands of lay-people or those

considered partisan in their approach to generating, presenting and interpreting information. Participants reached some agreement about information relating to both the nature of 'the problem' and about possible alternative solutions, as a result of peer review.[199]

> Consultant "I did point out problems with information, but generally it came from members without me having to say very much and one of the ways we did that was to involve another traffic engineer to trouble shoot - peer review reports."

That is, the forum generated a common information base, on some issues, which enabled clarification and agreement on some of the sources and causes of 'problems', and also of the 'conflict', as participants were also able to identify where and how they disagreed over information accuracy or interpretation. This further removed some of the information uncertainties as a source of conflict.

> Consultant "I think a number of issues were resolved at that stage - certainly the [CRTWP] did clarify what the traffic issues were and what the costs and implications of various alternatives were... What the facts of the matter were, was much better understood at the end of the process. At the time of the earlier hearing that wasn't the case. So at the time of the second hearing, I think those issues were clear. What the congestion levels were and what the traffic effects of various alternatives would be and I don't think those points were at issue... I don't think they finished in any dispute as to what the traffic situation was, or what it is liable to be. The dispute arose as to what should be done about it."

Those information uncertainties that remained, (for example, an inability to 'accurately' predict possible future scenarios) were able to be addressed within this forum by employing an adaptable problem-solving approach. The group did not attempt to decide which 'possible' future scenario or which 'opinions' were most likely to be true, as no individual or coalition within the CRTWP could exercise a power to make such determinations. If the group did not agree by consensus, the evolutionary process adapted its conceptual framework of the problem, as the range of views had to be accommodated somehow.

The CRTWP addressed information 'uncertainties' by deriving a strategy which accommodated the 'precautionary principle' into its implementation framework. The strategy was designed to incorporate monitoring and some anticipated flexibility, to enable appropriate responses as the incrementally phased solution was to be evaluated for its effectiveness in addressing the problems, and as the accuracy of future projections were gauged. This can be seen as a means to reduce uncertainty as the strategy would be gradually implemented, and could be adjusted, as it was applied and monitored in stages.

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[199] 'Uncertainty' still surrounded some of the issues, for example in relation to sustainability of the mature trees and over future projections or scenarios relevant to alternative options/solutions. These were discussed in Chapter 12 as these uncertainties were most evident within the second hearing.

11.1.16 *The forum was conducive to problem, issues and solution 'exploration'.*

The forum was described as being relatively conducive to problem *and* solution exploration as the facilitator worked to draw out all the issues and views, and to ensure information was able to address the concerns of all the interested parties. As the interested parties identified what was significant to resolving the issues, the search for relevant information to inform the issues was driven directly by meeting the needs of all interested parties. A focus during the analysis of issues was to clarify different perspectives on information provided to the CRTWP. Where common ground lay and how different interpretations or perspectives gave rise to debate (or disputes over issues) were thus identified and efforts were directed at addressing these. Information from different sources and of different 'types' enabled diverse perspectives to be better integrated within the process. A beneficial effect was that participants thought the scope of the problem was widened and that also the CRTWP solution was wider in scope, as it incorporated a range of measures designed to cater for diverse interests.

> Public "Of the forums I think the CRTWP was the most helpful environment to operate in, in that people, representatives sitting around a U shaped table, with an independent facilitator sitting in the middle of it who is drawing out views, giving people a chance to be heard and then at the end of the day making some recommendations that everyone is signing off on. It is a great forum for getting some common views or breaking issues down."

> Councillor "It allowed the canvassing of views on what is quite a complex and sensitive issue in Palmerston North. It brought all the information interpretations and views together."

The relative informality of the process was indicated to be a reason for this forum's ability to explore options. 'Informality' allowed adaptability in the way different types of information were incorporated into the process, and also flexibility in how participants and thus the process responded to information. Informality enabled participants to communicate 'in their own way' and to do what ever was required in order for them settle differences, resolve issues and to reach an accord.

> Officer "The CRTWP held there meetings out of here and in a very informal manner, which was good."

> Public "The CRTWP was an excellent opportunity to resolve a public issue. It involved competent, interested and motivated parties, who could evaluate and synthesise the technical data, both quantitative and qualitative - given time."

Participants described that this forum enabled evaluation of a wider range of alternatives than was possible in other processes. As such it was suggested to have "broadened the horizons" in terms of exploring alternatives which could contribute to a strategy to solve the problems, while catering for diverse interests and values.

Public "Building bridges, improving public transport and cycling facilities, the Council totally ignored... washing their hands of it all the time. I think we are starting to see some moves for cycling facilities. There is a new bridge working party getting underway. They are talking about putting a cycle and pedestrian bridge at Cook St. All sorts of stuff is starting to come out and I think it came from that first process."

Public "[A benefit was] having PNCC look at short and mid term alternatives with regard to the use of the present roading network... We opened up options that weren't on the table at all, through the mediation process."

Public "[It was] a well facilitated forum to hear out a wide range of options with their suggestions and their evaluations of each of the options."

11.1.17 *The forum recognized all interests and values, and the process supported these by catering for them within the proposed strategy*

A more thorough appraisal of alternative options enabled participants understanding of the rationales for rejecting some options. The inference is that as participants understood the rationales, they could also accept them. Through the education process inherent to this forum, therefore, Council participants indicated the process extended public support for 4 laning as an option. Most representatives did prefer 4 laning over 3 or 2 laning *of the most eastern section of the Avenue (and the bridge*), and widening that section was an agreed feature of the strategy negotiated by the participants.

Officer "We seriously looked at it [3 lane, tidal-flow alternative]. I mean at one stage I thought the 4 laning wasn't going to happen and it didn't worry me one way or the other. All I wanted to do was address the issues we had. I mean we started looking at the tidal-flow option and we did quite a lot of work on that area and as it turned out we just couldn't. Well, again, it was pretty much safety oriented, everything fell over. So we thought where do we go from here and it was back to 4 laning and it was during that phase, of education, that a lot of people who weren't too sure where they were, actually came on board and could see where we were coming from and could see the difficulties we were facing."

The participants promoting other interests and values, who opposed 4 laning as that adversely effected their interests, also indicated that thorough appraisals (and thus the educational quality of the forum), extended support for their views.

Public "Save the Avenue started out as a lone voice but now a much wider group accept our position, including some Councillors."

Public "Well we went into the process as a single isolated group, there were 2 members in amongst all the other members of the [CRTWP]. So 2 of us represented our perspective, it was more or less an isolated one. So we had no support from any, no formal support, no indications of support from any of the other members. In my view, yes we did manage to move the barriers a little bit, because we came out of the process with quite clear support from [three other organisations]."

All interests and values were described as having been supported through the recommendations within the CRTWP's strategy. Other examples included: the agreed need

for a second bridge, (frequently indicated as the most radical finding of the CRTWP), which catered to those promoting alternative urban form and transport networks; the retention the 2 lane layout (at the western end of the Avenue) to cater for values associated with the trees; support for cycle and pedestrian convenience and safety, as well as; improved public transport. In this way all participants indicated the forum increased support for each of the interests brought to considerations of the problem, as these were catered for (or accommodated) within the recommendations developed as a strategy/solution.

11.1.18 ***This process developed a strategy which was considered wider in scope than the LTDP, as it catered to more diverse interests and values.***

A result of evaluating a wide range of interests and values in relation to a wide range of alternative options, was that the process applied more 'lateral' consideration, while seeking an appropriate strategy to proffer as the solution. Again, an ability to explore a range of options during efforts to accommodate diverse interests was thought due to the forum being well facilitated.

> Officer "As we went through the process, the facilitator made us go out and look at different options and things. I guess - to be fair, probably somewhat reluctantly - but as the process went on, I think that was one really good thing about the whole thing, it made us actually broaden our horizons, actually look at other options and we did go through that and we provided, at the end of the day, a hell of a lot more information to the [CRTWP] than what we had originally expected or intended."
>
> Councillor "I think the best options were presented by the CRTWP. That was an excellent report, it was excellently presented."
>
> Public "Also some of the ideas we were pushing, such as... just were not considered by Council at all. In fact the Council policy was totally against creating another bridge. So I think to some degree we gained allies we didn't have before."
>
> Public "The major benefit was the fact that new ideas that were counter to established Council wisdom were able to be brought into the argument and discussed. The key new idea was that a second bridge would be desirable. Council have always said, 'no, a new bridge would not be desirable. There was no point. It would not be worthwhile, it couldn't generate enough traffic to be funded by Transfund, couldn't trigger the cost benefit ratio.' They totally denied it would be any use at all."

Participants considered the resultant strategy to be broader in scope, or more comprehensive than the LTDP project. As a solution, the CRTWP strategy catered for a wider range of interests than the LTDP was thought to have done.

> Public "The CRTWP report recommendations were of a broader scope or considered a wider range of interests than the original project had catered for."
>
> Officer "My role is really on the policy side of things and the recommendations that came up were very positive and there was quite a range there, putting aside the division of 3 or 4 laning."
>
> Officer "There were quite a range of measures that were interlinked when they came out and they were very positive measures."

> Consultant "The degree of detail incorporated speaks for itself. If you look at what the Council had already generated and compare that to what the CRTWP produced, the [CRTWP] outcome was hugely more sophisticated in terms of pedestrians, cyclists, issues for the bridge and safety. To my mind there is a huge degree of difference... the outcome [by working parties] is always much better. The old adage, two heads are better than one, but in this case we had 12 heads. You get a better quality of outcome and not a compromise outcome. Now we could have no doubt achieved an even better quality outcome with better information and a longer period of time to work. So we did leave some loose ends, but that's o.k."

11.1.19 *The process achieved considerable accord between protagonists.*

Considerable agreement, or accord, was reached between the CRTWP participants.

> Councillor "In fact, I thought there was a great deal of accord and I was pleased with the way that it had turned out. [*The CRTWP strategy of recommendations?*] Yes."

Part of achieving such an accord might have been expected to have involved protagonists changing their minds. However, that does not appear to have been the case. Only one participant volunteered that they had 'changed their mind'.

> Public "Surprisingly I changed my own personal views during the process a) from supporting 4-laning to believing it was unnecessary, given other solutions were implemented and b) from supporting a 'far' bridge to a 'near' bridge."

Some participants suggested they had no preferences or 'position' in mind and so described that their views on the nature of an agreeable and satisfactory strategy developed within the process. Others said that they retained the same views as they entered the process with. As such, this process did not necessarily pass discord into concord on all the issues, although it has been noted that it did so on some things, (e.g. by reducing information uncertainties through reaching agreement on parts of the information base). Therefore, while involvement in the educational process did not necessarily cause participants to change their minds about their 'ideal position' or preferred solution, they certainly came to an agreement on how to cater for each of their interests to a satisfactory level, and thus how to accommodate their differences.

The facilitator was asked if the strategy could be described as a 'win/win' scenario, he replied, "I'm not comfortable with the term frankly. 'Win/win' implies that everybody gets exactly what they want when in fact I think an 'all-gain' or a 'better quality outcome', is a better way of putting it and I suppose you could call that win/win, but it still retains the concept that you are in battle." This suggests that participants were encouraged not to focus on getting everything they wanted, by 'winning' or trying to assert their interests over others, but to cater for all the interests to a satisfactory level. Therefore, participants cooperated in negotiating the terms of an agreement, while seeking to accommodate all

interests. This required maximizing interests *relative* to other interests, also seeking to be maximised.[200] In this way what could be achieved for each set of interests was bounded by the effects on other interests. Therefore the solution sought to achieve a *balance* between all the interests/values. The facilitator also implied that 'compromise' was not an appropriate term to apply to negotiations within a consensual process in saying, "You get a better quality of outcome and not a compromise outcome."

11.1.20 *Effective participation as the process was described as having had a palpable affect on policy.*

As the CRTWP consultation effort can be said to have affected Council policy, the forum was an 'effective' form of public participation.

> Officer "Just for the second bridge alone - I don't think people realise how significant that recommendation from the [CRTWP] is in changing Council plans. It didn't come about from Council staff or traffic engineering. It's just not justified on traffic grounds or urban needs - just from the community. The whole issue was approached much more widely and other recommendations cover other things. So in a way it acted as a scoping forum."
>
> Public "The major outcome of course is the recommendation for the second bridge and that it had to be a near bridge as opposed to a far bridge... I think they were surprised at the pressure that was put on it to look at a second bridge as being a near bridge, and it will be interesting to see what the result of the new working party will be in selecting a site. It is an interesting question, if you determine the criteria [for the design and objectives of the bridge] before you have evaluated possible sites, or whether you do it afterwards."

Participants indicated the CRTWP improved public input in decision-making processes, as: "public responses and views were sought"; "opportunities were opened up that would not have otherwise existed... when peer review experts were invited in"; "as it disseminated information. Information is power." However a public participants also noted that "at the same time it confused people as to the real issues involved - cross river transportation" and that "many people with worthwhile input do not seem willing to use this process."

11.1.21 *On-going benefits for Council in having used such an approach.*

A benefit from Council's perspective was due to the process being seen to be a 'good' consultative forum. Also, having addressed issues in that forum, its findings were suggested to have then been an aid to further (political) decision-making. The forum was an aid to more thorough preparation for subsequent (formal) processes. Public participants indicated on-going benefits for Council related to it having achieved some experience of this consultation process and that this process had improved public relations for Council.

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[200] An informal, intuitive or intellectual form of 'optimization modelling', as no software and no actual modelling exercise was applied to this analysis or to derive an optimal strategy.

Officer "It helps in the process when I am trying to get things approved when I can say look the [CRTWP] agreed with this. It gives it a bit of weight...Also going into the formal hearing for the plan change 11, the [CRTWP] process had, in retrospect, been a real benefit because what it had done was brought a lot of people to that formal situation a hell of a lot more knowledgeable of what the issues were than they would have been otherwise.

Public "They were not only trying to get consensus, they were trying to do a showpiece. For a person who wasn't spending the money, I thought it was a good idea. We have learnt about the issues. Surveying people is not an option because there is so much misinformation about and of course control of the media again, and of course those with the most money can influence more people."

Public "I think the major thing to come out of the RMA and Council's reaction to it has been the idea of consultation and I think consultation is a learning experience in terms of managing the process."

Participants saw the role of the CRTWP as an independent problem solving forum that would derive an agreed upon strategy, to make recommendations to Council. For example, a public participant said, "I simply saw it in terms of opening up their decision making process to new ideas. It was an opportunity to do that. I would simply say the major benefit of the thing was it opened up... it broadened their information flow." Therefore a benefit for Council was that it retained control or discretion at the decision taking stage, as the CRTWP were not delegated authority to make determinations. The Council continued to be in charge of outcomes of the process.

11.1.22 *A relatively high level of personal comfort in participating in the forum. The forum was 'user friendly'.*

CRTWP participants indicated benefits included that they achieved personal learning and experience as a result. Also they found it an interesting and rewarding process to participate in, which demonstrated that the forum had been comfortable to them.

Officer "I improved my communication techniques".

Public "It was a good experience in a very political decision making process. The ongoing process keeps me active and willing as I find it very interesting."

Public "The experience was very valuable and the process was both enlightening and beneficial."

An officer indicated that part of his sense of it being a rewarding, positive forum was that it enabled contact with the community, which enabled that community to be personalised.

Officer "It is a very rewarding process, I felt personally, to be involved in, because you are working directly with the community. You are not working behind concrete walls of a building where the community out there can seem one big amorphous block. You are actually working directly with stakeholders on an issue and part of your job is to educate those people about the planning process and then try to provide them with the information they need and that you have been instructed to provide. So it is a very positive process."

11.2 ADDITIONAL EXPLANATIONS FOR BENEFITS and STRENGTHS of ADR

11.2.1 *The 'group' managed how information would influence the process.*

The working party members' ability to determine how information would influence the process, applied directly to how it generated an agreed strategy. The process did not necessitate having to highlight which information would be accepted and which would be discarded. This lessened adversarial behaviour. Participants could 'agree to disagree' within the process and did not have to *determine* a right perspective, or winner and loser. Each of the CRTWP members indicated they had been influential in designing the strategy.

The group developed an informal hierarchy[201] of interests and/or concerns, in that, as a 'group' some things came to be considered more important or critical than others. As each participant explained their perspectives, the group came to a common understanding of what was relevant and appropriate in developing solutions. That is, *the group* through 'shared learning' developed a common knowledge base and understanding of what was feasible in designing an acceptable strategy.

Theory on communication and group dynamics offers insight into group processes and the concept of 'group mind'. While most of this theory is beyond the scope of this research, it is pertinent to note that an explanation for a number of benefits identified in this process can be attributed to this being a 'group', or shared undertaking, between what had been protagonists in a dispute. Shared learning provides the explanation for some of the strengths of this forum, for example, understanding of and empathy for others interests, values and perspectives. Another example is that it was evident that it was the process and forum that was able to accommodate the full range of information and views on it, and thus it was the 'group' that was affected by information and which responded to it, as distinctive from every 'individual' within the CRTWP.[202] Participants described how this occurred in the CRTWP, when discussing how the facilitator influenced the process. The facilitator was described as encouraging participants not to try to reach an agreement every time they identified a difference of opinion, rather they were encouraged to air and explain their views and these were left "floating like balloons in the air above them." Participants explained that approach intended, when it came to developing a strategy (solution), that these ideas

[201] 'Informal' hierarchy as it is not stated or clarified in any of the minutes or the CRTWP report, but appears to have occupied the 'group mind' and been generally accepted by the group.

[202] Similarly, it was the process and forum which was flexible and adaptable, and not necessarily every individual within it.

would "fall to earth" and it was these that suggested the framework of the strategy they developed. In this intuitive way, the 'group' identified a hierarchy of concerns and issues. Heavy balloons fell to earth and the lighter ones floated off, as they did not have sufficient gravity to be critical during formulation of the strategy.

Within this forum any additional information, presented by the wider public, through the media or from other sources, was able to be addressed by the working party as it saw fit. There were no rules as to how information was to be weighed or utilized within the process. This enabled the individuals and group to assimilate a variety of types and sources of information, in what might be described as a humanistic way, within the 'group mind'. This in turn allowed intuitive responses to be honesty conveyed rather than having to be couched in 'rational' terms. As such qualitative values and interests were more easily uncovered and incorporated into the process.

> Consultant "They [CRTWP members] received some [input] from the public, the expectations of some of the people, particularly the Councillors involved, was that we would be almost accepting submissions and considering them formally and responding, but that is not the nature of the type of process we were involved in. [Facilitator] made it clear to people that if they received information it was up to them to decide how to make that known to the group. We circulated copies of notes that would be made from phone conversations. Others would right in and copies would be circulated and [facilitator] said we're not going to discuss these individually, they are just information that you can take into account in the background. Sure if you want to discuss one of them we can, but we are not running a hearing, we're not weighing submissions, we're trying to gather information and formulate an outcome."

11.2.2 *The integrity of the facilitator in managing the process in an even handed way.*

The integrity of the facilitator in conducting a consensual process provided a sense of empowerment to all members. As the forum acted to balance 'power' or influence, it thus also achieved a balance (within the problem solving process), between the values and interests brought by participants into consideration of the problem/s. This led, for instance, to a sense that the problem-solving approach and the resultant strategy were equitable.

11.2.3 *Council's committment to the process demonstrated through the appointment of an independent facilitator.*

That Council had appointed an independent facilitator was described as demonstrating Council's (as an organisation) committment to the process. Council tried to get everything the CRTWP needed to inform the issues and to come to consensually agreed recommendations. This had consequences in the group and to public perceptions of the process, as it was well supported by the wider public and by members throughout their participation. However, some participants identified a lack of committment by some

Councillors and officers, within the process, as a problem in the process. These influences were indicated to have been mitigated, largely by the efforts of the facilitator. The facilitator suggested he undertook a number of efforts to preserve commitment by Council, through to completion of the process.[203]

> Facilitator "It was my role to make sure that the Council was perceived in that light [committed to the process] and I think I did a pretty good job of that, by pressure behind the scenes, to make sure that could be done. As an example, Council made a decision to cut down four of the trees during the process itself, as they said the trees were diseased and they had the responsibility for accidents and no way were they going to discuss it with the working party. They were just going to do it and I had to basically say, 'I'm sorry, but if you do that your credibility is shot - if you have become involved in a process where you have undertaken at the outset to discuss any works which relate to the function of the CRTWP, without consulting with it first. You may make that decision at the end of it though. So I basically forced them to be aware that the chair of that particular committee was very opposed to the CRTWP."

Therefore, a major strength of the process was the independence and professionalism of the facilitator as his commitment to the process acted to keep the protagonists committed to it. Officers also indicated that while some individuals within Council may not have been committed to the process, the appointment of an independent facilitator confirmed 'Councils' committment to the process.[204]

> Officer "It's easy to say the process was just a means of educating the public and a token consultation process, but I don't believe that was the case at all, certainly there are certain politicians that always held that no matter what, the outcome was going to be widening the Ave, but in reality that was not the case."
>
> Public "I think the facilitator did do a very good job in a tough situation."

11.2.4 *Agreement on the role of the CRTWP, the "Terms of Reference" which established 'ground rules for the process, and the committment of most of those involved with the CRTWP.*

Participants agreed about the role of the CRTWP. It was to *advise* Council on how to solve the CRT problem by developing an agreed strategy which Council could choose to adopt.

> Public "To identify and agree on the issues associated with the traffic concerns and agree on a solution."
>
> Public "To express its findings and recommendations to the PNCC based on information from various sources and its analysis."
>
> Public "[CRTWP was] funded by PNCC, ie meetings, research etc. [But the] CRTWP was independent of PNCC plans, but of course PNCC views were represented."

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[203] The alternative views on Council commitment to this process are discussed within Chapter 12.

[204] While the facilitator was selected by Council, the appointment was confirmed only after consideration by participants. Participants indicated they had no problem with the appointment of the facilitator. Most thought he did an excellent job in a difficult situation and given the time constraints.

Public "No direct involvement except to provide a consensus on CRT."

This role could only be achieved if, within the consensual process, participants did actually resolve or negotiate issues to the satisfaction of all the parties, otherwise no strategy would have been forthcoming (as consensus would not have developed). Therefore, in generating an agreed strategy, each party must have had their objectives met to their satisfaction.[205]

> Consultant "In a consensual process, what we are really talking about is the participation of stakeholders in an outcome. There is public participation stemming from the desire of a developer in trying to get all the appropriate input (like a scoping exercise), whereas the consensual process approach is different. You are really stepping back and saying really the developer has no higher role within the working party. What they have basically done is allow the working party to develop an outcome and there isn't a predetermined outcome. So to my mind the fundamental in a consensual process is that one of the parties involved in it hasn't already decided what the outcome is. We had an element of that in Palmerston North."

With the role of the working party in mind, participants were asked "What philosophies or principles do you think were important in using this approach?" Again there was consistency in response. That was, that there was some discussion at the beginning of the process about the "ground rules" for the CRTWP, within the "*Terms of Reference*" and these were adjusted to better match the participants' philosophies about the process and 'public participation'.[206] A number of participants indicated they expected the facilitators role was to have regard for 'principles' and ground rules within the process and references were made to the facilitators "*Terms of Engagement*".

Officers implied some of the principles underpinning this process, when they determined that there was a need for community rather than technical representation; that Council would need to be absolutely committed to the process and be unfettered, open-minded or unbiased in its participation, and; that the principles of 'natural justice' would apply. Furthermore, Council would need to *want* the product, or whatever came out of the process. Two of the consultants interviewed, who were most familiar with ADR processes, commented on the differences between the consensual approach and other approaches. They provided the principles they believe informed the use of this and described philosophies underpinning the use of ADR very similar to those discussed in Chapter 6.8

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[205] Problems identified within the CRTWP process relating to some members inability to focus on interests and values, rather than on predetermined positions, (and consequent difficulties in exploring option alternatives and in negotiating the strategy), are discussed later, in Chapter 12.

[206] The changes related to issues of confidentiality and members ability to confer with their interest groups, about public disclosure of views of participants during the process, and also about issues of legal prejudice. The draft contained a clause which sought to bind participants to any agreements reached as a result of the process. Instead, under "legal prejudice" is stated "[b]eing involved in a facilitated process shall not prejudice any existing legal rights of a participant."

Officer "At the outset we didn't really have a list of principles that we were going to follow because we were very unsure about the process we were entering into. I suppose we had this over-riding philosophy that everyone would be given every opportunity to be heard and have their views appreciated. But, that is secondary to the philosophy that we would have community representatives rather than technical representatives. In other words this was to be the community views on the issue, not driven by technicians... We decided on a community working party which could call on technical expertise, who could serve them. Then we asked how do we get representatives on a working party?"

Officer "Natural justice would apply... I guess there are two fundamental aspects of what people call the rules of natural justice. The first principle is that the decision maker is unfettered, or I mean their views are unfettered, that they are open-minded and are not biased. The other aspect is that people have a right to receive a fair hearing. Now the requirement for having a fair hearing is to be fairly and fully informed about the matter. To have an opportunity to front up and when you front up to have a fair opportunity to state your case."

Officer "It is very important for the consent authority, in this case the Council, has to enter into the working party process with an absolute committment to openly accept the working party's recommendations. It has to want the product, or whatever comes out of it. I don't think you can use a working party process just to satisfy some sort of consultation ideal and all the time have your own political agenda."

Consultant "Mediation or facilitated processes are those in which we allow the parties to formulate their own outcome. Its an absolute fundamental difference between arbitration/litigation on the one hand and mediation/facilitation on the other. Negotiation is different again, as it is only the parties who are involved, it is between people. Mediation involves a third party to assist and make easier the negotiation processes. I also differentiate between disputes involving issues which could end up in court and then problem solving which is looking for the best solution to something and is not necessarily dispute resolution. Most environmental public processes are aimed at problem solving and not necessarily dispute resolution. You don't need to have a dispute to have a working party. [*In theory more so than practice, as the approach tends to be used in response to conflict arising in the public arena. In this case there was a project that the public reacted to, interest groups formed from that reaction.*] Sure it can be that way and probably is in the majority of cases... There is public participation stemming from the desire of a developer to develop a particular project, so they [facilitator] work for the developer in trying to get all the appropriate input, like a scoping exercise perhaps. Whereas, the consensual approach is different. You are really stepping back and saying really the developer has no higher role within the working party. What they have basically done is allow the working party to develop an outcome and there isn't a predetermined outcome. So to my mind the fundamental in a consensual process is that one of the parties involved hasn't already decided what the outcome is. [*Were the principles informing the process made clear to participants?*] "Yes... I don't think there is anything magic about the word working party. You are really talking about a consensual process. The most common use of the term 'working party', relates to government setting up a 'working party' to look at a particular issue and appoint people to it - but it is not a consensual process." [*That is a brainstorming exercise, whereas this type of public participatory planning has been suggested as a form of 'power sharing' with the community?*] "Yeah, but it's not. Really it is a bridging power, to be involved shaping and owning the solution rather than actually making the decision because Council never delegated that. In my experience it is never the case that power to make the decision is delegated. It can be done that way, but its not how we did it."

The role of the working party and principles driving its operation meant that, for the time-period the CRTWP was in session, the dispute all but disappeared from the public arena.

Press releases made by the facilitator or communications advisor and the monthly newsletters "*Getting Across*", described a process aimed to reach agreement and produce an optimal solution, by resolving issues. For instance, in "*Getting Across*" (Feb. 1995) appears a heading "Involving the public in policy making", under which is explained:

> "*Forums like the [CRTWP] are based on the principle of 'participatory government', where decision-making is shared. This requires a process to involve the public, and provide them with all the information needed to consider the alternatives. The object is to create fairness, efficiency and effectiveness - in policy-making and resource management. A consensual process, such as the Working Party, is a form of public participation in which all interested parties commit themselves to working together, in seeking an outcome that they can each accept*" ("Getting Across", February, 1995)

11.2.5 *Efforts to inform the wider public about the planning process and hence also about the rationale for the CRTWP strategy.*

There was a concerted effort to inform the wider public about the ADR forum and process. This was described as a way to include the wider public as they were invited to comment on the issues being debated within the forum.

> Facilitator "During the process itself, there was a concerted campaign, primarily organised by myself, involving a newsletter and I had regular meetings with the media and encouraged articles and had a reasonable response. I spoke on the radio two or three times at the request of the radio people. I was interviewed for articles in the paper. The 'Square Circular' has key components as to how the wider public were involved. Every edition of the Square Circular had an article in it. Also the 'Letter to the Ratepayer' that Council put out. So there was wide dissemination of the fact that it was going on. I also contacted tangata whenua and met with representatives of tangata whenua groups. Anyone who expressed an interest. We never said no one couldn't attend, that indicated they would like to come along and see what's happening. We often had a few observers sitting in the meetings."

11.2.6 A strategy was *formulated* within (as a result of) the consultative process.

The CRTWP strategy was *designed* (formulated) within and as a direct result of the consultation process. As that strategy was agreeable to all the parties, it was described as an 'all-gain' solution, that intended to settle the dispute. It was generally anticipated (in 1996) that Council had accepted that recommended strategy and adopted it as its project for solving the problems on the Avenue. The facilitator gave a rationale for this which echoed the views of participants.

> Facilitator (1996) "The Council were not unanimous in setting up the [CRTWP] and those who opposed it, I mean there were a lot of political currents going on and they continued throughout the process. But I was convinced and I have had this experience on many occasions, that the strength of the working party recommendations wasn't going to be undermined when it came to the Council later on because politically it is just too correct. It carries a lot of weight when a group has worked for six months and has been directly involved in a consensual process with

all these representatives involved and they come up with a recommendation which *everyone, including* the members of Council who were on the working party have agreed to. There is no way the Council is going to change it. If they do, they run huge political risks and that is exactly what happened. There was never any criticism by Council of the outcome of the [CRTWP]. I think importantly, because it incorporated most of the things that were important to even those who opposed the [CRTWP]."

As such the conflict activities and public dispute might have been expected to cease. It has been noted, however, that was not the case, as a result of the formal processes subsequent to the conclusion of the ADR process.

11.3 CONCLUSIONS ON THE BENEFITS AND STRENGTHS OF THE ADR / INFORMAL EDR PROCESS

Anticipated benefits, from the perspective of Council, in choosing to adopt the 'working party consensual approach' to EDR.

The reasons a working party was chosen to be used were described in Chapter 9. Consideration of comments made during discussion on whether to use an ADR approach show that there were three trains of thought in Council choosing to sponsor a working party. These describe the anticipated benefits of the process, from the Council's perspective, as sponsor of the process.

1 *A desire to provide a good consultation or public participation forum in order to formulate an 'optimal' or 'agreeable' solution/strategy.*[207]

2 *The practical needs in seeking to inform the public about alternative options.* [208]

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[207] Comments indicative of this line of thought included: There had been some element of belief that Council had not explored all the options; options needed to be worked through further; the second bridge option should be taken into the equation even though it may not be a likely direction; a strategy needed to be developed to balance private rights with public good; a plan of action was needed which was technically appropriate with the best community support; there was a need to consider consultation with the other groups beyond Save the Avenue; many citizens understood the issues involved with the CRT dilemma and Council needed their input; officers presented a view of an 'impasse' and a need for re-evaluation / re-development of options in a collaborative problem solving consultative process.

[208] Comments indicating this line of thought included: a working party may cost less in agony than going into the cost of initiating a plan change and may reduce plan change costs in the long run (e.g. s 32 analysis); there was no guarantee of the outcome of any other process options; the LTDP did have a base of community support and if the issues were explored thoroughly again, it would win greater support with wider and better community understanding; citizens uncommitted over the issue would be better persuaded with the establishment of a working party; a working party is an opportunity to enhance community support for the LTDP, which would facilitate either undertaking a plan change or designing the new plan in such a way as to present no impediment to its implementation.

3 *Political issues, as seen by Council, relevant to managing a public conflict.*[209]

The CRTWP signalled a step away from a confrontational approach, as it allowed the issue to be defused, and a common solution agreed to. Adopting this approach, would however mean that all parties, would have to suspend their predetermined preferences in order to ensure that open and productive discussions could occur. This process was envisaged as allowing all parties to look at all the issues, and alternative solutions aimed at resolving these. It would include a re-evaluation of the Council's original thinking. The City Manager encouraged Councillors to adopt the process with an open mind about any strategy that could result from that process.

Participants described that this process, set up to provide an opportunity to resolve issues, by reaching agreement or an *accord* between all the interested parties, achieved that purpose, and a consensually agreed strategy was formulated. That this was achieved was attributed, in part, to strengths in the design and protocols established to manage the forum and process. These included that:

- an agreed problem to be 'solved' was identified;
- an agreed goal was established, along with 'ground rules' for the process;
- the process was equitable, in its representation and treatment of diverse interests, values and views.[210]
- participants developed a set of 'criteria' to evaluate options;
- members determined the information requirements, interpreted information (undertook analysis and evaluations, debated issues) and were in charge of responses to that information;
- they then designed a strategy to meet all their objectives to their satisfaction.[211]

The conclusions on the benefits and strengths of the ADR process are summarised in Table 14, and additional explanations for these characteristics are summarised in Table 15.

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[209] Comments indicating this line of thought included: A working party presented an opportunity to enable others to take on board the direction which was being taken by Council. This would be achieved by them being better informed and being involved; publicity without the support of a working party would appear arrogant; if Council considered an immediate plan change there was a risk there would be an appeal, whereas a working party would ensure better public support of the case and diminish that possibility; there was a need to accept a mode of open government on this issue which ultimately could gain considerable kudos for the Council; the degree of importance the Council placed on the establishment of a working party may provide a greater chance of success which would have long term benefits to the Council.

[210] Although it was observed that some participants exhibited a belief that they had more 'rights' than others to influence the/their environment on the basis that, outside of this process, they were duly elected 'representatives' of the community and also carried the official burden of 'responsibility' for the outcomes of Council activity.

[211] Had that CRTWP strategy been implemented in its entirety and as intended by the members of the group, the dispute could have been anticipated to have been extinguished by mutual agreement of the interested parties.

TABLE 14 CONCLUSIONS ON THE BENEFITS AND STRENGTHS OF THIS ADR PROCESS.

A Research participants' perspectives on the benefits and strengths of the ADR process.

* As the process incorporated the full planning process the protagonists in the dispute became parties to the planning process.

* The members themselves were responsible for the conduct of the process and for generating the outcomes of that process. It was not left to a third party to determine these, although the members were facilitated in their endeavour.

* There were no formal procedures or rules for the meeting, so that the process was adaptable in its approach to resolving issues and solving the problem/s.

* Participants developed a sense of effective participation and ownership in the result, (although there were exceptions to that rule).

* Recognition of the legitimacy of the demands of other parties and of the parties themselves. While individuals within the process may not have recognised others or their views as legitimate, the use of the process was thought to have done.

* This ADR approach acknowledged everyones' right to influence their civil affairs in relation to managing the/their environment.

* Within the process efforts were made to 'balance' the influence of the members, as they were each seen as representing valid and worthy interests, values and perspectives.

* Diverse interests and views were incorporated into a new planning process which was able to review and evaluate all the issues in a way which addressed the concerns of all the interested parties.

* This process educated the public about the nature of planning processes. Participants were able to comprehend the historical contributing factors and rationales for past decisions, actions and inactions.

* A similar educational strength of the process was that participants experienced 'shared learning' about the different perspectives. Participants came to understand philosophical differences in outlook and diverse responses to information and to the diverse interests and values. Participants learnt what was held in high regard by others, *and* the rationales for their diverse views.

* The 'community' became personalised to Council officers.

* This process improved communication flows between interested parties, as it enabled them to question each other directly and to explain themselves.

* Improved communication reduced misunderstandings and enabled better comprehension of all the issues relevant to solving the problem/s.

Table 14 continues...

Table 14 continued...

* This process was described as an open and inclusive forum which was conducive to transparency. Peoples' underlying rationales and motives were uncovered, as were inconsistencies in arguments. Everybody involved came to a comprehensive understanding of the issues relevant to the conflict and also about what each considered was important in designing the strategy.

* The process incorporated a wide representation of diverse views which enabled consideration of a wide set of interests and values. These were seen as objectives to be catered for within the strategy to be developed. This provided inclusivity of all interests and values and an equitable balancing of these, as each would have to be catered for (or maintained, retained or enhanced) to a 'satisfactory' level to those who promoted those interests and values.

* This approach was described as enabling an holistic or comprehensive and integrated approach to solving the problem/s and thus 'resolving' the conflict.

* Diverse objectives giving rise to an holistic approach, which in turn gave rise to a view of the problem to be solved that helped to turn the focus of protagonists towards collaborative problem solving and away from winning their predetermined preferred position. Participants had to work together to seek to find ways to accommodate all the interests within a solution.

* Taking into account diverse perspectives within this process was seen as accommodating these within the strategy. This required collaborative problem solving endeavour, which implies a balancing of influence (or power) within the process as it allowed interests and values to be considered as objectives to be catered for within the planning process.

* Participants described a relatively high level of personal comfort in the forum. That the forum was 'user friendly', was attributed in part to the professionalism of the facilitator, and by an ability of participants to communicate 'in their own way' as they were not constrained by rules or strict protocols.

* The development of a comprehensive information base which, through the shared undertaking of analysis and evaluation, came to be a common or agreed set of information, in terms of the 'group mind'. Participants knew where they agreed and where they didn't, and why.

* Participants were able to identify subjective features of analysis and this helped to reduce uncertainties surrounding the information informing the issues, as subjectivity described the relevance of perspective.

* This process used peer review consultants, who further enabled different perspectives on how to analyze the issues. That these expert parties were involved in critiquing analyses and commenting on issues reduced perceptions of partisan characteristics in critiques undertaken by interested parties.

* Peer review increased participants sense of the integrity of the process, as it removed some mistrust in the motives driving the generation of information.

Table 14 continues...

Table 14 continued...

* The shared undertaking and consequent common understanding, enabled a 'reframing' of the problem as it was viewed/described from several perspectives. These views facilitated an understanding that the planning problem was multi-dimensional and complex.

* This forum was conducive to problem *and* solution exploration and therefore also to a resolution that could effectively end the dispute, as it both encouraged and facilitated a wide evaluation of alternative, potential solutions as part of an overall strategy to address issues.

* Lateral thinking was fostered as people were encouraged to focus on interests and values and not on preferred positions.

* The forum recognized all interests and values and was shown to have taken these into account, as each interest group described being supported within the CRTWP's proposed strategy.

* The strategy was considered wider in scope than the LTDP (1988) as it catered for a more diverse range of interests and values.

* Participants understood the rationale for the strategy. That is, as a 'decision' its formulation was transparent.

* The process achieved considerable accord between protagonists, showing that the escalation of conflict had been prevented.

* Public participation had been effective, as the resultant strategy was described as having had a palpable affect on Council policy.

* Most parties accepted the outcome document in its entirety despite some having reservations over features of it.

* The use of this process was described as achieving on-going benefits for Council, including: improved management of the dispute context as confrontational debate subsided for the duration; public relations were improved as the community approved of the approach and applauded the initiative; a better informed/educated public was achieved and new communication links between sections of the community and Council were established; Council gathered a wider support base from the public (those organisations in the CRTWP) who agreed with 4 laning (of at least one section of the Avenue); the process generated a comprehensive information base which described and informed all the issues; this information was then in existence for use in later formal processes; the process had evaluated a wide range of options, which could also be demonstrated in later formal processes; an indirect benefit of the process from Council's perspective was that the main opposition to Council, Save the Avenue, lost its momentum as a political pressure group, for the duration of the process as its public profile diminished.

TABLE 15 SUMMARY OF ADDITIONAL EXPLANATIONS FOR THE BENEFITS AND STRENGTHS OF THIS ADR PROCESS.

* Participants had a direct influence on the process, with a consequent sense of ownership of the resultant strategy by most of the individuals involved, together with their constituencies (although there was an exception to the rule).

* The integrity of the independent facilitator in conducting a consensual process provided a sense of empowerment to all members.

* The independence and neutrality of the facilitator heightened perceptions on the integrity and fairness of the process. These characteristics were observed through perceptions of equitable or even-handed treatment of all participants.

* The forum acted to balance power or influence and thus also achieved a balance (within the problem solving process), between the values and interests brought by participants into consideration of the problem/s.

* A sense that the approach and its resultant strategy were equitable.

* Perceptions that Council as an organisation was committed to the process.

* A high level of committment by most participants in the process.

* All the interested parties were involved in setting up the process and in its design, as they were canvassed for views about how it ought to be set up, prior to the process being undertaken, and also debated features of the terms of reference.

* This process was an accessible process to all interested parties. Participants were not concerned about personal costs (even though it took considerable personal time). The length of time to initiate the process was not prohibitive to any party.

* The process was found to have had little fear and uncertainty surrounding participation as there was an expectation that something positive would result, along with the knowledge that formal processes were still available.

* Concerted efforts to inform the wider public about the planning process and hence also about the rationale for the CRTWP strategy, as an outcome of that process.

CHAPTER 12 PROBLEMS AND LIMITATIONS OF ADR PROCESSES

12.1 PROBLEMS AND LIMITATIONS OF ADR PROCESSES IN PRACTICE.

12.1.1 *Issues of representation in a consultative forum.*

The working party was not open to any member of the public or all interested 'parties'.[212] Most research participants indicated they supported their representatives.[213] The CRTWP process did not canvass wider constituencies directly, but disseminated information through the media and invited feedback. Consultation in this forum was essentially between the fourteen people active in the working party, plus the information providers to the group. The representatives in the CRTWP were not selected to represent a cross-section from the community,[214] but to represent stakeholders in the outcome. Besides the two key protagonists (Council and Save the Avenue), the other member organisations represented stakeholders on the basis these were the predominant *users* of the Avenue.[215] Some participants indicated they believed other 'interest groups' ought to have been included. For example, a Councillor suggested Fitzherbert Avenue residents needed to be canvassed directly, as he was aware of some who disagreed with the views expressed by CRTWP members who resided on the Avenue. Those members were not there officially as representatives of Avenue residents, but made some claim to knowing what residents interests and concerns were.[216]

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[212] Council sent letters inviting registrations of interest in participating in a working party, and a questionnaire canvassing views on establishing a working party, to approximately 75 organisations. Following receipt of these, through discussion with organisations, the group was restricted to 12 participants. Council invited key organisations and the Save the Avenue 'interest group' to nominate their representatives. These organisations were identified as 'stakeholders' in the outcome as they were the key users of the route together with the most vocal public opponent to Council's project, at that time. Any other individuals who wished to comment, within the CRTWP forum, were provided an opportunity to do so by the facilitator..

[213] One indicated they became disconcerted with their representation during the process, while some stated they never conferred with the views and stance of their 'representatives'. Checking back with constituencies during the process was at the discretion of individual representatives and no 'official' checks were made to ensure CRTWP members were accurately informing and/or representing their constituents. Council did make unofficial 'checks' on some representatives after the CRTWP concluded.

[214] The demographic make up of the CRTWP (including the 11 members, the two 'participants' and the facilitator) was: 12 male, 2 female. All were European. 2 were less than 40 years of age, 2 were between 40 and 50, 7 between 50 and 60 years, and 3 were over 60 years. Of the 14 people who signed the report all but one had tertiary qualifications, with 6 with PhD's and 3 with Masters degrees.

[215] The CRTWP included: 7 members from organisations whose constituents travel the route while getting to or carrying out their work, 2 Councillors and 2 Save the Avenue members, plus the facilitator.

[216] Similarly, 'Cook St residents' were identified as an interest group, as this was seen as a main alternative route to the Avenue. Again, there was an assumption that those members who resided on Cook St could represent any interests and concerns.

Other participants questioned why some user groups were invited, while others were not, for example cycling representatives were invited (by the facilitator) to participate as guests, rather than 'official members' and public transport users, motorbike users, pedestrians and so on, were not represented directly but were assumed to be represented by the organisations involved in the CRTWP.[217] The make up of the group led the Save the Avenue members to consider they were outsiders. However, the facilitator indicated all groups and any outstanding interests or views had ample opportunity to make themselves known and were able to contribute. Besides which, issues of majority rule are thought irrelevant in a consensual process, as all interests are sought to be catered for and thus *balanced* within the problem-solving forum.

> Facilitator "There were other parties affected by the outcome who to some extent it would have been desirable to involve, but on the other hand the time-frame and politics of it made it impossible... that is a limitation of the process when you have a stakeholder in the outcome who is not present in the working party... [However] during the process itself there was a concerted campaign... so there was wide dissemination of the fact that it was going on... so I knew that if any particular ginger groups felt left out that they would make it known to me... So, I felt really relaxed about that side of it. They had plenty of opportunity to become involved. Also, the participants names and phone numbers were advertised, so anyone could have contacted any member. We made a media release at the end of every meeting, as part of public awareness."

An agreement was reached in the first meeting that "representatives are expected to report to their respective groups and as far as possible involve them in accepting the outcome" (Minutes, 16/11/96). A two way information flow was intended between representatives and their constituents, to ensure that constituents were kept fully informed, and would therefore be 'carried along' with the process and would endorse its outcomes. It was also to ensure that representatives did have the mandate of those they represented, that they represented their interests accurately and took decisions on their behalf appropriately.[218] In ADR theory, checking back with constituencies ensures these are kept informed and also that representatives still have the mandate of their constituency. Such procedures are considered important to lesson the likelihood of some interests being neglected or of splinter-groups forming within interest groups, either of which could act to subvert any consensually agreed strategy (Crowfoot and Wondolleck, 1990).

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[217] For example by the University Students Association and Palmerston North Girls High School.

[218] Other issues related to representativeness of CRTWP members were suggested by participants. For example, several indicated they believed a particular representative was not acting in their constituents best interests in relation to this issue. They described opposing views expressed by the two branches of management within that member's organisation, only one of which was represented in the CRTWP. Some participants believed that representative made decisions based on a desire to facilitate the achievement of certain goals in relation to other interests, which were not disclosed to the CRTWP. These related to negotiations that party was undertaking with Council on other matters. As such these participants described a 'currying of favour' and a 'conflict of interest' for that member.

Following completion of the process, some Councillors raised concerns about how accurately some members of the CRTWP had represented their organisation. Issues included how well representatives kept their constituents informed and canvassed them in coming to conclusions and negotiating the strategy.[219] Those members described that they were able to withstand what they saw as a challenge to their representative status, as they did have the support of their executives.

Similarly, public participants questioned the representative *status* of the two Councillor members. While issues mentioned in relation to measuring Councillor representativeness and mandates, (particularly through elections) were too numerous to note here, it was evident that participants did have different perspectives about Councillor mandates (and about what elections indicated with regards these on individual issues and about 'public opinion'). The facilitator noted, "[w]e did have pretty good representation. The Council members represented the whole community, that's why they are elected. So they have an over-riding brief to represent the interests of the whole city, which is very healthy in that kind of process and the Councillors themselves were supported by the staff who were involved in the whole process and that's unusual in my experience, usually the officers deal with it and Councillors are not directly involved. So that was good."

12.1.2 *Issues of consultation with wider constituencies and mandate of representatives*

That issues of representativeness and mandates arose in this process was attributed to a lack of time between meetings for members to consult their constituencies and the wider public. All participants described considerable pressure to review information between meetings and also to conclude the process in the final meeting. "Since the basis of choosing between 3 and 4 laning only arose in the final 24 hours, there was no opportunity for members to consult with their groups over this" (Facilitator, Memo to Council, 2/05/95).

The facilitator expressed dissatisfaction at the challenges to representative status of members after the CRTWP concluded, stating, "To my mind it was hypocritical of people to criticise members for not keeping their members informed and at the same time being

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[219] Some CRTWP members described what they saw as an effort to undermine their status as representatives of their organisation, as key people in Council telephoned certain organisations to check that their representatives did have its mandate to express certain views and to take a particular stance. These participants indicated that such checks were made of CRTWP members opposed to 4 laning and not also of those in favour of 4 laning. This suggested to them that this was an effort to isolate their views from the large organisations they represented and to have them seen as the views of individuals. That these representatives did represent large organisations placed them in a difficult position, partly because those organisations 'management' structures were not set up as top-down hierarchies that could ensure the support of all constituents, rather they were set up with both top-down and bottom-up structures exerting a two-way influence within the organisation.

responsible for in fact making it impossible for them to keep them informed." He suggested it was the tight schedule of meetings and adherence to the 'deadline' that limited participants' ability to undertake wider consultation in this process. Council established the schedule of meetings and complied with the conclusion date for the process, despite problems emerging during the process. These issues indicated that a limitation of this ADR process was its omission to ensure the two way flow of information between CRTWP members and their constituencies. While members were carried along by the process, constituents were not kept as well informed as members and Council would have preferred. The facilitator indicated he did not believe members could keep their constituents on board with developments as they occurred during this process.

> Facilitator "Not in this particular process. For example at our second to last meeting we had brand new information, one day before our last meeting. How could people inform their respective groups. That's why I wrote to them [before the CRTWP began] saying, 'if you do not have all the information available by the end of January, it will not be possible to produce a quality consensual outcome... This wasn't the most critical information, but yes it affected an element of the outcome, so to that extent I think all the [CRTWP] members did their utmost to keep their groups informed of the process, but..."

12.1.3 *Problems informing the wider public and of transparency of the process.*

A participant referred to a "confidentiality muzzle" as an impediment to consultation not only with the wider public but with their own interest group. Several said that they were hindered in their ability to inform their constituency and attributed this, in part to the confidentiality agreement[220] and other 'ground rules' within the "*Terms of Reference*". Participants described some confusion as to how they were to inform their constituents given the tight schedule and ground rules, and came to believe they, as the 'fully informed representative', were responsible for assimilating *all* the information and *representing* their constituents interests to their best ability. As such, some participants did not act as intermediaries between the CRTWP and their constituencies (or confer closely with these), but acted on their behalf as they believed they fully understood their constituents interests and concerns. The proper *role* of CRTWP members, as representatives, therefore was variably perceived.

While officers indicated a benefit of the process was that it enabled the community to be

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[220] The Minutes of the first meeting of the CRTWP (16/11/94) records that "some of the information they would be working with would be confidential". All members were requested to "sign their acceptance of the Terms of Reference to acknowledge their responsibilities with regard to the Local Government Official Information and Meetings Act and other provisions." It is noted that the CRTWP agreed "that participants and observers sign their acceptance of the Terms of Reference", but also that "representatives are expected to report to their respective groups and as far as possible involve them in accepting the outcome." Further to that under "Media/Public Relations" it was agreed "That the Facilitator will issue any media releases and the [comminations advisor] will work closely with him in that regard", and "That if members spoke of any issues outside the [CRTWP] arena, it was from their own perspective and not in the capacity of a spokesperson for the Group."

personalised to them, public members were uncertain how far the process was shared with (or extended into) the wider community.

> Public "I don't know if the public are any happier to be quite honest. I think that for the people who were actually in the [CRTWP] it was a very beneficial exercise. I think everyone who was there learned from the process. It is a valid process."

Other research participants, who were not members of the CRTWP, did not appear to have shared the learning or educational experience to the extent members and observers of the process thought they had.

> Public "No, the [CRTWP] didn't really make me better informed about the whole issue, because the [first hearing] process had been very thorough. Not much new material came out that I saw."

Also, participants who were not members of the CRTWP, including some Councillors, did not describe feelings of understanding and empathy that members of the CRTWP described. Thus, it was indicated that some *key* benefits and strengths of the process were not successfully extended beyond those directly involved with the group.

Participants also had different views on whether the CRTWP had made the process, its conclusions, and the rationale for its strategy clear to the wider public. Some suggested it had, while others thought it had not. Some participants suggested the nature of that information disseminated to the public did not describe the different perspectives, but focused on the 'consensual process' (as an ADR forum) and on 'official' Council views on the issues. There was no test of whether the public had followed the process and received or understood the rationale for the CRTWP strategy.

> Public "The reasoning was only clear to those members of the public who were interested enough to read updates of progress in the media."

Other participants indicated information disseminated about the CRTWP strategy may not have clarified the rationales for the group's strategy, as these were not always easy to explain. Some participants suggested that the public received a restatement of positions rather than a comprehensive rationale for the entire CRTWP's strategy.

> Public "No [the reasoning was not clear]. It highlighted the division of opinions."

> Public "Doubtfully, it was really a restatement of positions."

A journalist observing and reporting this ADR process indicated it was more difficult to report than the formal forums, suggesting that formal processes are relatively easy to 'cover' as the process is clear and the outcome is well defined (formal processes "tend to produce a yes or no answer"). The dynamics within formal processes are relatively easy to follow, while the subtleties of group processes in the ADR forum

were more difficult to interpret. Also, disseminating information is only one half of informing the public. The individuals on the receiving end of publicity (information) must also be receptive to any information disseminated to them and take self-responsibility to *become* informed.

> Media "It is definitely the medias' role to inform... The fact that we had two [full time Council reporters] shows that we do put a lot of credibility on informing the public. But you can't make people read stories. If people choose not to. A lot of them, as soon as they see 'City Council', switch off. So we are occasionally accused of not informing people, but that is often by people who didn't read the story last week or the week before... You get to the stage when you think how many more times must you have to tell people things. So certainly we have a job to inform but we can only go so far, we can't actually make people read. We try to write stories and present newspapers that people will buy and read, but it doesn't always work."

> Councillor "Some people are not well informed despite what I would consider to be massive media coverage and flyers to letterboxes. A lot of the public didn't seem to be picking up on what was coming through the [CRTWP] forum. [Although] It was quite technical."

Participants suggested that full, balanced and objective reporting of information is necessary and that disparate abilities to disseminate information (including to access to the media) was an issue for some people wishing to inform the wider public. Criticisms of the reporting of alternative perspectives and information were addressed by the media research participant, who suggested such allegations are the views of subjective critics.[221]

> Media "I would like to think that we have been fair and balanced, but at the same time I know there are people out there who will say that we haven't. But the best judge of that, to my mind, is if you get people saying, 'you have taken their side', and if I get an even number of people accusing me of going to both sides, then I have probably done a fair job of putting it down the middle... There is certainly a barrage from people who are trying to get a message across. They are people who have learnt very quickly that there are ways of getting their point across in the media."

Some participants suggested that Council's intentions were not fully disclosed to the public and that the media had acted as gate-keeper of information provided to the wider public.

> Public "From a propaganda point of view I think they were reasonably successful... In the media, they say they want to 4 lane to Te Awe Awe, but they want to 4-lane the Ave all the way to Ferguson St. [Councillor] has told us that several times in the [CRTWP] or we would never have thought that at all, because it's not publicly stated. They wont say that in the media, but privately they say eventually they will 4-lane to Ferguson. That is why they are widening Ferguson St [and] removing the protection of the trees not just to Te Awe Awe St, but all along to Park Rd and the others weren't protected anyway. It is the thin edge of the wedge and gives them opportunity later... I mean we have written to the Editor [of the "*Manawatu Evening Standard*"] saying this but he will just not release that information to the public. It is considered unconfirmed and conspiracy theory I guess."

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[221] Several public participants indicated they believed the City's leading newspaper favoured the position promoted by Council and showed bias in its approach to reporting the issues to the public.

While there were problems in keeping constituencies and the public fully informed about what was transpiring within the CRTWP process, there were also problems in accurately canvassing public opinion. Participants had contrasting views (and 'evidence' to support their own views) on what was the general public opinion on various issues.[222] These issues highlight a problem in measuring the 'effectiveness' of efforts to inform, to engender public feedback and thus also to include the wider public, and also to gauge community opinions, strength of feeling about diverse interests or preferences of the majority (public will).

> Councillor The flyer went to every letterbox [*Did you get a lot of comment on it?*] No there wasn't. Mostly, they were saying, 'get on with it', 'I've been waiting 20 years and we're still jammed down the Ave. day in and day out', and, 'it takes half an hour to get there', 'do it'."
>
> Public "There were three factions again. Those very fervent in favour of the trees staying and very committed to it and there was obviously the radical part of that group, and then there was the group of people who wanted them removed, in my view they were a higher number of people than wanted them to stay and then there was a silent majority that didn't care either way."
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> Officer "A problem with EDR processes is that, primarily, the submissions you get to most things, whether hearings, working party or whatever, are from those who have a real axe to grind. You will get 95% of the community who will sit out there and let Council get on with it and with this issue there has been a very strong voice that the city does not want this. But frankly it is the protest group saying 'we' don't want it. Well, I get people who ring me and see me socially who say 'good on you, get on and get it done'. So it is those people who don't get heard in both processes. You very seldom get a hearing where a submission has come from the public supporting what we propose. It's not to say they don't support it, its just they say 'well Council is doing it and that's fine'. They think, why should I come along and say, 'well done Council, you are doing what we want you to do'. It's the people who don't want it done who submit and I think that is normal in most hearings. It is a bit of an anti-climax, you can sit there and think, 'have we got this completely wrong?' Everybody seems to be against us, but then you get out into the community and you find lots of people are really happy with what you are doing. [*So is it difficult for Council to gauge the level of support?*] Well it is, any questionnaires or surveys we put out on a whole range of issues - if we get a 5-8% return we are over the moon, and that's... well what is it, apathy or confidence in what we are doing. I don't know, what does an 8% return on a survey tell you really."

12.1.4 *Perceptions of having to validate interests and views*

Most participants indicated they believed their views were respected and considered

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[222] Regardless of recognised problems informing and canvassing the wider public opinion, participants did offer views about what that 'public opinion' was. They were able to say what they were led to believe the majority of 'the wider public' wanted. For example, the results of elections were said to have shown a mandate on this issue, by some Council participants, which was refuted by some public participants. It was evident in participants' comments that they believed the view *they promoted* was more commonly held by the wider public (supported by the majority). They had gathered that through communicating with others. An explanation for the conviction by which individuals stood by their personal views was that they felt supported by others in their stance. Each side described how the majority supported their view. How individuals can arrive at such an impression is described in theory about 'communication', 'group' dynamics and processes. While too extensive to describe here, theory does indicate that individuals filter and interpret messages conveyed by others and exercise 'selective' memory in formulating a perspective, which tends to reinforce their predetermined worldview.

important by others in the CRTWP. However, some participants did differentiate between how valid or worthy different views and interests were.

> Councillor "By most [members], as I respected theirs in return."
>
> Public "There was a respecting of views, but they had to be justified."
>
> Public "Issues were given the hearing and merit deserved."
>
> Public "Save the Ave's views were considered a little weird or not as important as others. Certainly not by the Council - they were less important than traffic engineering problems."

Reflecting this, some participants described that they had to prove the importance of their views, and the validity of their interests and values.

> Public "It took a while to be taken seriously. Perhaps it was because I was by far the youngest member of the [CRTWP]. Yes I had to prove importance."
>
> Public "Nothing was respected or considered important because we said it. We were the outsiders. We had to work very hard to influence any of the other players."
>
> Public "We were treated as tree-huggers and all that sort of thing. Our opponent often accused us of being overly sentimental about silly old trees. So we did have to spend some time trying to convince people to look at the problem differently and having to explain our reasoning."
>
> Public "In general, I believe my views were respected. However, I was unable to convince the PNCC or traffic engineers on... [the merits of certain options]."

12.1.5 *Issues of transparency in the ranking of interests within the process*

Some participants suggested that interests and values were not regarded equally important within the process. They believed some interests and values were either not defined explicitly as objectives to be catered for, while others were ranked, weighted or considered variably important within the process. The name of the working party was said to have indicated a ranking of interests and highlighted the way the problem had been framed for the CRTWP.

> Public "They [my interests] were catered for in one sense under the term amenity value, but amenity value was considered secondary." [*so you thought your interests were ranked against others?*] "Yes, in Council's mind" [*Did the CRTWP have that kind of ranking*?] "Yes, I think they did, again in the CRTWP, if you look at the definition of the working party which is cross river transportation. It ranks it, it's there to solve transportation issues, its whole focus was transport, so you are fitting everything else around that and it wasn't to examine other options to Fitzherbert Avenue."

Concern about whether all interests were acknowledged within the CRTWP, and any weighting or ranking of interests, was also indicated by participants who suggested funding concerns were a strong influence on the stance taken on some issues and options, but that the influence of that interest was not clearly stated. These participants indicated that

determining *spending 'priorities'* are *political issues* and suggested economic issues were not disclosed fully or discussed within the CRTWP or in its report. For example, participants described the City Manager had addressed the CRTWP (in the last meeting) and stressed that economic constraints *precluded* another bridge in the near future. However the CRTWP considered that the community needed and wanted "a second bridge *now*". While the CRTWP recommended a second near bridge to address traffic problems (and dispute) in the Avenue, 'Council' viewed such a bridge as an economic impossibility or as unviable, but that was not stated within the report.

Other participants indicated it was impossible to resolve some issues, until all the relevant economic analysis was available, which it was not. For example, a participant suggested that economic analysis on different types of river crossing[223] ought to inform selection of a bridge, which ought to precede determining where it should be sited. Those issues were not resolved within the CRTWP. The CRTWP therefore, did not clarify all the issues surrounding 'cross-river-transportation' within their final report.

> Public "Well [all views] were certainly heard. I think Council is still very driven by their budgetary concerns. At the last meeting, the City Manager made a very strong plea - and it was actually reported in the paper - [He] indicated he felt the city would only ever be able to afford one bridge in the near future simply because of the other budgetary demands that are coming up. So it had better be in a place that would serve long term growth. So the idea of one bridge rather than two was heavily pushed by Council for budgetary reasons. But I am sure there are other political reasons underneath that."

These issues were related to diverse perspectives about how comprehensive and integrated the CRTWP considerations and report were. While the CRTWP *forum* was said to have addressed issues comprehensively, participants suggested that having to validate their views indicated that others had taken blinkered, segmented or partial views on the problem. Some participants were described as having lost sight of "the big picture" and on how issues interconnected, depending on their personal focus. An issue for this process was whether *all* participants were taking an holistic view of the environment and an integrated approach to addressing the problems, or approached the problem and its solution in a piecemeal fashion. This criticism was made by participants from all groups.

> Public "I think what they [Council] wanted to do and they have done this effectively with the change to the [TDP] is to do it piecemeal, say we will get rid of this section of trees here. Its the first step in a long process and if the [CRTWP] can agree to that, they could say, 'well we have been through the consultative process and the [CRTWP] agreed to it'."

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[223] Some had suggested a light commuter bridge was all that was required and thought such a bridge could be built relatively quickly and cheaply. Another option was a weir. The type of 'crossing' required as well as how much it would cost, and also where it could be built remained contentious.

Councillor "They [public] often have a segment view, which in jigsaw puzzle terms just does not fit the whole picture."

12.1.6 *Different views as to whether 'the problem' was well defined or of sufficient scope, and also about the nature of the problem to be addressed.*

There was a lack of agreement as to exactly what was encompassed within the *official* problem definition, and a lack of agreement as to exactly what was the appropriate scope of the problem. Some participants suggested the problem was not well defined or of sufficient scope. Others that the problem definition was accurate and the brief wide enough to address the sources of problems and not just the symptoms. Some participants implied the scope of the problem had been widened conceptually within the process. A further group, indicated that the problem definition and scope itself was not really the issue, it was how it was variably interpreted during application that was an issue for this process. Diverse perspectives on whether the problem was well defined are presented in Table 16.

TABLE 16 WAS THE PROBLEM WELL DEFINED AND OF SUFFICIENT SCOPE?

Participants indicating the problem was not well defined or of sufficient scope.

Councillor "The Terms of Reference were set up to fit the 1988 proposal. The definition of the problem and the approach to solving it was not able to include all the variables and that is a frustration, because they wouldn't include those items in the calculations."

Public "I think the problem definition has been flawed from day one, because it has been based around an expedient scenario, rather than defining the problem and solving it and saying OK this is the problem, here are our options.

Consultant "I don't think the city ever took the sort of a view of the problem as to what sort of city they wanted. As I say, it was a reactive solution to an immediate problem and tied back to the history which linked it to NRB funding and a number of things which focused traffic on that route."

Public "The problem wasn't defined at all really, which is what allowed us to wander off and say whatever about anything else. In some cases we looked at rather specific issues, at times we got overall broad. [Then] overall broadness was put to one side and we would discuss some little issue at great length and then during that, someone would jump in and say what about the overall blah, blah, blah, so in some ways perhaps it was a lack of direction we had."

Public "That's one of the core problems that has been in the whole debate, in that the Council have seen it very narrowly as a roading issue and within roading they have seen it in a narrow approach to roading and there are other approaches to roading and there are wider issues and you could see that when you heard the different sides. They were talking in different areas, so they were not really communicating with each other... I think they were working on solving the problem [of CRT] but there were constraints put on them about how far they could consider it and about how specific they were allowed to be in their recommendations - so only general recommendations were allowed and these are open to interpretation."

Public "Really the problem the Council don't want to hear about is its nothing to do with 4-laning the bridge or Ave, it is really about the whole traffic design layout right through the city and all the traffic flows are all wrong. Traffic is channelled to come into or cross Fitzherbert Avenue."

Table 16 continues...

Table 16 continued...

Public "I think they focused on a symptom and through the process I think we got much closer to identifying the source of that. The problem that was creating the symptoms. I think that was a very valuable part of the CRTWP. We got closer to identifying and talking about it, but Council still hasn't admitted that... Because the brief for the [CRTWP] was constrained to a focus on symptoms... I think the Councillors simply said, 'we have got more cars on the Ave than we can handle with the present road configuration. We must change the road configuration', and without too much thinking about why all the cars were concentrated on the Ave, about what alternatives to that concentration might be. In other words, they carried on with their policy of concentrating traffic rather than dispersing it and I think the problem was never really that simple. You can manage by creating more facilities or you can manage by reducing the traffic, by encouraging people to cycle, to use public transport, to car-pool, to use alternative routes and so on and so on... We simply argued that the trees are symptoms of the problem. The problem isn't just traffic jams on the Ave. It's not that the Ave is too narrow because the trees are there. The problem is the transportation policy which has led to this and so once again we tend to, well we have always recognised that the trees conflict is symptomatic of something much deeper. But certainly the trees have values of their own which made it reasonably easy to gather some public support for their protection. We actually don't argue that the trees should be protected. We argue that the Ave effect, that the trees represent, that's what has to be protected. There is a subtle difference."

Participants indicating the problem was well enough defined to address the issues or was widened 'conceptually' within the process.

Facilitator "The case was specifically a dispute, but the scope of the [CRTWP] wasn't limited to the specifics of the dispute."

Officer "The role was to, by facilitated process, try to identify solutions to CRT problems. It was a conflict resolution process, but, I understood the brief to be wider than the conflict over [the] Ave. So it was also - and conflict resolution was the essential ingredient because you wouldn't have had a working party otherwise - a public participation process with stakeholder groups represented to look longer term at transportation issues across the river. I think that's quite important... that you not only perceive it as set up to resolve the conflict of the Avenue, but it's brief was wider and a longer term view. [*So, in order to get past what may be seen as the conflict over the Ave, they took a broader view to begin with and those other things would fall out or be resolved as the wider problem was considered?*] "Yes"

Public "It was wide enough, in other words it wasn't specific. So it was wide enough to encompass anything and it was specifically documented that we were to consider long term planning and future bridge sites and other impacts not necessarily involving the Ave. [A new bridge] was certainly discussed at the meetings. It would probably be a fair comment that [CRTWP] did focus on the Ave, but that's not to say we didn't discuss all those other issues, at length in fact. It needed to be brought back to specific, I suppose 'crossings' but the brief was wider than that one crossing. So I think that might have been the perception when everything came to a conclusion. After doing all the evaluation and investigation that they had to be brought back to that one location."

Public "I think the recommendations reflect that the brief was widened to consider all the issues. I think the problem was very well defined. It was to improve CRT by whatever means and the CRTWP did look at various options for how that could be done, but in the end it came back to trying to solve a traffic problem and you either do that by doing something with existing flows or creating new flows."

Councillor [*Considering the debate about the scope of the problem do you think it could it have been framed differently?]* "No way."

Councillor [*Did you feel the problem was well defined or of sufficient scope?*] "yes"

Table 16 continues...

Table 16 continued...

Public "The problem is you have these environmental impacts, but what you do is you make sure they are as minimal as they possibly can be and can they be tolerated in order to get the good thing from the development. But the problem is once you have decided to 4-lane the impacts can hardly be softened. I mean you lose something, you change the character of the Ave and you have got to be able to say, 'yes, that is a good thing' or 'no, it isn't', and there are two opposed views."

Officer "I think it's brief widened to look at all CRT matters, not only relating to Fitzherbert Avenue, but it was the Avenue that instigated the need for the CRTWP."

Participants indicating the 'issue' was not one of how the problem was defined but its variable interpretation by different participants.

Officer "I think I was probably satisfied from the point of view that there were '*Terms of Reference*' for the group and they were relatively tight. But *perhaps what didn't occur to the same degree was actually getting people to agree to those 'Terms of Reference' from the beginning and that there was a sense of fighting them and I think people wanted to widen the issue out to bigger things* - it was a bit like the information overload one for me - You could keep on doing that and *I think for me, there was a clear purpose for the group, whether everybody had the same understanding of that and acceptance of it and was then prepared to work through it was another matter.*"

Public "I don't think the problems scope was too narrow. We would have just had been taking on too much. That is the attitude some of us, not necessarily had, but we couldn't get into all this other stuff and it is not really a site specific issue, even though it seems like one, as everyone thinks Fitzherbert Ave. It is too complex just to be site specific... I don't think we really, in the end, had tackled the question of 'what is the problem?' The actual problem definition supposedly was how to improve the flow of traffic, goods and services across the river. *The problem is... the concept of the issue is what really is the problem in the current situation, and what is the level of idealness to bring it up to.* Different people had different - and I struggled with this personally most of the time throughout the CRTWP - a lot of stuff I saw as 'hey that's not a problem' and other people said, 'yes it is a problem'... I came from a completely different viewpoint to the issue than say the Roading Manager. Their concept of what is good movement of traffic and what is best and things like that is quite different to my own." [*so perspectives on the problem were different within the CRTWP*] "Yeah, but we didn't really get down to defining the problem properly."

Consequently the process involved taking time to debate how to appropriately define, scope or frame 'the problem', even though members had signed the "*Terms of Reference*" in the first meeting. While participants had 'agreed' to the "*Terms of Reference*" in that they signed it, they had not come to a common understanding about what they meant. Within this process, defining the problem, its scope and thus identifying any constraints on possible solutions, were part of the process, not a precursor to it. These comments highlight the relevance of advice provided by the PCE's Office to Council (undated, MI) that

"PROBLEM DEFINITION is an *essential precursor to finalising terms of reference*".[224] The range of interpretations of the problem indicated that some participants attempted to take a view of the problem similar to the definition provided by the PCE's Office (refer to footnote 126). While some did think the CRTWP's definition could cater for wide interpretations, others thought it did not.

Participants also had different interpretations as to what the problem's focus was, that the CRTWP was to address. Some saw they were solving problems in terms of traffic congestion and delay in the Avenue, others in terms of crossing the river more generally, others in catering for a range of interests, and one in terms of a problem of processing information. In response to the question "What was the problem the CRTWP worked on?", participants replied,

> Councillor "The traffic flow across the bridge by way of the Fitzherbert corridor."
>
> Councillor "Improving the safety and drastically reducing the delay to cross river traffic movement, while at the same time retaining environmental values of the Avenue by a programme of tree planting... I was one of the ones who insisted it be called the 'Cross-River-Transportation' Working Party, because that is the issue. That is the wider issue rather than whether you are going to 4 lane the Avenue or the bridge. They are part of it."
>
> Public "To 4 lane the Avenue and relieve congestion the Council needed support from action groups and parties affected, therefore reducing objections when the new district plan was released, i.e. removal of trees from the Ave."
>
> Public "The problem was to find an alternative to the problems travellers face when trying to cross the Manawatu river while leaving/entering the City. Tidal peak traffic flows exceed the present road and bridge capacity of 2,000 vehicles per hour."
>
> Public "The terms of reference came from the Council itself, as they are obliged to do of course... One of the biggest problems was that while we knew what the problem was generally, we couldn't put bounds on it because it implicated so many other factors. It was such a complex issue that you couldn't just talk about the Ave. We wanted to talk about this whole area of the City. But the Councillors didn't want to talk about the City they wanted to talk about the Ave. Well, one of the problems was when we first came to discuss problems, somebody would start from the outlying area as a problem and then everyone would chip in about all the other flow on effects if that occurs... There was a lack of definition of the problem area or spatial context we were working with... Council wants to use 'existing' roadway more efficiently, effectively. People wanted continued protection of a major city amenity. How best to meet needs of commuters to Massey etc, while having a continued amenity."
>
> Public "Many resources. Consulting engineers, PNCC statistics and traffic reports, environmental opinions from various sources, public submissions, both to the CRTWP

[224] They also illustrate the relevance of the problem definition the PCE's Office provided as an example, "How to move people and goods *while maintaining or improving the quality of life in communities and the quality of the environment*" (MI) when compared to the CRTWP's problem definition: "The current level of service for cross river transportation offered by the City of Palmerston North is not meeting the needs and expectations of users" in hand with the goal of the CRTWP, "to find acceptable means of improving the movement of people and goods across the Manawatu River".

directly and to individual members, personal observations of the situation by individual CRTWP members."

The diverse emphases evident in these views indicate an explanation for problems in the CRTWP was a difficulty in maintaining a distinction between personal objectives (subjective interests) and the forums objectives (catering to the range of interests and values). Participants' highlighted their own interests and values and therefore focused on options which each believed would best cater for their interests. These preferred positions, were seen as 'mutually exclusive'. Promoting positions, rather than interests and values to be catered for, had the effect of casting the *diverse interests* as mutually exclusive. The most obvious examples of a difficulty in distinguishing between interests and preferred options, were provided by research participants who were not members of the CRTWP.

Public "Well, that [dispute] would obviously polarize opinions straight off, people are either for the trees or for 4 laning. [*Is there a way the debate could have been examined that could have avoided that mutually exclusive clash*?] "Of course there was. 3 laning achieves the same objectives as 4 laning in terms of traffic flows. You do not need 2 lanes for traffic in both directions all the time, you only need one extra lane in one direction at opposite sides at alternate ends of the working day. So they could have retained the trees and had the same benefits to traffic flow. I suppose in a way that is why I am still licking my wounds, because that is the sensible solution and we were behind that."

Media "There has been such clearly defined fors and againsts. It is one of those, I feel, that could never have been resolved, simply because the two factions were so far apart it is almost impossible to reach a compromise. I don't know if any consultation process, if it had started earlier than it did, if it would have made any difference. For instance last year when the trees were about to come down, people were saying, 'but we weren't consulted', but the process had gone on so long! I asked [an officer] about this and he said, 'well, we just did so much consultation, how much more can you do,' and I think that is probably fair comment."

12.1.7 *Different views on the purpose of the CRTWP, indicating it was not clear.*

That participants agreed on the *role* of the working party was identified as contributing to certain benefits and strengths of this process. However, participants had different perspectives on what the *purpose* of the CRTWP was. Complimentary purposes were identified. One was the 'stated' purpose as a collaborative problem solving forum, another was an unstated purpose to control or manage the conflict (as it was good public relations), another was that it was to promote Council's LTDP to the wider public.

Public "[The CRTWP's purpose was] To alleviate public and pressure group objections to the widening of Fitzherbert Avenue."

Public "It was a good idea, to try to improve their image, from their point of view."

Public "I thought the [CRTWP] would mean more informed people who would make better decisions. But, I think the Council thought it needed to show the community that their option was the only viable one, to smooth future legal requirements. That was their motive in having the [CRTWP], because [this] is a controversial issue."

> Public "After loosing in court the alternatives were politically risky. Perhaps they felt there was every chance that we would better understand their position and accept their plan via this process. I think their purpose was to try to move their policy, of 4 laning the Ave, forward. They saw it as one way, the best way, of moving forward with implementing that policy."
>
> Public "To obtain tacit approval for the 4 laning of [the] Ave through a perceived public consultation working party with some recognised standing. Council was in a bind, their resource consent application had been declined. They were really stuck. They had a strategy that they really couldn't implement. They had options... [ME] or, they could go back to a community through some sort of consultative process and get them to support what Council wanted to do."
>
> Public "To have a range of options. To have people coming away from it more informed so, in some ways they could dispel a lot of the myths and conflict. However, they came to the table with a set of cards up their sleeves. They had already decided what they were going to do."

The media research participant stated, "Certainly it contained elements of PR, very much so and purely, just as an observation - seeing the reactions that were going on in the community at the time." Some participants suggested that the CRTWP was as much an exercise in conflict management as in problem solving.[225]

The use of this process was suggested to have had ramifications for Save the Avenue, as the sole 'public interest group' involved in the process. As the public conflict quietened during the duration of the CRTWP, Save the Avenues momentum in gathering 'strength in numbers' was halted and its public support wanned.[226] Presumably the wider public believed a consensual strategy was being developed through the CRTWP and that strategy would be adopted by Council, as that was what reports indicated through mailouts and in the media. That such an effect on 'political pressure groups' could occur is implied in EDR

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[225] Participants indicated that feature of the process was successful, in that the state of conflict all but vanished from the public arena, as conflict behaviour dissipated, for the duration of the CRTWP

[226] It was evident that this approach did remove the conflict from the public arena. The sole public 'political pressure group' involved in the process, Save the Avenue, derived any power of influence it had from its public support. Most of this support occurred as a "groundswell" during the intense phases of public debate. During the duration of the CRTWP, such support became less obvious, as Save the Avenue and the state of conflict, faded from media attention. An implication of involvement in this process was that this group did loose momentum in securing a stronger public support base. The public was informed that all the interested parties were involved in a collaborative problem solving process, that would develop a solution that would resolve the conflict. Therefore, this process not only ameliorated the public dispute as it practically eliminated conflict behaviour, it also dissipated public opposition in the form of public support of Save the Avenue. This was identified as an issue for that interest group, as, not long after the conclusion of the CRTWP process, the PDP was notified which contained features which they saw as a threat to the CRTWP strategy. When conflict resurfaced, as the formal consultation processes were initiated, it was more difficult for Save the Avenue to *demonstrate* strong public opposition. Participants from all groups indicated that the wider public apparently did not understand what had happened to the CRTWP strategy, and why Save the Avenue was again in dispute with Council. Save the Avenue participants indicated that the interest group was caste in a poorer light, (as a temperamental and disruptive minority rather than a strong political force of concerned citizens), as, simultaneous to notification of the PDP parts of the CRTWP were being promoted as Council's intended strategy.

literature, for example Chapple (1993, MI), in advising public interest groups involved in advocacy or a conflict, suggests "[y]ou must decide whether to deal with an issue through public debate, resource management procedures or through lobbying. You can't really do all three simultaneously. Remember that *political action is often more successful than the use of legal systems.*" Public protest and overt conflict is beneficial for political interest groups, in the sense that it gets media attention and builds their support base, from which they derive their power to influence decision makers. Chapple (1993, MI) also notes that parties in a conflict "can motivate your community by establishing good public relations and supplying information. *Give the issue a high public profile by making the facts and your views available to the media.*" For the duration of the CRTWP, information was supplied to the media by the facilitator and the communications advisor and this focused on the process, not on individual views or interpretations of information. With the re-emergence of *public* conflict, with notification of the PDP, opponents indicated it was difficult to convey the complex issues and what was happening with the CRTWP strategy, through the media. Despite a perspective that this ADR approach *intended* to achieve such effects, and also divergent perspectives about exactly what was the 'primary' purpose of the CRTWP, most participants indicated that the purpose *was* made clear, in the "*Terms of Reference*".

> Councillor "Yes, by setting out a 'terms of reference' for the CRTWP and by giving the facilitator a detailed brief to work to."
>
> Public "Reasonably clear as we all worked through the Terms of Reference. But it became clearer as issues/time progressed."
>
> Councillor "The terms of reference were circulated and members signed a contract."
>
> Public "No the purpose was not clear. PNCC attempted to sanitize the process by professing an open agenda and non-partisan facilitator. I think their agenda was to get the working party to ratify what they wanted to do and so it was really a mechanism, whereby, 'we win, and we don't lose' approach by Council. At the end of the day, it was quite clear that their agenda was to 4 lane the Ave and remove the trees. I just didn't see how Save the Ave was going to agree to that, they offered the 3 lane compromise and Council refused to agree to that."

Participants comments about the "*Terms of Reference*" suggested that some fundamental features of these terms (making up the CRTWP's brief), were open to interpretation. There was debate, for example, about the extent to which the focus should be on traffic problems in the Avenue, and about whether considering a second bridge was within the CRTWP's brief. As an explanation for limitations of the process therefore, some participants felt the CRTWP was constrained in its problem solving endeavour due to 'control' of the process, provided by the "*Terms of Reference*". Participants variably interpreted the scope and nature of these constraints, as they applied to defining the problem, and influenced the range of potential options to be considered, among other things.

> Public "The Council refused to discuss the idea of the group considering a second bridge. They said that was long term and was not part of the brief and there was no way that this CRTWP should be discussing that... So there were quite a few meetings where we continued to hammer that point - that we are looking at symptoms, unless we go back to the problems, we were not going to get anywhere... The problem was CRT but one group was called Save the Avenue, where do words like aesthetic, cultural, historic values equate with a traffic problem. We use those sorts of words in saying, 'you should not cut down the trees,' but it goes back to the original thing where the Councillors saw the trees as a problem to improving another problem."

> Public "If you look at the definition of the working party which is CRT. It ranks it. Its there to solve transportation issues. Its whole focus was transportation issues, so you are fitting everything else around that and it wasn't to examine other options to the Ave, even though the brief was to define how long term CRT issues could be solved."

Some participants indicated it ought to have been a role of the CRTWP to define the problem it was working on. They described that Council had identified part of the problem, but following that, participants reinterpreted it as they identified interests to be catered for. The group, in effect, 'reframed' the nature of the problem to be solved.

> Public "It should be the role of the working party to define the problem, because you have these community groups who have different perspectives on the issue and they see things in a different way to the Council. The first step should be to get everyone to describe what they think the problem is or issues are - then to define objectives. The terms of reference must be set out properly too - by the working party or in agreement with the working party so they can take ownership of them."

> Public "The CRTWP started out with the facilitator trying to ask for information about what you think we are trying to solve and how do you think we could solve it and trying to widen it, despite the fact the Council actually complained to him afterwards."

However other participants did not think the problem was reframed as they thought the group was not able to change the brief established for the group.

> Public "I don't think the mediator was in a position to accept a change in the brief. He was hired for a particular purpose on a particular brief and he really had to try to narrow it in and keep the focus on that."

An explanation for problems within the process was traced to indications that the CRTWP did not establish and agree to an all inclusive set of *objectives*, to act as criteria by which to measure the level of attainment of values and interests while evaluating options and deriving a strategy. This is concluded through consideration of participants' responses to questions about the objectives (and criteria) to evaluate options and generate agreement or an optimal strategy, and whether these were made clear within the group. Participants believed the objectives were given in either the "*Terms of Reference*" at the beginning of the process or in the "*CRTWP Final Report*" presented to Council. However, no such list of objectives (consensually agreed or otherwise), catering to the diverse interests and

values under consideration, appears in either of those documents.[227] What does appear in the minutes of the first meeting of the CRTWP, under the heading "Criteria for Outcomes", is an indicative scoping of interests rather than an agreed set of objectives (or criteria by which to measure their attainment).[228] In response to the questions, "Do you recall what objectives were established by the CRTWP to evaluate options and generate an optimal solution and were these made clear within the group?" participants said:

> Councillor "At the first workshop, [in October, to discuss the CRTWP] people came in and said 'we want this', 'we want this', others just said they were there to listen, which is what I said... They were discussed at the beginning."
>
> Councillor "No, I don't think there was a formal list drawn up. In an informal way, things were said about what each wanted.. Within the '*Terms of Reference*', set down by the Council, those various issues were canvassed and where more information was needed it was obtained"... [*so were there specific objectives?*] "Oh yes, they are written in the [CRTWP] report."
>
> Public "Well the objectives were obviously stated at the beginning. The facilitator was there to make sure that it was an independently driven working party rather than a Council driven one. The objective was obviously to come to a recommendation to Council on solving the traffic problems across the Manawatu River [*wasn't that the purpose of the process*?]... I don't think, we did [develop a set of objectives] certainly

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[227] Some participants referred again to the objectives of the process rather than the objectives for deriving and assessing an optimal solution.

[228] The "*Terms of Reference*" (ME) state under the heading that "the brief of the working party will be to... d) Develop criteria to evaluate any options. e) Develop, investigate and evaluate options (including the Council's current strategy) which will: Solve the CRT problems, taking into account, short and medium term CRT needs and current and long term growth options identified in previous Council research." The "*Terms of Reference*" do not identify any criteria by which any solution/s can be evaluated to measure if it solved the (as yet unqualified) problems or if it achieved the (as yet unidentified) objectives. The nature of e) in the brief, in hand with d) indicates that the working party were to formulate these objectives by which to evaluate options. In line with that, prior to the first meeting of the CRTWP (16/11/94) members were advised in a memo dated 20/10/94, (MI) that the facilitator intended that meeting would consider "a) the process, including the draft Terms of Reference and related matters. b) *Their most important needs or criteria so we can identify issues that will need to be canvassed.* c) The possible options (or their components) for an outcome. d) Any further information and/or technical studies that might be required."

The minutes of the first CRTWP meeting (16/10/94) show that participants did brainstorm to "open up the issues" and a list of "Criteria for Outcome" is recorded in the minutes, as follows: To serve future City development - City including Aokautere, Massey, Linton, Science Centres; Efficient system; Minimise delays; Be user friendly; Be safe at all times for: cyclists, pedestrians (including children/students), vehicles, motor cyclists, people who live there; Provide parking/access for: residents and visitors, motels and businesses, student drop-off and pick-up [girls high school]; Utilize existing facilities (and extend or supplement); Robust system, including for; contingencies, natural disasters, alternative routes, civil defence, emergency; Aesthetics, including visual; Environment: avoid pollution, heritage values, cultural values, quality of river; Be policed." It is evident that such a list was indicative only as what each actually means is not defined so that could, in fact, act as criteria against which any levels of attainment, with regards each, could be measured. It is not indicated whether any ranking or weighting was to be applied or if each was considered equally important. That is, they are open to variable interpretation and application. It is evident that this brainstorming exercise was intended as a quick scoping of interests in the group that would be further developed throughout the process. No mention is made of economic objectives, besides a reference to efficiency which could be interpreted to include cost issues.

as individuals... I think that was very much covered by the brief anyway. There was great debate about the brief. There was a Council brief and then it was slightly added to by discussion. So I think that was very much outlined at that stage".[229]

Public "I think they developed their objectives within the framework they were given. They were told what they were working within. They were told they weren't allowed to expand outside of this, so even if they felt, what they found out, they should really look at this area over here, they were told they shouldn't because that wasn't what was in their original brief and they were controlled in that way. As for actually evaluating it, they discussed on various occasions whether they should have some sort of success matrix to work out if they were winning, but there was disagreement amongst the group about the value of these [matrices] or which way you should do it, so they ended up not really doing it."

Public "I don't think it was discussed sufficiently within the CRTWP itself. I think there is a view that the people arguing for Save the Avenue are really 'out of their trees' sort of. I mean the Council's view is that if you plant new trees you can solve that problem. You might have to wait 20 years for it to happen, but it will be resolved. There are others who obviously felt very strongly that the Ave is distinctive and they should retain its character. There is also the view that came from people who felt that 4-laning would divide the city in two effectively. You see, when the CRTWP came together, they were really looking to solve what was perceived to be a CRT problem, but some of the people who joined the group raised other issues such as pedestrian and cycle safety, wheelchair access etc, which are quite valid, but they provide a whole different perspective on what the Council had been trying to do."

12.1.8 *Diverse views about the timeframes to apply to the issues.*

There were variable perspectives on the appropriate *timeframe* to apply to analysis of the problem, and for implementing management responses. While traffic problems were able to be described within a precise timeframe, participants' indicated that analytical time references were adjusted, depending on the aspect under consideration.

Public "The traffic problem is very specific... you can isolate it, you can box it. Your've got times of the day, everyday for five days of the week when this problem occurs. It doesn't occur all the time or intermittently throughout the day. It is a problem related to peoples' journeys to and from work and that's how it should be solved, to my way of thinking, rather than pulling in the 2020 picture which is what the Council's determination has been to do. I would have said, 'let's solve it in the shorter framework', as the problem... because my view of urban, of non Auckland, Wellington, NZ, is very different [to Council's]. They believe they're going to grow. I believe provincial NZ is going to shrink. So making projections of what the population of Linton is going to be in 2020 is really kite-flying. The proposal for a new bridge is considered long term and is related to urban growth in Linton, but that is not going to help solve the immediate problem. That is the nub of the matter. What you are trying to do is to define the problem to another set of rules. The problem is very definable and it requires a very defined solution too."

Public "Sustainability as far as the Council was concerned is defined in terms of catering to traffic growth to a 20 year time horizon. If they assume the same growth [past 20 years] then they will need to concrete over the entire river. If you stop at 10 years then you don't need to 4-lane the bridge, you don't need any more bridges, you could get by with better traffic management. If you stop at 40 years then their

[229] This participant also said, "It certainly wasn't for the [new bridge site working party], it was very much, 'this is the objective from the Council's point of view', and it had to fit within that objective" indicating the CRTWP, to his mind, was able to influence the setting of objectives.

approach is not sustainable. They just chose a time horizon which defined what they wanted to do. The problem was described in a way that they came to the conclusion they did. They did the same thing with the new bridge siting. I believe the issue of design and type wanted should have been chosen prior to selecting a site to match their chosen growth scenario. That conclusion was to support people in Council who seem to me to be obsessed with cutting down the trees in the Ave. In the end you can't come to any other conclusion. We put forward alternatives to their 4 lane design in the Avenue without cutting the trees down, but these have been ignored."

12.1.9 *Issues relating to negotiations.*

Some participants indicated the CRTWP enabled reasonable negotiation between competing views, while others thought it had not. This contrast was linked to comments which identified reluctance by two key interest groups to deviate from their respective *preferred positions*. This suggests that some interests and values may have been seen as 'non-negotiable'. A component of the CRTWP strategy became a choice between 3 or 4 laning one section of the Avenue. These choices were seen as posing a threat to each sides interests/values respectively. As such, some participants were not prepared to concede to the other sides preferred option, regardless of how well their interests appeared to others to be catered for within the rest of the strategy.[230]

Public "The process allowed reasonable negotiations between the parties. Most issues, viewpoints were given a good hearing and debated to conclusion."

Public "There was the problem of inflexibility of some members."

Public "I am not sure that negotiations were on the agenda. Certainly all the discussion was undertaken in a moderate and cooperative environment."

Councillor "Not entirely, it was clear that strongly held views were retained and threats to try and prevent the majority recommendation were made and have been repeated."

Councillor "People had non-negotiable demands that simply could not be met and they came with that agenda in mind and they never were going to move."

Public "Negotiations were one-sided as there was an inability of Council to compromise. Save the Ave made a compromise offer which became recorded as their accepted position, while Council made no counter compromise offer and their original position remained."

Public "I think although the Council did have a very fixed predetermined outcome in mind - new ideas did come to the surface and they are slowly becoming accepted wisdom by some of the Councillors. So that is great."

[230] In chapter 6, "non-negotiable" interests and values were discussed. It was noted that while values may not be negotiable, that demands as to their level of expression or degree to which they are catered for may be. Disputants are therefore encouraged to accurately describe the values that they are seeking to promote, rather than their preferred positions, as this aids lateral thinking while developing solutions and also facilitates 'bargaining' during the derivation of 'all-gain' solutions.

What had been mutually exclusive *positions*[231] in relation to the whole Avenue, became relevant to just the bridge end of the Avenue, as the CRTWP agreed to a strategy for both the medium and long-term *and* for the remainder of the Avenue. Therefore, that debate, over the short term response for one section of the Avenue, reflected and reinforced the 'original conflict' between what were seen as mutually exclusive *positions*.[232] As conflict over that section of the Avenue was not resolved within the CRTWP, later commentaries came to suggest that the issue was not resolved, despite the considerable consensus reached in the remainder of the CRTWP strategy.

12.1.10 *Views on what is meant by compromise and resolution in an ADR process*

Participants referred to compromise as a component of the consensual process, and a Councillor described issues relevant to bargaining in terms of participants' perceptions on the degree of change taken by themselves *by comparison* to others. However, the facilitator indicated 'compromise' implies each party gets *less than* they wanted and suggested that was an inappropriate description of what occurs in a consensual process, where all interests are catered for *to a satisfactory level* for each party.

> Councillor "They might only compromise 10%, but they feel they have compromised 50%. The others might compromise 90%, but they may still feel aggrieved because they didn't get totally what they wanted. So it's about attitudes and you have to educate people as to what dispute resolution is."
>
> Facilitator "You do get people trading-off things to the extent that you get people agreeing to something which is not exactly what they want. But I don't like the use of the word 'compromise' as it assumes that people have cut things up in a way that they each get 60% of what they want. Compromise to me is not an appropriate word to use when you are working in this type of process. Its a question of generating a better outcome which in fact accommodates the values. You see, you have to define

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[231] In trying to determine the short term strategy, with regards the bridge end of the Avenue, those promoting traffic interests rejected the retention of the 2 lane layout and trees, as they did not believe that other agreed measures (improvements to public transport, intersections, etc) were sufficiently able to alleviate problems, while awaiting a second bridge to be built. They also had concerns about expense and safety aspects of 3 laning and tidal flow, and doubts about how long it could take to establish an alternative river crossing. Furthermore, they believed other interests were catered for sufficiently throughout the remainder of the Avenue. On-the-other-hand, widening to 4 lanes was rejected by those promoting values associated with the trees, a different type of urban form, transport network and commuting behaviour. These people believed 4 laning would not solve the traffic problems and as other measures were required to treat causes and not symptoms, why sacrifice other interests and values to implement a solution which they believed would not 'fix' the problem, in even the short term. They also thought allowing tree removal in one part of the Avenue would lead to continual pressure to widen the remainder of the Avenue, which could preclude other long term options for the City.

[232] ADR theory describes that negotiations while developing an optimal solution, which best caters for the full range of interests and values (or which seeks to optimise *each and all* of these as objectives, given constraints on their expression *relative* to other objectives), involves elements of bargaining or trading-off, as each party may not necessarily achieve everything they want *or* to the level they would ideally prefer. Such negotiating activities revolve around attempting to reach agreement on 'how well each interest or value will be catered for', *only when the problem solving endeavour has been unable to produce a solution able to eliminate competition* between the different interests/values.

> your roles in terms of what you want to achieve, rather than what the outcome is and once you get agreement on what you want to achieve, you then have to slot in behind it... In this type of process most people don't agree to anything until they agree to everything."

Participants were asked if they had been forced to compromise at all, during negotiating the strategy, and how agreement had occurred. Most felt they had negotiated or compromised to some extent in seeking to reach agreement. However, some felt they had not and indicated this was because they had no preferred position to begin with and so were flexible. Others indicated that while they had made compromises, these were not forced upon them, as they were agreeable to accommodating the interests of others, and were satisfied their own interests were also accommodated to a satisfactory level.

> Public "Yes there were some compromises that were unpreventable."
>
> Public "We offered a compromise, there was a solution which could cater for all the interests. They could have retained the trees and had the same benefits to traffic flow, with 3 laning and tidal-flow. I suppose in a way that is why I am still licking my wounds, because that is the sensible solution and we were behind that."
>
> Public "I think in fairness, if you look at the position that Save the Ave took, I think they did try to find a compromise solution, but I don't think the other side ever did and I think the facilitator got very frustrated in the end."
>
> Public "Yes, my opinions were modified during the process so that those with entrenched views were partially accommodated."
>
> Public "We were not forced to compromise. We could have left the [CRTWP]."
>
> Councillor "We were not forced to compromise - that is far too strong. I did not have a set agenda and therefore was open to negotiation which occurred."
>
> Public "No, because my views were taken into account."
>
> Public "No, I had no fixed position, but I felt a second bridge was an ideal outcome."
>
> Facilitator "[members] had not *compromised* themselves at all."

The facilitator was asked, "Were the things the CRTWP recommended able to be generated because they were features that were no longer in dispute or did these features have to be negotiated?" He responded,

> Facilitator "Definitely negotiated. Some of them were very controversial but we worked our way through - collecting the information, evaluating it, generating options, evaluating options. Eventually we had to start generating an outcome... Every time we produced a new version, the changes from the old one were marked on it, we underlined the new and crossed out the deleted."
>
> Importantly he indicated, "*What people want at the end of the process is different to what they want at the beginning of the process*. People go into a process being quite convinced as to what is right and what is wrong, but they actually have often made those decisions based on incorrect information or sometimes their views change. Some of the people at the conclusion of this [CRTWP] had different ideas than they did at the beginning. Some find it embarrassing to have changed their minds part way through the process. *Some of them get criticized externally for a changing their minds*

during the process, but that is what the process is for." [233]

That the process intended to change peoples minds could be thought of as self-evident in the context of an ADR effort. All participants believed that while they were prepared to compromise, their opponents were seen as unwilling to do so. This apparent contradiction suggests that each side believed they were being asked to concede *more than* the other side, that their opponents had non-negotiable demands, or that they were asked to make 'inappropriate' concessions. It was also suggested that if one side offered a 'concession', but if the other side was not prepared to make some or an equivalent concession, then compromise was not achieved.[234] These difficulties were reiterated by a view that *agreeing to the demands of others* was not 'resolution'.

> Councillor "Any dispute can only be resolved if people are prepared to compromise. If they are not, if they have a set agenda or a non-negotiable agenda, then you are wasting your time because unless you say 'yes','yes, we will go with what you want' - and that's not resolution - then it's not going to happen."

The inference is that 'resolution' is not achieved when only one side concedes.[235] Acquiescence to the will of others (while a legitimate tactic in conflict avoidance) was not thought to be a satisfactory way to 'resolve' this conflict. These comments underline the reason the facilitator did not like the term 'compromise', as it implies mutual loss caused by competition, and does not reflect that the process acknowledged diverse interests and sought to provide satisfactory ways to cater for these, preferably by removing direct competition between diverse interests. Members were not asked to change their minds about the importance of their interests and values, but about what was *necessary* in order to maintain and/or cater for these. It was on that basis that some members had difficulty adjusting the level to which their interests ought to be accommodated, relative to how well other interests were to be accommodated. This entailed a continuous process of 'reframing'

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[233] These comments of the facilitator also serve to highlight limitations of this process. His reference to "people" changing their minds refers to members of the CRTWP. That other people, external to the group, criticized members for changing their minds indicates they did not also change their minds. This confirms the observation made previously that the process was not always influential on people who were not directly involved. That external people did not necessarily *want* different things at the end of the process was observed in some Councillor and officers' responses to the CRTWP strategy. These observations were found to be related to limitations with regard: representation in the forum which was attributed in part to time constraints for both canvassing *and* fully informing *external* people; the quality of information disseminated from, and brought, to the forum, and also; the *role* of officers in the CRTWP as well as how the groups strategy related to Council's authority and issues of political determination.

[234] 'Compromise' is defined as "settlement of a dispute by *mutual concession*" (Oxford Dictionary of Current English, 1987, MI).

[235] This comment reflects problems in defining the term resolution and describing what is meant by 'resolution processes', as discussed in Chapter 6. Clearly this person considers some measure of satisfaction is required to be able to claim the issue has been 'resolved'. Diverse applications of 'resolution' as a concept, do raise interesting questions with regards the use of formal EDR processes in which it is expected that one side will be 'forced' to concede, rather than doing so voluntarily.

the problem, as different angles were taken and views considered during the problem-solving endeavour. Not only was the EDR forum adaptable, the 'process' was also flexible and evolutionary as 'the problem' was continuously redescribed.

> Public "It was a point were someone would say that is not a problem and someone else would say but I think it is a problem and that happened quite a lot." [*So would they then try to accommodate that view or would they try to convince them it wasn't a problem?*] "We did in some cases thrash it out and see if we could come at it another way because it was normally just one person who saw it as a problem.[236] Occasionally we did compromise but we never really got to the point of saying what is the problem"

As the negotiations included trying to determine between 3 or 4 laning of one section of the Avenue, interests were pitted against each other in a competitive way, and no consensus was reached on that part of the strategy. Neither side was prepared to make that ultimate concession to the other side, as that concession on either sides part could place their interests at risk in the future. Each side looked to the other to concede, or to acknowledge that short term responses could affect the long-term security of their interests. As the other side did not acknowledge that risk, no agreements were sought on how to manage risk, or to ensure against the realisation of their fears in the future. Consequently each side asserted that the 'other side' would not compromise, negotiate, or deviate from their original position, even though both sides did so within the overall strategy.

12.1.11 *The effect of voting in a consensual process*

The issues of representation, mandate, and preparedness to deviate from preferred *positions* became relevant in this forum because of the lack of consensus on one issue, which led the CRTWP to recommend a choice of 3 or 4 laning one section of the Avenue. The facilitator indicated that "No decisions were made by voting, we used a consensual process approach. Nothing is ever done by majority in a consensual process, I mean shouldn't be. *That's what gives the working party power, is that they know they will develop an outcome to which everyone agrees*". Similarly, measuring the sizes of constituencies had played no role within the consensual process.

> Public "At the end of the day, the feeling was that, in the long term, 4 laning the bridge would not provide the best solution. The ultimate solution was to provide a second bridge. So then the discussion really came down to a time frame. Whether a new bridge could be built quickly enough to solve the problem or did they have to do something else in the meantime. So the group was split. The [CRTWP] agreed on a second bridge, a consensus was had on that. The difference, which wasn't voted on, was the timeframe. I felt that if they got really stuck in, they could do it quickly. Council said it would take more than 7 years, so it wasn't really resolved in that

[236] This comment can be interpreted as implying the CRTWP had not defined its objectives very specifically as the group was constantly having to evaluate why some people thought there was a 'problem' in some instances, while others did not see an issue.

> context. So the next issue was what to do in the short term and Council was not keen on doing just enhancement improvements - altering traffic lights, closing Hardy St. They were stuck on the idea that they should go ahead with 4 laning."

Information on 3 laning and tidal-flow of the bridge was requested early in the process,[237] but was not presented to the CRTWP by the time of their final meeting, when recommendations for a strategy had to be finalised. Those preferring 2 lanes offered, as a compromise, 3 laning with tidal-flow of the bridge and the Avenue up to Te Awe Awe St intersection. Those preferring 4 lanes did not agree to that. Thus, those preferring 2 lanes were said to have *agreed to* 3 laning. At that stage a "straw poll" was taken, to indicate how far the group was from consensus, as discussions were not progressing the issue in the absence of factual information. It was stressed that this was not a vote on the issue. As such, a participant stated that while very interested in 3 laning he could not endorse it as an option, at that stage, given the lack of information surrounding its operation. In that light, he said, he could only support 4 laning on the basis that he understood how it would work up to Te Awe Awe Street and believed the rest of the agreed strategy satisfied the other interests. In such ways each member indicated a preference based on the information they did have. With opponents of 4 lanes agreeing to redesign the road layout to 3 lanes, the recommendation was made to '*widen* the Avenue from the Bridge to Te Awe Awe St'. The group recommended that Council, with the completed analysis already requested by the CRTWP and with further consultation through a liaison group (also recommended), decide if this widening would be to 3 or 4 lanes.[238]

The issue of a vote having appeared to have been taken became a source of conflict in the continuing dispute. Different interpretations of the 'straw poll', on one feature of a strategy,[239] contributed to misunderstandings by observers and 'reporters' of the process,

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[237] "Four laning was the basis of prior design work. Three laning was identified as an option at the first meeting. However, the technical and safety aspects of both options were still uncertain at the time of the final [CRTWP] meeting" (Facilitator, Memo to council, 2/05/1995).

[238] The CRTWP did not comment on the ramifications of widening that part of the Avenue in relation to policy in the PDP or the TDP - 3 laning would not require tree removal, it could be accommodated between the trees, while 4 laning would require removal of the trees. The CRTWP report does not discuss the policy ramifications of any of its recommendations, or contain specific recommendations with regard policy options for the PDP, despite the fact that the closing date for the CRTWP was set down to enable any findings of the CRTWP to be incorporated into the PDP, drafting of which was due to be finalised two days after the CRTWP had to conclude. Hence the CRTWP's strict deadline. The CRTWP had been advised a 'holding provision' had been drafted for inclusion in the PDP and a change could be introduced if needed, following the Council's determination on the outstanding issue.

[239] This straw poll is quoted in Council press releases and information brochures as showing a vote finding in favour of 4 laning. For example, in "*Fitzherbert Avenue: Planning for the Next Century*" it is noted that the "[CRTWP] votes 9-3 in favour of 4 laning the Te Awe Awe St to the Fitzherbert bridge section". Some officers and Councillors referred to a vote showing 8 - 3 in favour of 4 laning, or to majority opinion. Some public participants also referred to 'majority opinion', e.g. "There was a desire to reach an opinion based on consensus. This was not to be. My final opinions were the same as the

about what is meant by a 'consensual approach' to ADR and a 'consensual strategy'.

> Officer "People did move and the [CRTWP] was big enough that one or two dissenting voices could have a weight of opinion against their view that the [CRTWP] could still make a strong recommendation on the options. As it turned out we didn't, so the group chose to say either/or rather than present a consensus proposal."

The CRTWP final report (1995, p8) lists six *organisations* which prefer 4 laning and 3 which prefer 3 laning. The two 'guests' preference for 3 laning is not recorded, nor is the actual preference of some members for 2 lanes. Several participants indicated these were serious omissions from the report.[240] The facilitator in presenting the report, advised Council, "As required by the '*Terms of Reference*', the report lists the groups whose representatives currently support each of the options, and their reasons for doing so. Some groups may change their opinions in the light of the further report and with adequate time to consider it" (Facilitator, Memo to Council, 2/05/95). Consequent efforts by Council to decide between 3 and 4 laning led to other problems identified by participants.[241] Council's decision to proceed with 4 laning to Te Awe Awe St led to a need for formal consultation processes, as described in Chapters 8 and 9.

12.1.12 *Timeframe acted as a constraint on, and caused problems within, the process.*

Problems relating to insufficient time to keep constituencies on board or to seek endorsement of members responses were attributed to the tight meeting schedule under which this process operated. Council had set the deadline to take account of the schedule for the PDP and also as there were concerns Transit N.Z. funding could be lost with further delay.

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majority opinion." However, other participants suggested these interpretations were incorrect. One explained a different view. 6 organisations (with 7 representatives) supported 4 laning. But one of those had clarified he was supportive of 3 laning in principle but could not endorse it in the absence of information on 3 lanes and tidal-flow, that person ought to have been considered undecided or an abstention, rather than as a clear endorsement of 4 laning. 4 organisations (with 6 representatives) supported 3 laning (but each did so as a compromise, their preference was actually for the retention of 2 lanes). However, as one of those 'organisations' was a 'participant' and not an 'official' member, its view was not recorded or 'counted' in later reports. Hence Council's assertion that 3 supported 3 lanes. The alternative view of the straw poll was argued to have shown that, amongst those who negotiated the agreement and signed the CRTWP report, 6 people were for 4 laning and 6 were for 2 laning - but compromised by agreeing to 3 laning - and 1 person uncertain. This view saw a split decision. Another participant also suggested there was no clear majority and that its absence, the 'precautionary principle' suggests the correct choice is the status quo, which was in fact 2 laning.

[240] Other participants indicated the decision was never intended to be made by vote counting but by full consideration of a comparative evaluation on the feasibility and merits of the two options in the short term, to cater for traffic while a second bridge was constructed.

[241] Council sought to determine which of two choices the most people supported. This involved, an effort to check if some members did accurately represent their organisations, and to determine the sizes of constituencies.

> Officer [*Was the timeframe for the CRTWP to keep it in line with preparation of the new plan?*] "Yes, but there were also other issues, we are subject to Transit funding as it was one stage of a larger project. So there were concerns that we had to fit their programme budget - we had asked them to carry over at least a year already."

Participants described pressure to negotiate an appropriate strategy and finalise the CRTWP report in the last meeting, despite being provided new information and having to negotiate a strategy with incomplete information (that is, with some uncertainties continuing as a source of conflict). Requests to Council to extend the deadline, were declined. The facilitator confirmed difficulties attributed to time constraints and stated, "It was absolutely chaotic at that [last] meeting and we had to be out of the room by 10pm. Very difficult conditions to work in". However, he also indicated that the process succeeded in producing a satisfactory agreement, never-the-less, as a consensual strategy was formulated which all members endorsed. This contrasts to the views of a member who referred to "the aborted process", indicating that he endorsed the result as the best that could be achieved, *given the time factor* and related problems, but not as the best that he believed could be achieved if they had been allowed more time. Most participants echoed this view in pointing out they would have liked more time to get the information they did not have and also, more simply, to "fine tune" the wording of the report.

> Consultant "They [members] did not have ample time to consider information. I think [members] did remarkably well in understanding huge volumes of information in hopelessly short periods of time, with reports that were generally way overdue and in some cases were quite off the mark, in terms of what was asked to be put in the reports. But I think that all people in the [CRTWP] showed remarkable understanding of the issues. I don't think lack of understanding was a feature except for one particular thing. The outcome left one particular issue open as to what would happen between Te Awe Awe and the bridge. We just didn't have any information and the outcome required the Council to produce that information in proper detail and to do that before the Council itself made a decision on that particular issue."

> Public "We accepted things in the report which we really didn't agree with, which we weren't totally happy with, but we were interested in these broader things being brought out into the open. Like a second bridge, like the real problem is this infrastructural policy of concentrating traffic rather than dispersing it. Let's talk about that rather than focusing and arguing over words, sentence by sentence. So there were things in the report we really didn't agree with, words, sentences, paragraphs, meanings that we would have liked turned around, but we focused on the broader issues."

However, some participants believed the process ran for sufficient time and did have all the information required.

> Councillor "No I don't thing the timeframe was too tight. It was that [CRTWP] just couldn't reach consensus in the time they had"

The facilitator wrote, (Memo, 2/05/95). "In introducing this report, I recommend that Council build on the goodwill developed by this process. All members, working on a voluntary basis, contributed a great deal of time and energy to this process for the

community good. I think the report will stand up to scrutiny, but am concerned that off-the-cuff negative comments might undermine the good that has been achieved".

12.1.13 *Problems with regard the quality, independence, relevance and scope of information brought to inform the issues.*

Participants indicated the tight schedule of meetings also exerted pressure on officers and consultants providing information or support services for the group. Information was often late or not forthcoming at all. The facilitator indicated he did have reservations about the timeframe established for the process, stating, "the timeframe was artificially determined, it was nearly impossible... I made it clear at the outset that the only way it could be achieved was if the necessary background technical information was achieved to a very tight timeline and it wasn't. They didn't meet any of the deadlines that we set in providing the background information. That made the process extremely difficult."

> Public "We really didn't have the time or information to really explore the alternatives for short term improvements."
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> Officer "We underestimated this [commitments of staff and resources to the CRTWP process] a little bit - in terms of generating reports for the CRTWP. We knew we would be getting in consultants, but that didn't mean that there also wasn't a huge call on our own engineering and planning departments... If a working party is to be successful there is no doubt they have to be provided with complete and good data and if you start making shortcuts on the information you are providing the group, then you are really wasting your time. So when we entered the [CRTWP] process we accepted that there would be a committment for the organisation and for our staff and that took priority over other work.
>
> Officer "In terms of the detail of that information, that was in their hands to come back to us - for instance looking at alternative options to transportation such as public transport etc. They had these, [but] I don't think they had enough time to debate those and I know one of the [CRTWP] members was wanting more information on the aesthetics of the Ave and that information had to be provided late in the process."
>
> Consultant "But sometimes consultants just did their own thing. Turned up to meetings late, with half backed up reports. We had problems with a particular consultant... Well the problems revolved around [that consultant's] attitude to the [CRTWP]. I don't doubt for a moment that he is absolutely a competent guy, may have been under huge pressure with other projects or whatever, but he was constantly late with reports which didn't meet the objectives required... A report didn't meet the brief... It's a problem you have in these types of processes. Here you had a [professional] who is used to making decisions and saying what had to be done, call a spade a spade to get things done."

Another problem was that requested reports did not necessarily address the concerns which had led to the report being requested, and some information was not provided at all. The CRTWP started out with incomplete information and a lot of contradictory information and had to spend some time determining accuracy and retrieving independently generated data and analysis.

> Consultant "There were huge discrepancies between the delays caused by traffic. Some talked about half an hour, others about short delays and there just wasn't any information. Now they had been to a hearing and no information was produced. So we needed more information on some of these issues... now there were worse times, but generally the delay was about 8 minutes. Anyway producing that one page sheet [of data about delays] defused the issue. They never argued about that any more. They accepted that these were the delays and that they were unacceptable delays and that was OK, but they needed that basic information - what were the delays. See the distinction I'm making, what is the information and then the perception of people as to whether that was acceptable or not, or what it meant. Now it was up to them to decide what it meant and whether it was acceptable or not, but they needed that basic information to start with."

The facilitator identified a problem for this approach is "when information is lacking". However, he also said, "We did reach agreement on 95% of the issues despite the hugely different programmes and lack of information and it wasn't inappropriate that we ducked away from any consideration of where a second bridge might be, the [CRTWP] was happy to make a decision that the Council would in fact be committed to a second bridge, which I see it endorsed anyway."

While, participants indicated a benefit of this process was the scope and depth of the information generated to inform the issues, they also indicated some uncertainties persisted. That some issues were never informed by accurate or objective (independently sourced) information meant a number of issues remained unresolved.[242] These information disputes contributed to difficulties in undertaking analysis of the problems and in attempting to derive a consensual strategy. The CRTWP's inability to make a determination on what was most appropriate at the bridge end of the Avenue reflected more than a conflict between trees and cars. This conflict was also based in information uncertainties, so that members had to rely on (subjective) beliefs and opinions, which were variable and conflicting. Each (and all) of these *uncertainties* had an effect on members who had to assimilate these personally and make essentially, a judgement call on what they thought was 'most likely' and thence to make a decision as to which option was most appropriate.

> Public "I agreed with [CRTWP report] in the end, but we thought it needed more work. We never went back to the issue of whether 2, 3 or 4 laning should be done, they needed more information and Council has taken that as being the [CRTWP] said 3 or 4 laning and we have chosen 4 laning - so 2 wasn't even an option in the report"

[242] For example, the group did not achieve an agreed or common information base on the feasibility of some options, or on all the 'sustainability' issues relevant to the mature trees. There was uncertainty, and hence disagreement, surrounding how long a second bridge would take to build; the type of bridge required and hence where it could be sited; about the safety and convenience of 3 laning and tidal-flow by comparison to 4 sub-width lanes and combined pedestrian-cycle ways; about comparative costs if 'externalities' were included in formulae to measure on-going costs of alternative options; about the extent of future development in settlement nodes; the 'desirability' of public transport; the effectiveness of altering traffic signals, intersections and traffic flows in the Avenue.

Public "We asked for the modelling and information but it wasn't produced in time. No one else had the resources to really study any of the other alternatives."

Public "Peoples' opinions as to what is desirable is circumscribed by the information they have been given, and full information is not being given because they have not been given the option of commuter style bridges near the existing bridge."

12.1.14 *Issues over economic analyses and the inclusion of externalities in CBA*

A frequently cited gap in information related to economic analysis. Some participants indicated they were not able to fully assess economic considerations relevant to the various options, as such analysis was not available on many alternative options. A focus on the Avenue also made other analysis difficult. All the externalities associated with various options were not able to be assessed or evaluated within the CRTWP and this was also a basis of difficulties in evaluating options. Participants described having to rely on unquantified information, 'guestimates' or in generalised terms which were open to subjective interpretation by members.[243]

Public "We've said here are our options. But [Council] said all of those have got to go because its got to be that one, because that one has got a subsidy on it. The others are going to cost Council 100% of costs. That one has got 50% subsidy so we've got to solve it within that framework and that brought with it Save the Ave, costs of hearings, delays, arrests, the whole thing has come out of the fact that they said, 'it has got to be that option there'."

Public "The Council had always tried to solve the problems on the Ave within a framework defined by the NRB, because that board would reduce costs and the Council wanted a minimum cost option, for themselves, and that meant bring in the NRB. Now the NRB could only be brought into a Fitzherbert Ave solution to the issue, as it was a SH57 to Ferguson St. So the moment you took any other solution to the problem, you took away the Council's major lure - that was the carrot under the donkeys nose. The NRB would pay for it."

12.1.15 *Issues of advisors taking stances over options and promoting views*

Another problem with regards to information provided to the group related to criticisms that some contributors (sources) of information found it difficult not to draw conclusions and to provide advice to the group. Participants referred to "zealous" information providers who went beyond providing their expert interpretation of information to promote a preferred option or criticise alternatives, and some were also described as having debated issues with CRTWP members.

Consultant "The thing that really dogs these processes is reliable information. Quality information that is clearly explained and, in fact, deals with the specific issues and technical people seem to have difficulty producing that type of report. They're all end oriented or something. You know, write the report to justify the conclusions they have

[243] For example, a participant indicated that while focusing on the Avenue, travel across the City to get to and from the Avenue was not considered in CBA. He considered if these costs had been taken into account, a picture closer to what he believed was 'economically viable', would be shown valid.

reached it seems, rather than writing the report to provide the information that other people will make the decisions on, especially engineers. The role of a provider of technical information in this sort of situation is to provide information not to provide judgements on what the outcome should be. Sure, they can indicate the strengths and weaknesses of different potential outcomes, but they musn't be the person who formulates the outcome. We had very clear examples of technical people being very committed to outcomes."

Public "The possibility of having one rather than two extra lanes is now a live issue although the Council wouldn't want to admit that. But we are dealing with political matters and I would expect the political side to still continue, given their staff. Their staff point was to prosecute their own policy. So that is important too. We are still having to work through other forums, the new bridge working party, the new district plan process, the annual plan process, the transitional plan, but the whole issue has been widened because of the working party approach."

Public "I would say in general from the Council's viewpoint and from the advise that Councillors were getting they really did appear to have a predetermined attitude and when they didn't agree with something they would dismiss it and you got the impression they were almost coming up with the reasons after making the decision."[244]

Participants gathered from comments, the nature of some reports and some consultants and officers "attitudes" to the CRTWP that these aids to the process held preferences which they promoted within the process. That some advisors to the group were perceived to be attempting to influence the *political process* caused problems for participants as they mistrusted the *integrity* of information when the distrusted the *motives* of advisers. They presented a view that some experts presented opinions that were based on political determination and not necessarily technical reason.

Public "You have experts saying that north is the way to go and other experts saying all they could to say that is wrong and south is the way to go. I mean it is a question of were you want to get to."

Consultant "You can get within these processes two different decision-making processes - one is the political decision making process and the other is a legalistic decision making process through the RMA or whatever you are working under. This only got into the RMA area because of the protection on the trees, it if hadn't been for the protection on the trees the decisions as to what sort of crossing there should be for the river would have been a straight political decision."

12.1.16 *Perception that all participants (and the 'sponsor') were not committed to a consensual process, but went into the process with predetermined 'positions'*

Observations about the 'willingness' of others to formulate a consensual strategy, were linked to perspectives that some participants were reluctant to thoroughly explore all the alternative options and combinations of these. The participants who criticised the

[244] Public "The classic example was their dismissal of the use of buses and their argument was they had trilled buses, at 7am and 10pm, and people hadn't used them, therefore, buses will not solve the rush hour traffic problem. Now there is no logic in that. Now maybe buses wont solve the traffic problem but clearly they had decided that and then come up with a reason why it wasn't going to work and the reason didn't match what was being suggested."

evaluations of options gave examples from the 'raft' of options proffered as smaller and complimentary measures, which they suggested (in combination) could work to ameliorate or mitigate problems in the short to medium term. Participants suggested these options were evaluated (by officer and consultant analysts) in isolation and were rejected after superficial appraisal, as not going far enough, rather than as being evaluated as components in the development of an overall strategy capable of catering for all the interests. They described a piecemeal, rather than an integrated analytical approach to evaluating options.

> Public [*So the CRTWP came up with options and discussed these*?] "I don't accept they have. I think *we* have discussed alternatives. *We* have all the time been putting up alternatives and are saying 'these are alternatives', but the Council, no, they haven't been open to those."
>
> Public "We came up with a raft of small things but, to the Council staff, they were never big enough to fix the whole thing."
>
> Public "I think this is the major issue. If the city had, in particular, concentrated on alleviating the environmental effects, if that could have been done and explored how that might have been done, they might have come out with a better solution. I don't think the environmental aspects were considered in enough detail"
>
> Public "After the 3 or 4 laning options had been put on the table, the officers, I felt, were quite dismissive of the 3 laning option. In the sense that it wasn't embraced as an option we should seriously investigate. It was seen as an option that we should discredit. It was an option that we should prove just would not work."

However, an alternative perspective on this issue was provided by Council participants who indicated that the information search was insatiable. It was indicated that there were limits to what could be researched and how many alternatives could be evaluated within the timeframe of the CRTWP.

> Officer "One of the problems from my point of view was that information search. People always wanting more. They are trying to actually draw that to a bit of a conclusion and the other side of that is coming up with new options. Now there is nothing wrong with new options but at some point there are variations on a theme, which really you are not going to investigate in detail, and to be expected to, which people often did, was just a little too much. So it was a problem that people offered what they saw as viable alternatives or adjustments and expected a thorough analysis of that before a decision is made. But, in part the thing has been considered to some degree through analysis of a similar proposal and was rejected at some earlier stage and there is no time or opportunity to really show and explain that to them."

Participants described a relationship between 'preparedness to negotiate' and 'perceptions of prior commitment to a particular response', that serves to illustrate a difficulty participants had maintaining a distinction between interests/values and preferred positions, referred to by the facilitator (and within ADR theory) as crucial to effective dispute 'resolution'.

> Public "The only really positive benefit that came out of that [CRTWP], in my view, was we have managed to get the idea of a new bridge on the table. Now that was fought against really hard by all the officers and the Councillors on the [CRTWP].

But in the end, the [CRTWP] strongly preferred that and as I say that has now come to pass. We now have another working party on the bridge... Once again, the [CRTWP] were quite united in seeing the need for a second bridge *right now*. I'm not sure that the Council is really committed to that."

Councillor "No way at all were they prepared to negotiate. What was even worse was that they came along and presented themselves as being fair and reasonable people. You know, 'we want to negotiate, we want the best result here, we're happy to trade-off some things', but they weren't."

Public "I don't think that after the preliminary meeting that they went into it honestly. Council's purpose was to push LTDP."

Public "Once they stepped onto the programme in 1988, that was it and then it became a case of 'we are defending our plan'.

Public "We always recognised that Council had their agenda, naturally enough, I mean they are political animals, and so it wasn't ever hidden, although it wasn't expressed in the brief. The facts were there if you wanted to look in the Council's minutes, there is nothing hidden about it."

Public "I think he [the facilitator] came to realise that the outcome was almost predetermined. I think the Council went into the CRTWP knowing what they wanted to come out of it and whether that was on an individual basis or a policy basis, who knows."

Consultant "We had people in the [CRTWP] who basically said 'as far as I am concerned the answer is going to be such and such', 'we're going to 4 lane throughout' and you know getting them to gradually back off from that and look at the options etc, that was all part of the process."

Consultant "So to my mind the fundamental in a consensual process is that one of the parties involved hasn't already decided what the outcome is. We had an element of that in Palmerston North."

The facilitator was asked when the consensual process works or does not work well. He indicated that the process works well "when the project sponsor/authority is committed to the consensual process" and the process does not work well "when the project sponsor/authority merely seeks to use the process to endorse a predetermined outcome." An officer responded very similarly to the same question, saying "When representatives on the working party can't leave their agenda behind. When they have no mandate from constituents to leave their position behind and negotiate other options - they just keep pushing their point." It was evident that a limitation of this process was that some members were perceived by others to have predetermined a preferred outcome, as they promoted that outcome and as they were reluctant to accommodate changes to that within the process. That representatives were perceived as having predetermined a preferred option, was extended to an assumption that those they represented also held that stance and had not given representatives a mandate to deviate from that position. A limitation of this process was that it was not clear whether representatives did have mandates to deviate from their constituencies preferred or ideal option.

In addition to perspectives about the committment of other members of the CRTWP to the process, some participants suggested that others external to the CRTWP were also not committed to, and supportive of the process or of its outcome. For example, some participants suggested some officers and Councillors demonstrated a lack of understanding of the both the process and the resultant strategy.

> Public "Given the view of Council that the goal was to have their policy vindicated/accepted. The independent facilitator was the key. The acceptance of the second bridge option actually undermined the 4 laning policy. 4 laning was promoted because there was *no other option*."

> Public "The CRTWP gives the impression of a Council wanting to get the communities views and take them on board, but it is as much the Council wanting to get the community to take Council's views on board. I really think they thought the CRTWP would be able to get Save the Ave to change their position. By the weight of evidence and pressure from other groups."

Officers indicated that their committment to the process, was evident in their response to the CRTWP, in that it did broaden their horizons.

> Officer "There are some things that did come in, to be fair if we had thought of it, we hadn't actioned it - some of the safety issues, not biggies. When talking intersections you are getting into big costs, but much of these were low cost. I think probably what the process did do was it made us... I guess during the earlier times we had sort of thought about what the [CRTWP] was talking about, we had never really put a great amount of effort into proving either one way or the other what we had to do. So it was really encouraging, I guess, to find that the work we had done earlier did stand up to the rigors of cross-examination by a group of 11 diverse people. So it really made us go back to get a lot more information and look into it a lot deeper. We had to do that either to convince or not convince or whatever the case may be."

12.1.17 *The CRTWP's outcome was non-binding on Council (as sponsor or as participant) or on other participants*

That the outcome of the CRTWP was to be binding on participants had been included in the "*Terms of Reference*" for the CRTWP. However, that clause was removed following debate by members. The facilitator indicated, "It's not a true consensual process as the Council had not made an undertaking that the results of the process would in fact be their decision and that can happen, but in my experience that doesn't happen."

> Public "Some would see it [the CRTWP] as tokenism, not that Council was prepared to share power. I think first of all they need to have a process which people are happy with and secondly an outcome that they are happy with. But as I said before, they were new to it [the process] and they were scared about it."

> Consultant "I feel really uneasy about people having several opportunities to have a go within a process, unless everyone else does, it's not a level playing field, and that might be ok, if there was a really good consensus decision, but if it is a compromise with different views, and some views are held by Councillors who then have another go at it, then I think that is really bad practice."

Some participants believed Council, as an 'interest group' within the CRTWP process, operated in the knowledge that it would alter any part of the strategy it did not want.

> Public "It was really an information sharing exercise because the City Council still had the ability to twist what was negotiated at a later date."

Councillors in the CRTWP indicated to other members that, as they would have a continuing role after the CRTWP concluded, they weren't worried about agreements reached by that group, that were different or counter to their *preferred* option.[245] Such comments, suggested an apparent contradiction between Council committment to the process when Councillor representatives appeared (at times) uncommitted to the process or to a consensually agreed outcome. Thus Councillor representatives were described as having subverted this ADR process.

12.1.18 *The sharing of influence achieved through this ADR process*

Participants had different views as to whether the CRTWP forum enabled decision-making to be shared with the public. Some believed it had, on the basis that as the public were involved they may have had some influence. Others indicated they were involved, but as Council would make the decisions, the public had little influence. One participant indicated that 'the public' was not included at all and pointed to what he considered a problem with media coverage and reporting of civic affairs and Council business.

> Councillor "In so far as input came from members of the [CRTWP] - from a range of interest groups - there was greater sharing."
>
> Public "The public had no direct decision making role. Some Councillors had an expectation they would. However, there was opportunity for greater public input into the decision making process than normal."
>
> Public "We were just another tool, in effecting the Council's exercise of coming up with a solution. The [CRTWP] itself was in effect a consultancy group to the Council and a gauge of what the public reactions and views could be. Some influence was shared with the participants involved, not for people who just want action."
>
> Public "Yes, the concerns of groups who would not otherwise have had such a good avenue through which to voice their views, eg cyclists, were heard."
>
> Public "No, because the Council makes the ultimate decisions. The conflict will end up in Court."
>
> Public "The [CRTWP] had no power to make decisions. Our role was to make recommendations to a Council subcommittee."

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[245] Public participants described that Councillors made comments towards the end of the process by way of reassuring each other to the effect of, "don't worry, if we don't like it we can change it later". A participant who recounted one such incident, described that after a Councillor made such a comment another member "exploded", saying "they were wasting their time", and had the two members been sitting next to each other physical violence could have occurred.

Public "The mechanism of the [CRTWP] had the potential to do this. Unfortunately the Council had a predetermined agenda."

Public "In hindsight, no, because of the working relationship between the media and the Council. The local newspaper strongly supports the Council's view."

12.1.19 *The CRTWP was thought to have improved the quality of planning advice and provided a way towards resolving the conflict*

Participants indicated that the CRTWP had not 'resolved' the dispute because the two key interested parties maintained the same positions at the end of the process, as they had at the beginning. However, they also indicated that the agreed strategy provided a means to settle the conflict as it showed a way to address problems, while catering for diverse interests, that all the parties could live with. The CRTWP process was considered to have improved the scope and quality of information brought to inform Council's later decisions. The process then, was believed to have been a crucial step *towards* satisfactory resolution of the dispute.

Public "It did not resolve the dispute, but increased the amount of issues involved and confusion as to who was telling the truth."

Councillor "Probably in bringing together in a single report information, material and professional advice from a range of sources."

Public "Yes, there is wider understanding and knowledge of divergent views."

Public "The Council is more aware of the need to address the communities desires/needs and involving them in the process. This should improve decisions."

Public "No,it didn't resolve the dispute as [the strategy] was not agreed to by the decision makers."

Public "Yes, in the sense of shifting/widening the circle of advice available to the Council. It also began the shift of focus from the trees (symptoms) to faulty underlying policy (causes)."

Public "It is another step in the dispute. A very important step I think. The concept of an independent mediator facilitating communication between the parties is absolutely critical, and [he] did really well, the Council tend to disagree with that I think."

Public "The process effectively left the two camps in their initial positions. Save the Avenue group wanted environmental protection (by only 3 laning) and the Council group wanted 4 laning and removal of the trees."

Public "In the event, it became clear that the initial goodwill evaporated and at the end of the aborted process, neither party had changed their positions. I personally changed my views. I was a strong advocate for 4 laning, but the evidence made it clear that the city traffic problems were infrastructural, and only a second or third bridge would effectively address all the issues.

12.1.20 *The level of influence of the CRTWP and its report*

Participants had different perspectives as to the level of influence the CRTWP report did have on Council.

> Councillor "I only concluded at the end of the day that the original work had been done reasonably thoroughly and that there was very little new information that came up that gave us a moment of excitement where we thought, 'well, by joves, now this might work as an alternative. But there wasn't even the slightest hint of that."
>
> Public "I wasn't that influential in determining what happened. I don't think the CRTWP was free, in a sense, to determine what happened in the end."
>
> Public "The idea that came out of the CRTWP. That was the one idea that was forced onto the Council from that consultation process, which they have accepted, all the rest of the recommendations they have rejected. I think they are all well aware that building the bridge is actually going to be some other Council, not them. I think they have carefully left the door open and they have said, 'yes we will build a bridge when future urban growth kicks in. So they have been really hammering the idea that future urban growth is right on us, it's going to be right now. So we are going to build this bridge straight away. I suspect the reality is somewhat different to that, but basically, they managed to get their way in saying Maxwells Line is where the new bridge should be. They wont get funding from Transfund unless they can get a specific benefit-cost. That B/C wont arise if there is no demand for urban growth over there. So that is a concern - that a new bridge may never be built."
>
> Public "The CRTWP has had some influence. The original policy, they stuck to it, but new ideas did come to the surface, its just a pity more of the new ideas didn't come through. But they are moving on cycle ways, they have moved on the bridge, although it is possible the bridge may still be back in the original position."
>
> Public "There were some significant things that came out of that. I think probably the most significant was that [some key organisations] stood with Save the Avenue on 3 laning. [They] didn't go for 4 laning and that was a huge set back for the Council from out of that CRTWP. They had had a set-back with Tizard and the CRTWP was another set-back, I believe."
>
> Public "I think they did have an influence. The opportunity was there to do it, but the practicality of it became quite clear, it wasn't going to solve the issue in the short term, and that is what it came down to. An issue of whether any of the 'what if' scenarios where going to solve anything short term, and Council said they weren't."
>
> Councillor "Yes, the new bridge has been advanced."
>
> Public "No, the die was caste and the funding was tagged."

Some came to believe the CRTWP did not come up with any new options or information and as such the LTDP remained both feasible and the best option. Others indicated the report had palpable influence on Council policy. Some public participants came to a view that an explanation for problems within the process, was that Council had not accepted that consultation, with the public, was either necessary or was a good thing (in this case) as there were such strong influences on Council in it taking its original decisions.

> Public "I think the problem that the Council has is they really see consultation as a process they have to go through and they don't really realise or put into practice any outcomes of that consultation. They give the impression in all areas, I think, that

they're the people who are elected to make decisions... [gave example] if that was the price of democracy, put it in and to me that struck a certain attitude. We are just paying for this because it is the process we have to go through, just let it go on, we are going to make the decision anyway. It's just part of the process and I think it indicated an attitude that they didn't take the whole thing really seriously. This was a consultation issue, something they had to do, not something they philosophically believed ought to be done."

Public "My feeling about everything that has gone on since, the process of consultation... public involvement processes, have always been structured in a way which frustrates attempts by people to present alternatives to the LTDP for the Ave which was developed without consultation."

Public "Public disharmony has simply been a nuisance for Council. It wasn't a hurdle. They saw it, in fact, I think one of the Councillors described it as a 'hiccup', which is ridiculous. That was, [named Councillor] who said the whole Fitzherbert Ave dispute was a hiccup and they would get there anyway."

Public "It is hard to imagine it [the EDR process] being managed in a worse fashion quite frankly. I mean, I just think they were confrontational from the beginning. As soon as they realized there was going to be [named public] and his gang being vociferously opposed, they became highly confrontational. They didn't try to meet on common ground and they just carried on with their pre-set agenda."

In contrast to those views, however, Council participants indicated that members of the public have unrealistic expectations about what consultation can realistically be expected to achieve. These participants indicated that the public expect to have more or less total control or influence on the outcomes of decision making. It was evident that both political determination of Councillors, (as elected representatives of the community), and the advice of officers (as professional experts) were also important influences on outcomes, but that the public did not appear to acknowledge or accept these streams of influence on the decision making process.

Councillor "[the public] seem to believe that if they have made comments about something, their view will prevail. All I think they need... their expectations need to show, or, they need to alter their expectations to... the belief that Council will listen to them."

Officer "The public need to be clear about expectations and what is the level of influence they can have. [*Are you inferring they have unrealistic expectations about the outcomes of their participation?*] Yes."

Councillor "Well, [the public] might not be able to see how they influenced a proposal. This is the dilemma. There is a huge confusion about being listened to, consulted with. If you then don't agree with what they want, they say, 'they are not willing to consult.' I mean, they have got one single narrow focused mind and if you don't come up and agree with that, then you are immediately accused of not having consulted or not having listened and I have heard them loud and clear." [*People expect not only to have a say, but to know how that has been considered and/or catered for?*] "Well that's impossible [*to cater for everybody?*], exactly right - and this is the biggest misconception about consultation. In fact, this [named person] even goes so far as to say that democracy has been threatened and yet the democratic principles of the whole thing have been slavishly followed. Yet he wont accept that as an outcome, and his idea of democracy is now anarchy in the sense that, 'if I can prevent this happening by any means at my disposal, then somehow or other I am justified'."

Officer "*[So there is a perception that being heard means you actually get what you want?]* "Yeah. Democracy is fine, as long as you make my decision."

Public "From the publics' point of view, I would agree that public consultation is expected to give effect to certain philosophical principles. From an organisation point of view, I would disagree with it. I understand why the RMA was put in place, but I think its too stringent and is too biased towards the public and interest groups. In the way of timeframe and costs. I'm not saying the issues shouldn't be debated and the Council just go ahead and demolish a whole stand of native forest, but at the same time, there must be some point where there has to be a mix, rather than a bias. In other words, I think it has gone the other way. Whereas before Councillors had the power, I think it has shifted towards the public and I would rather see a mix rather than a bias either way."

12.2 ADDITIONAL EXPLANATIONS FOR PROBLEMS and LIMITATIONS IN PRACTICE.

12.2.1 *Uncertainty that the CRTWP could produce a "useable" outcome.*

The City Manager (22/08/94) identified that "The working party would not necessarily achieve the outcome which the Council is seeking or as it is not part of any statutory process, a great deal of time could be spent on a process which may not yield a usable outcome", indicating a concern that any consensually agreed strategy could be contested in subsequent formal processes or may be too far removed from what Council believed was appropriate. The City Manager also wrote (22/08/94, MI) "it would be appropriate to put a timeframe on the [CRTWP's] deliberations to avoid the matter going on for too long and *avoiding actually making a specific recommendation*." Discretion for Council, in planning how best to implement any resulting strategy, was considered important. A similar reason was given to explain why the CRTWP did not make recommendations regarding policy issues being drafted within the PDP.

Public participants indicated they were concerned that they did need to succeed in reaching consensus. This pressure to produce a "useable outcome" for Council, led participants to take shortcuts they might not otherwise have taken.[246] The facilitator stated, "the [CRTWP] did meet the required timeframe, it had to take a few shortcuts and I constantly had to re-evaluate what could we actually achieve. I proposed a draft at a very early stage and people said 'but we're not ready for that yet', and I had to say, 'but you have to start thinking about that because this is the date I have been given for completing it. So, if you don't start thinking about outcomes now, you are not going to be able to do it on the last day'." Council's stated uncertainties in employing this approach along with the tight schedule, exerted pressure on members to 'achieve results' within the process.

[246] For example, by not consulting widely with constituencies, in taking decisions based on incomplete information, in not debating the wording within the final report as they focused on achieving broader aspects and believed the intentions of the strategy were clear.

12.2.2 *Distrust in the agenda or motives of participants and of Council as sponsor of the ADR process.*

Council's concerns, along with the reasons articulated for choosing this ADR approach, were a source of problems within the CRTWP process. Some participants interpretations of comments by officers and Councillors led them to distrust the motivations of other participants (Councillors, officers, and consultants in the employ of Council). This distrust affected their acceptance of information and the rationales or arguments presented to promote or reject options, as they came to insist that independently sourced, objective information must be available to the group. A lack of trust and notions of 'hidden agendas', prevailed several months following the conclusion of the process, which indicated that participation in the process had not removed those doubts or modified earlier perceptions.

Addressing the issues of trust, motives and agendas are identified, in theory, as important components for the success of ADR processes. It was evident that, for a number of reasons, a limitation of this process was that it failed to successfully build trust and remove doubts about the motivations of the sponsor.

12.2.3 *Issue of voluntary participation in a ADR process.*

Other factors contributed to distrust in the motives of some participants. The most commonly referred to factor revolved around issues of voluntary participation and whether all members and Council were committed to the process and its outcomes. Some participants indicated that while they could have elected not to participate in this process at the outset and could have withdrawn from it at any time, they felt compelled to participate until its conclusion.[247] Other members of the CRTWP, once the process was initiated by Council, indicated they thought it was beneficial to participate.[248]

While all members were 'voluntarily' participants, one had spoken out against the use of this ADR approach and so could be described as a reluctant participant. That member was a Councillor representative who had been outspoken in supporting the LTDP and in

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[247] A representative of Save the Avenue described feeling compelled to stay in the CRTWP as that group had muted that this approach ought to be pursued. Given the problems members experienced in the process, others within Save the Avenue indicated there was some pressure to withdraw. However representatives described there was also a counter pressure to remain involved. They considered that had they withdrawn, the process would not have been abandoned, it would have continued without them and they would not have had access to information that *was* being generated or any ability to influence developing the strategy, later in the process.

[248] Other than Save the Avenue and the Council, the other organisations represented in the CRTWP had not been active in the debate in the 'public arena' or in making submissions on this issue, to the formal processes preceding this approach. Following the CRTWP process, some did also became active contributors to subsequent formal processes.

opposing the use of an ADR approach, preferring instead to undertake a plan change to the TDP. However, with the majority electing to pursue the approach, that Councillor sought to ensure a personal influence in the process.

> Public "Well, I think the [CRTWP] found it difficult in that, of course, in that particular case [Councillor] who had argued against the formation of a working party, who said Council shouldn't have it and then had gone on it, insisted he should go on it and that was a bad start for them really."

That this Councillor had volunteered but, in effect, had been coerced into participation, contributed to problems for the process. As other participants were not oblivious to that Councillors views, some had doubts about the integrity of *Council's* committment to the process. Never-the-less, all participants indicated, in their own way and for their own reasons, that they believed their input into this approach was the best means to seek to resolve the dispute, in a way that would satisfy their constituents interests and values. It was apparent that each of the participants did consider the pros and cons of non-involvement and what they would be likely to achieve in alternative processes, and decided participation in this ADR process was their best option, at that stage. Voluntary participation is theoretically an integral component for a successful ADR process.

That a lack of committment to the process could cause problems within the process, was anticipated by officers. A letter inviting Councillor nominations for membership[249], outlined key considerations for Councillors wanting to participate as members on the CRTWP. They were to consider, "any potential future conflict of interest" and that the CRTWP "was structured to be representative of interest groups, not on the basis of technical expertise of its members". But most importantly it identified "The need for an open minded approach to achieving the goal, avoiding a narrow focus on any particular issue, e.g. the Fitzherbert Avenue trees or a second bridge." This letter effectively asked for representatives who were not committed to a particular outcome, as the goal was to achieve a consensus between all the parties. That Councillor committment to the process, and not to a particular outcome, would be important to the success of the process was further indicated by the [staff] Coordinating Group, which noted that consideration was given to a letter from a Councillor (dated 9/10/94). Officers noted that, "comments expressed by the writer were contradictory to those expressed in the City Manager's report [of 22/08/94]" (Minutes, 10/10/94). This staff group also noted with regards "attitudes of [CRTWP] members -

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[249] **The chair of the Goals and Strategies Committee, sent a letter to all Councillors (5/10/94) indicating they would have received the "Draft Terms of Reference" for the working party, as formulated by the [staff] Coordinating Group in conjunction with interest groups (in the preliminary meeting held 3/10/94). They were informed that the working party composition was to include two Councillors and all Councillors were invited to register their interest to membership of the [CRTWP].**

Consideration was given to the need to *ensure members of [CRTWP] did not forfeit the objectives of the working party in an attempt to influence the outcomes of its decisions*". This suggests that councillor's views may have demonstrated a capacity to cause such a forfeiture. In addressing this issue this staff group noted that "The working party members' responses would be a matter for the Facilitator to control and that the imposition of applying standing orders may discourage free flowing consultation and debate." Officers' consideration of that Councillor's letter show that his views were influential in setting up the CRTWP as it was, "Decided: to take into account [Councillor's] concerns regarding the brief being too wide for the working party, if it included consideration of urban growth options and the siting of a second bridge. Accordingly, the brief would specify: Take into account short and medium term CRT needs, not being inconsistent with identified long term growth options" (Staff Coordinating Group minutes, 14/10/94).

The two Councillors' comments[250] regarding their desire to represent Council as members in the CRTWP, show they had different personal views about their role within the process, and therefore approaches within the CRTWP.[251] An inference of comments of Councillor members, reported by others, is that both Councillors may have come to believe their 'BATNA'[252] lay in later Council decision making forums and not within the CRTWP. However, even in that knowledge, they did not withdraw from the process, which indicated these members still saw some benefits to participating until its conclusion. Similarly, within the process as problems arose, each participant can be assumed to have reassessed their 'BATNA' and whether they would continue to participate. The facilitator observed with regards problems emerging in the process that his role was to "just make explicit in the process that the participants work out if they still want to be involved or not. One of the things about a working party is that they are not paid to be there, they are not obliged to be there and if they don't feel it is being handled in good faith, they can just walk out. So

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[250] Refer to footnote 133

[251] One Councillor saw herself as a neutral facilitatory participant. The other indicated they had been an advocate for the LTDP and made "no apologies for that, as others within the CRTWP would also be advocates". This Councillor stated their advocacy, within the CRTWP, would be on behalf of citizens generally and not therefore on behalf of a preferred solution. However, this Councillor also wrote "[I would] consider all the information placed before the [CRTWP] and weigh its deliberations *before coming to a final view on the Working Party's report to the Council*" (MI), thus indicating an outsider view of any 'working party report', rather than an insider view or 'ownership' of the result they would be party to formulating within a consensual process. This Councillor's comments imply that they anticipated a remote engagement within the group, and a low personal committment to a consensual process. As such that person could not have been 'expected' to ratify any agreement reached by all the other members or to support it later in Council. In the event that Councillor was the only CRTWP member to include a rider to their signature, indicating reservations over certain recommendations and also spoke against aspects of the strategy in later Council forums

[252] Refer to footnote 129.

it's not up to me to do anything about that, but I would make it clear."

That each participant decided to continue with that process is evident in the fact that a strategy was developed and all members endorsed that as the outcome of the process. That each did so indicated that such a process could reach a satisfactory conclusion, in the form of an accord on a preferred strategy, despite circumstances which placed the principle of *voluntary participation* in jeopardy. It was evident that, in this process, by referencing their BATNAs each member decided to stay in the process until it produced an outcome that each endorsed. In that light, their participation can be described as voluntary.[253]

Having participated in this forum a number of participants came to perceptions of a lack of commitment by Council to the process. While 'Council' and other Councillors may have been committed, appointing a representative who was widely perceived as not committed, and also not ensuring some information providers understood and respected the role of the CRTWP, undermined perceptions on the integrity of the process. These problems highlight that a less that *willing* participation in (and input to) the process, of some individuals undermined the integrity of the process.

12.2.4 *Perceptions on entering the process of a predetermination for a particular type of strategy or outcome.*

Several participants suggested the City Manager's report had made it clear that Council had a preferred outcome in mind which it wished to promote through the CRTWP.[254] That report was considered to see how they could have arrived at that view. It was found to contain mixed messages.[255] That innuendo or subtle messages were gleaned from

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[253] Similarly, endorsing the final report or strategy is considered voluntary. As a Councillor did include a rider to their signature (endorsement) another 'participant' (not a member) wrote to Council to point out how he would like to see the strategy 'improved' further and what he wasn't enthusiastic about within the report, so providing an 'after the fact' rider to his signature to the CRTWP strategy. However that 'rider' was not included with the report or in later reporting of it.

[254] The City Manager's report (22/08/94) was frequently referenced to demonstrate Council's 'agenda' and 'motives' in pursuing the CRTWP approach. The interpretations of 'motives' suggested by that report, as offered by participants are relevant to EDR as they show personal perspectives.

[255] Within that report the comment, "the working party would not necessarily achieve the outcome which the Council is seeking", was open to interpretation. Some public participants believed the outcome Council was seeking referred to a particular preferred solution. However, the outcome Council was seeking could also refer to the achievement of satisfactory resolution of the dispute, so that something could be done to address the problems in the Avenue, (preferably by reaching a consensus, but recognising that might not be possible). Also, while stating that "all parties [in the CRTWP] would have to suspend their current preferences", the option of a working party approach appears in a report which, "considers the following options *to enable the achievement of Council plans" (MI)).* Some participants took that to mean, progressing the LTDP. It is unclear whether 'Council plans' refers to the

Councillors and officers comments contributed to the dispute context and thus contributed to problems in resolving the conflict.

In considering whether to establish a working party Council identified a range of advantages in using that approach by comparison to other approaches (refer to p147). Councillors believed the LTDP did have a base of community support and that if the issues were explored thoroughly again, it would win greater community support. Also Councillors showed a concern for being seen to do the right thing with regards consultation, and also that they considered risks associated with other processes. They considered their BATNA, in terms of achieving practical solutions and enhancing their public image. It was thought such a process could reduce opposition within formal processes that could still be necessary. It is apparent that an influence in choosing the approach was that it was an opportunity to enhance community support for the LTDP. Councillor representatives in the CRTWP appeared to participants to have taken that approach into the CRTWP.

12.2.5 *Perspectives on the exercise of political power and authority.*

The use of a consensual ADR approach was noted, in Chapter 6, to imply a willingness to share planning influence. However, participants indicated an explanation for problems, within this process, was Council's determination to exercise its political authority. A participant surmised that the trees issue became a "power symbol".[256]

> Public "I think they did try to make the process work to suit themselves and people didn't want it just to work to suit them, but, other people wanted to do things. Councillors had problems with that. They say it is Councillors abdicating their overall authority. They don't want other people who are not Councillors making decisions."
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> Public "Firstly [Councillor] fought against having [the CRTWP] and then insisted on being on it. His view was - if you think historically, you can see were that view comes from - that Council is elected to govern. It should go away and govern and I suspect that pre-RMA, that's what they did. [Councillor] has been there for over 25 years now and he has been through that, and I expect the whole Council is finding it hard to live in the new constraints of the RMA - having consultation. I think they are struggling to accept alternative views and perhaps even having to try to cater for them. [A Councillor] started off by pointing out that people tended to confuse consultation with their views being accepted and that people think that if their view hasn't been accepted, there hasn't been consultation."
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> Public "Councillors think they are elected to take tough decisions and ought not to discuss everything with the public."

LTDP specifically or to Council policy directives more generally.

[256] Others described that Council had been frustrated in its ability to implement some recent proposals, as it had conceded to public pressure on two other major Council decisions. They suggested that Council wanted to reassert its authority. For example, a decision to develop empty space within city centre and siting of a new landfill were overturned following public disputes over the decisions.

When asked to comment on whether this process was a form of sharing power with the community, the facilitator said "Yeah, but it's not really. It is a bridging power to be involved in shaping and owning the solution rather than actually making the decisions, because the Council never delegated that. In my experience it is never the case that power to make the decision is delegated. It can happen that way, but that's not how we did it." Some Councillors indicated that their leadership role was a consideration for them, while debating whether to use an ADR approach.

> Councillor "A plan change process provided the community with transparency and simplicity and *ensured Council was seen in a leadership role on the matter...* there would be sufficient opportunity for consultation in the process provided for a plan change." (Goals and Strategies Committee Minutes 30/08/94, MI)

Participants were asked whether this process encouraged fair decisions, or shared influence in designing a solution *with* the community. Most indicated the CRTWP *forum* and *strategy* promoted an equitable process and outcome, in terms of EDR, as the interested community was directly involved. While they suggested that would be a strong influence on Council, they did not believe decision-making had been shared. That is, the *process* was considered to be an equitable approach, even though Councillors would make the decisions and so *decision making authority* was not shared or delegated to the CRTWP.

> Public "Yes. Divergent views were aired and talked through face to face."
>
> Public "Yes, because people/groups have to put their information and reasons forward for critiquing by other groups."
>
> Public "It provided a check or counter balancing view."
>
> Public "Being better informed as to the accuracy of information or different interpretations is important."

Several participants suggested that this forum could not be described in terms of sharing power, on the basis that the CRTWP did not ultimately determine the outcomes, as Councillors would decide whether the CRTWP strategy would be accepted. Therefore, the CRTWP had no power. It was indicated that had there been some prior agreement that Council would endorse any consensual strategy, rather than that being an assumption of the process, then power and influence could have been said to be shared.

> Public "If you want to be more cynical you could suggest that the entire CRTWP was simply a ruse by Council to give the impression that they were fully consultative when I don't believe they were. I don't believe they had their hearts in it, but that is only my personal belief. [*Why do you think that?*]. Because I went to a meeting at Council and despite a certain recommendation by the CRTWP... At that stage they had made a decision, I believe, prior to any reporting back... That was the fundamental issue."
>
> Public "Not sure. As the Council will ultimately make the final decision, the [CRTWP] conclusion was only a report to Council for consideration."

> Councillor "Cannot say, but can say that the elected Councillors [representatives on the CRTWP] had a responsibility to articulate the views of citizens generally, not just members of some of the groups represented."

Some participants attributed some problems within the CRTWP process to a reluctance on the part of some in Council to give up control of the process to the facilitator. They described what they saw as efforts by some Councillors and officers to control or dominate the process, in terms of seeking to describe the way information should be interpreted in the CRTWP and also in seeking to define what the group could consider within the scope of the problem, and could generate in terms of outcomes.[257] However, other participants thought Council had not 'lost control' in the process, as they suggested the fundamental constraints were established in how the CRTWP had been set up initially. These issues highlight that this was a political forum. Council had recognised the political character of the dispute, in deciding to establish a group of community representatives and not one of experts and technical representatives.

12.2.6 *Council reluctance to change its mind after a decision has been made.*

That some Councillors preferred to show leadership and envisage consultation as an informing process once a decision is taken, was identified by some participants as an explanation for limitations of the process. This perspective is linked to others relating to the level of Council committment to this approach and its outcome. Participants described what they saw as reluctance in Council to change its mind once a decision has been made.

> Public "There is a malaise in Council to overturn a decision once made. That is the accepted wisdom, stick to your guns once you have made a decision. I think the people who make those sorts of decisions and who influence them strongly are very influential politicians. [Councillor] was a long term 'planner', you know, a very effective guy - just happens to be wrong I think. But yes, when they have got a very coherent team at the top, they stick together and once they make a decision, it's very difficult to influence that, except that I would say, the CRTWP has had some influence."

> Public "I have heard if from some of the Councillors that nothing has changed even though this plan was developed in 1988, prior to Local Government reform in 1989, the RMA in 1991, Transit's new CBA and so on. But as they see it, nothing has changed in terms of this proposal, so the 1988 decision stands. Now a number of things have changed. [A Councillor] said he was surprised at the depth of feeling about the cutting down of the trees in Jan. He knows since the vote was taken to cut down the trees, he has had it put to him that you can 4-lane the Ave without having to fell the trees, which he didn't seem to know before. He now knows that some of Massey University is moving to the other side of the river. These things are changes, things aren't the same as they were at the time of this decision. They have got ample basis to change their minds and change their approach if they want to."

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[257] However, Council 'loss of control' in the CRTWP was also given as a reason Council did not appoint an independent facilitator for the new working party, established to determine an appropriate site for the second bridge.

Public "In 1988 the die was caste, the thing that stopped them was when we drew attention to the fact that these were protected trees. The whole consultation process, in a sense, was because of that and the whole process was an attempt to get over that problem, which the last hearing finally got through. So the destination was set and Council was determined to see it through. While it changed direction occasionally, its ultimate end was the same and different processes or directions were taken to get to there, not to get to some place else."

Councillor "One of the things that hurts me a little bit, because the Council is really quite sincere about the [second] bridge. There were some Councillors that said, 'look, we are really feeling now that we can no longer delay this thing, we have got to get on to a bridge right away and it must be seen to be a policy of this Council to build another bridge. It wasn't capitulating, it was a sincere thing coming through. But they were still not prepared to give up their old policy. I could not get them to see that one was contradicting the other. Emotionally they were saying they wanted a new bridge, but they weren't prepared to do anything about it until 4 laning is out of the way."

12.2.7 *Political undercurrents running throughout the process.*

An explanation for some problems within the process related to the fact that preferences for solving problems were based on political views, as well as on a range of technical and economic factors (among others) informing the issues. Participants therefore highlighted political undercurrents throughout the process, as interested parties sought to assert political influence, as well as technical or logistical reason, in constructing a preferred strategy.

Public "When I went to the preliminary meeting there was a lot of good feeling about the idea. That was facilitated by [planning consultant] and I think there was goodwill from all sides... I think from that exploratory meeting they went ahead and set up the CRTWP. The Council then put on 2 people with what I would call vested interests. That affected the purpose, or the perception of its purpose, and I think it affected long term how good a job it could do."

Public "I think because they felt they had lost control of the CRTWP activity through having an independent facilitator... They had a policy to prosecute, and they lost control. [*So you think that the role of the Chair is a powerful position*?] Yes, I use the word Chair, but [the facilitator] saw himself as a facilitator, leadership sure, but independent leadership. I think that was totally critical and the Council felt that it didn't help them push their policy forward which is always their agenda. I'm sure, quite openly, as they can't manage it. They couldn't control it and they have walked away from it in two instances. In the new bridge working party and in setting up what they call a liaison group, which is really a travesty of what was intended in the CRTWP recommendation."

Consultant "I think [the CRTWP] was a gesture but I think it was set up in a way that the Council knew it could control it. The way it was set up and managed."

Consultant "The Council were not unanimous in setting up the CRTWP and those who opposed it, I mean there were a lot of political currents going on and they continued right throughout the process."

It was also apparent that some officers also attempted to assert some political influence

in addition to contributing their technical expertise to the process,[258] by making their views, as to their preferred options, known to the group. That factor along with efforts to manage or 'control' the CRTWP were seen as undermining the integrity of the process. However, other participants indicated that they trusted the integrity of the process, because of the integrity of the facilitator, and therefore that political influence in the outcomes of the process would be balanced within it. Participants described that it was the individuals within the CRTWP and Council's response to the outcome of that process, that determined whether the process would be successful.

12.2.8 *Councillor representatives endorsement of the strategy did not mean it was also acceptable to Council, as the CRTWP acted as advisor to Council.*

It was noted in Chapter 4, that when an ADR forum has reached an accord and all the interested parties have signed an agreement to the effect they are satisfied with the outcomes, the formal EDR forums may not be necessary, as the decision making authority can also elect to endorse the results of the ADR forum.[259] All participants indicated that the CRTWP's strategy required the sanction of the sponsor. This implies that the Councillors representing Council within the CRTWP, did not have the mandate to take decisions on Councils behalf, as sponsor. Otherwise Council endorsement of the strategy could be assumed to have occurred when the Council representatives in the CRTWP signed the final report, as was assumed when other organisations representatives signed it. This highlights another limitation of this process, that all the representatives could not take decisions on behalf of their constituencies while negotiating an agreed solution. Others not included in the process had either an ability to participate in later formal processes *or* they had ultimate authority to determine if the outcomes of that process were acceptable (as provider of civic services, and as responsible for resource and environmental management). Therefore, this process was additional to, not alternative to other processes and decision making forums.

The facilitator was asked, (in 1996) "Was this CRTWP seen as advising the Council or sharing their decision-making role?" He indicated, "Both, they were reporting to Council, but because the Council was involved it was unlikely they would make any changes." As Council had voluntarily chosen to employ this approach to generating a strategy (solution),

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[258] These observations were related to the perspective that Council was not committed to accepting any consensually agreed outcome, but was seeking to generate consensus on a particular preferred outcome. Comments of some Council participants do suggest they did have a preference for a particular outcome, for example an officer said, "Now, we almost got there, I think there was an 8 for 4 lanes versus 3 against. Now obviously during that process there were an awful lot of options looked at."

[259] That that could be the case was provided for within s100, RMA, 1991, when submittors indicate they no longer wish to be heard in relation to a resource consent application.

it could be said to have shared planning influence with the other interested parties.[260]

> Public "The document got reported to Council of course and then the Council adopts it and they are the only ones who are handling it. There is no legal obligation or any other obligation on them to actually follow what is set out in it. In fact, they have already jumped over some of the basic, fundamental parts that we were asking for. They are proceeding with what they wanted to do in the past. But those parts that do coincide with what they wanted to do they are saying, 'look we are doing this as recommended', when it is coinciding with what they were doing anyway. They are extremely selective about what they do."

As this process was not required by statute its outcomes were not binding on any of the parties to the agreement.[261] Each party was "without prejudice" able to participate in other procedures initiated to resolve the issues further. A public participant indicated "Negotiation is a part of the [consensual] process, however I believe we have the possibility of strengthening our position during the future legal[262] processes." A limitation of this EDR effort was that it was an informal (ADR) process requiring *sanction* in other forums. This was complicated in this situation as Council was both a proposer of change and so was sponsor of an ADR process, and was also the decision-making authority with responsibility to oversee EDR processes and outcomes. In 1996, the CRTWP was seen as advising Council, but that such advice would have a strong influence and would likely be taken. It was also believed (at that time) that Councillor representatives did have the mandate of Council. Participants thought (in 1996) that Council was pursuing the CRTWP's strategy. However, as Council was also the resource and environmental management authority the proposed policy framework [PDP process] initiated not long after the CRTWP concluded, was suggested by participants not to have reflected an endorsement of the CRTWP's strategy. Participants suggested the PDP posed some threat to the CRTWP strategy (as discussed in Chapter 10).

12.2.9 *Confusion as to whether Council did accept the CRTWP recommendations or adopt that strategy.*

Participants had different views as to whether the CRTWP report was adopted by Council as its preferred strategy *instead of* the LTDP. In 1996, there was a view that the consensus strategy was too 'politically correct' to ignore and it was thought to have been adopted.

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[260] Further-to-that Council as regulatory authority would have to reassess its policy framework in relation to any accommodations or impediments to that strategy (if they accepted it) and how to address these through later decision-making forums.

[261] The facilitators "*Terms of Engagement*" (clause 8) show that "negotiations in the facilitated process shall be without prejudice and shall not be referred to or relied upon in any other proceedings".

[262] Such comments also serve to demonstrate a commonly expressed view that the formal EDR processes (statutorily required submission and hearing processes) are 'legal processes' and that their determinations are 'binding', which strictly speaking they are not, although 'operative' plans do "have the effect of law" (Frieder, 1997).

Officers indicated Council had accepted the CRTWP's strategy and that Council was going through the further processes required for implementation. The reason was provided by the facilitator who said, "Because the Council was involved it was unlikely they would make any changes." A number of actions were undertaken, during 1996, in accordance with the CRTWP strategy, and processes to facilitate implementing other features were initiated. Officers indicated the time frame for implementation would depend on funding constraints.

> Public "Council seemed ostensibly to accept the CRTWP recommendations or report."
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> Officer "I think the two Councillor representatives signed an agreement which was also signed by all other members of the CRTWP and they agreed to most of those recommendations. [Councillor] didn't agree with a few recommendations, so I think as the Council's representatives those recommendations they agreed with, would be important policy wise."
>
> Officer "A lot of those recommendations relate to physical works so there will be an issue of funding and what priority they get in the annual plan process as to what funding is available for capital works and what priority they get... You would need to speak to the implementors to see how the CRTWP product is being effected and what degree of priority it is given."

However, issues arising out of how the report was interpreted and aspects of how some recommendations were implemented, suggested to some public participants (in 1996) that the CRTWP's strategy was not adopted in its entirety.[263]

> Public "Council's reception of the CRTWP report was less than satisfactory. They accepted the recommendations that suited them."[264]
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> Public "Council did not take the CRTWP recommendation for more information on 3

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[263] Public participants indicated there were three aspects to implementation that led them to a perspective that Council was reinterpreting the CRTWP strategy to accommodate the original LTDP. One issue for participants was the nature of the liaison group set up. It had been recommended to monitor implementation and to resolve any new issues arising. It was also intended as further consultation with regards analysing a report on the feasibility of 3 laning to Te Awe Awe St. The subsequent report was also contentious. Some participants present a view that the report was not an independent, comparative, feasibility assessment but promoted 4 laning and downgraded 3 laning. Thirdly, the nature of the PDP was perceived as a threat to the future of all the trees along the Avenue and not just those in the last two blocks of the Avenue, as implied may be necessary by the CRTWP.

[264] Public (continued) "One of the recommendations was for some form of liaison to carry on, to continue to resolve the problem as they defined it. That process was totally captured by the Councillors and the liaison that has followed has been an absolute farce really... There is no formal group set up where everyone is kept informed. They have set up a little group of Councillors and when they think there is something they want to discuss about the Ave, they will call in two or three people and tell them what they are going to do. The Council simply says it has a liaison group, but they will only invite people who they want to any meeting, to discuss a particular topic and the discussion is generally, 'well, we are going to do this, what do you think?' It's not really consultation or liaison at all. So we are disappointed with that... They don't actually call together a review group. They say they call people who are directly affected. But the people they call are always the people who are supportive of their position and so it is a very select set that they are working with and the set changes depending on the issues, so no one knows the overall picture of what is going on, except the person who is managing the process and that person is a Councillor. The Councillor who has fought most strongly for 4-laning for years."

laning seriously. They never got any independent appraisal of that option. It was quite amazing, in the sense that Council policy, right from the time that bridge was built in 1987 onwards, was for 3 laning and tidal-flow. The bridge was never designed to be 4 laned, it was built as a 2 lane bridge which could be 3 laned if they wanted to. They have archival records where they argued that 3 laning would be just fine on that bridge, it would resolve all the problems. But when they started to get into the RMA type dispute, I think they suddenly realized that their arguing that a 3 lane bridge would be just fine, somewhat compromised their point that the Avenue had to be 4 laned. In other words, if the bridge can be 3 laned, then that short stretch up to Te Awe Awe could equally be 3 laned. So we were suddenly informed the bridge had to be 4 laned, that it just was not possible to 3 lane it any longer. So that was one of those little undercurrents that most people weren't aware of."

Public "Well, they receive the document and can do whatever they want. It doesn't matter if what they do flies in the face of the CRTWP outcome. Who is going to bring it up and say you said you would do this or agreed to do this, because it was just a working party report. [*So was there a way to monitor if it was being implemented as intended?*] There was a group set up for liaison. The idea put up by the facilitator was that this could be a watchdog group who could then report to Council about how things were going. But the Council then turned around and decided who was going to be on this group, and how they would operate, and [my group] wasn't on it." [265]

Public "There was a lot of debate about whether Council was implementing that report properly... We were expecting the recommendations from the CRTWP to be implemented. We were not of the opinion it was not going to happen, so we wouldn't have raised the issue again with Council."

Public "What has *not* been publicly promulgated was the conclusion of the CRTWP that the *traffic* problem could best be resolved by a second *'near'* bridge. This conclusion was opposed by the Council representatives, who were committed to a development strategy and a second *'far'* bridge. It was only the need for a *second* bridge that was reported, and subsequently with the added timeframe of 10-13 years!"

In 1997, Council participants indicated that the CRTWP strategy was one piece of advice it had received to inform decision making on these issues.

Consultant "Council took the CRTWP report as just one piece of advice. This is a problem really. One would hope that a working party process actually took *all* of the participants along with it, and those were then able to represent the group feeling and that everybody made a group decision."

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[265] This participant gave examples to explain why he thought the CRTWP's recommendations had been reinterpreted by Council. Public "I wrote a letter to the Commissioner for the Environment and to the Mayor, because they jacked up the liaison group basically. It was a group that could be expanded when they wanted more peoples input into anything. Save the Avenue was meant to be in it, but they withdrew, because it was rigged. I turned up to one of the meetings and said, 'I am not invited to this, but I will be here anyway' and so they threw me out and there was a bit of an argument. Basically all it was, was some Council staff would write a report and so [Councillor] would get it and call in a few people who would say 'OK, put it to Council'. They said 'if you have any comments, put them in', but they always had to be in by lunchtime the next day. Now this group was supposed to be thrashing out any new issues arising, fine tuning implementing the CRTWP strategy. This is where it became part of the Goals and Strategies Committee, and the staff implementors have to report to that. But there was no real process for us to report also and the other thing was they stacked that liaison group as well. They had [Councillor] chairing it and [influential Councillors and officer] there all the time. So it was a very 4 laning group. They got the report on 3 laning, recommending 4 laning, from the roading division and when I read it, I just thought, 'oh my God'. We were told to comment on it by lunchtime tomorrow. All it was, was an engineering view saying how they got to saying 3 laning was not appropriate and the avenues the Council should pursue from there to get 4 laning underway, and to undertake a plan change. I couldn't understand how they could work the process backwards like that."

> Councillor [*EDR literature talks about reframing or redefining the problem in terms of agreed objectives. Was it possible to step back from the dispute between 4 laning or trees, and set objectives and explore how to meet these?*] "Well they did. This is where they came into the new bridge, but only they said, if you were more committed to the bridge and built it faster, you wouldn't need to cut down the trees at all, 'maintain the Ave and have another bridge to cater for the extra traffic', but that wasn't viable because what are you going to do now, you can't build a bridge overnight."

In 1997, this ADR process had come to be viewed as a complimentary political process. Having received the CRTWP's strategy, Council reverted to its usual methods of making decisions.[266] A different emphasis was given the CRTWP report. It was seen as supplementary too, and not contradictory to the original LTDP strategy which proposed to 4 lane the entire length of the Avenue. A Councillor said that Council had not adopted the CRTWP strategy in its entirety, as its preferred solution over the LTDP, but the things that could be accommodated were taken on board by Council.[267]

> Councillor [*So there have been attempts to incorporate wide concerns and views?*] "To the extent to which they are practical or fit in with an overall scheme... because you can't go changing small parts of it later. Well, often you can't."

> Officer "[*The CRTWP recommendations were adopted by Council then - but the 3 or 4 laning to Te Awe Awe remained unresolved - so information was required or modelling needed to help choose between the two options?]* Yes, that's right. The subsequent report was put to the Goals and Strategies Committee of Council some 3 to 4 months after. Well, what it did, I guess, was it confirmed the robust work we had done in our process back in 1987 - from our point of view, we had gone right through the CRTWP and hearing processes and we had heard a lot of options and come up with other ideas and talked about all these things and we were almost swayed away from it at one stage - so we went through that and it wasn't just that we tried the process as a cursory thing, we really had a real genuine attempt to look at some of the other options. [*At that time when that report went to Committee and they concluded it was necessary to go into the plan change process, was it in order to implement the CRTWP recommendations along with the decision to 4-lane to Te Awe Awe OR was it to go back to the LTDP. Which one was the emphasis on implementing at that stage?*] Officer "Well, I remember the [roading division] report [on 3 versus 4 laning] of November last year [1996] which said, 'lets get on with this and get back to the LTDP as there was nothing that had happened during the process - so within the CRTWP, while there were a lot of comments on there, whilst they were additional to, they weren't contradictory to the original strategy. The only issue that was really outstanding was the 3 versus 4 laning which was the subject of the report. So when we went back to the Goals and Strategies Committee

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[266] Some participants indicated they believed Council's subsequent considerations focused too much on technical, economic concerns and did not adequately take into account all environmental qualities and adverse effects on these, that the CRTWP had considered in formulating their strategy.

[267] There were no records of the LTDP having ever been officially dropped or altered to accommodate the later recommendations of the CRTWP. Nor was there an 'official' policy demonstrating an accommodation of the CRTWP strategy in favour of, or over, the earlier 'policy'. It appears the 1988 LTDP had continued to stand as a 'policy' concurrent to the CRTWP strategy having appeared to be 'accepted' or 'adopted' in 1996. While there were numerous indications that the CRTWP strategy was being pursued in 1996, it became apparent during 1997 that the LTDP was also still an active policy. It became apparent that the CRTWP had never in fact been officially endorsed in its entirety or stated to have replaced the earlier LTDP as Council policy, the two strategies appear to have vied for supremacy within Council, as to which was in fact being implemented. Some participants indicated they believed both were being implemented, in part, simultaneously.

recommending 4 laning, I guess that pretty much bought the whole CRTWP process back into... apart from a few little tack ons, pretty much consistent with what the original strategy was again. Now we didn't come up with 4 laning because that was what the LTDP says, we came up with it because it was a good engineering decision to make and the recommendations were quite specific on that. So I guess with the approval of that report, as a result, obviously the next thing was going to be, 'well how on earth do we get over the problem we have got', because at the moment we can not 4 lane the Ave because we can not remove the trees. [*So that decision had really taken you right back to where you had started the conflict and a failed consent application?*] Yes, that's right."

Participants indicated that Council had exercised discretion in selectivity implementing some CRTWP recommendations and not others. Some public participants suggested that as the LTDP was in place it continued to be followed as Council *policy*, and the "slate was never cleaned" to consider others interests and to develop an appropriate solution that all interested parties could live with.

Public "The CRTWP produced a report, the people who are primarily interpreting what was written and what was intended are the Council's people. So, naturally, they are adhering to their own perspectives. We think they are ignoring aspects of the CRTWP report that don't suit their original policy. They are amplifying aspects that do suit their old policies."

Public "They didn't alter it [the CRTWP report]. They accepted it - they were unhappy with it, to the point where the facilitator was lambasted at some length by some Councillors. But the report itself stood. The changes that the Council has made are simply changes where they have interpreted what they wanted to and ignored what they didn't want. In other words, the political approach took over again, as you would expect it to do... From what I heard at the Council discussions in public when the report was presented, there was considerable Councillor dissatisfaction. I think their expectations were jolted. They went into the process thinking they would be able to move forward on their policy, and I think when the report came back, they began to understand that the whole thing was much more complicated. The facilitator took some considerable flak in that Council meeting when that report was presented."

Public "I think it would be unrealistic to expect the outcome of the CRTWP to be able to be used literally, as I say we weren't able to change the brief, we weren't able to refocus around the idea of the infrastructural problems as being the heart of the problem we were trying to solve. We were simply to solve cross river transportation problems, particularly as it exists right now. So I think it would be unrealistic to expect the Council to totally change. But I think an element of change has occurred. New options are now being considered. Cyclists are now given much more priority, cycle ways are being thought about. The new bridge is now being thought about."

12.2.10 *A lack of transparency about what Council intended to achieve.*

Public participants speculated about Council's long term intentions in the Avenue, as they did not believe information presented to the wider public was sufficiently detailed to provide transparency as to exactly what Council intended. Some public participants suggested Council's public statements were couched in terms that would encourage an inaccurate interpretation by the wider public, as to the changes Council wanted to make to the Avenue in the medium term. For example, participants referred to Council's brochures (mailed out to all households, refer to Appendix XI), in which it stated a commitment to action the

CRTWP recommendation for a new bridge. As Council didn't also state an agreement with the CRTWP, that it should be a near bridge capable of alleviating traffic problems on the Avenue, or that it should be built as soon as possible, the wider public could assume that, but that was not what Council had indicated to members of the CRTWP. [268]

Similarly, there was confusion as to whether Council's focus on 4 laning between the Fitzherbert Bridge and Te Awe Awe St, (as the issue surrounding 'no policy' of tree protection was always couched in terms of being *necessary* to 4 lane that section), would actually mean 4 laning being confined to that section. Some participants believed no policy in the PDP *intended* to allow 4 laning of the whole Avenue, "but no one would ever admit to that." Some public participants also described difficulties in disseminating these concerns, as the media would not report these, as the public participants could not substantiate them.[269]

A public participant referred to "deceit by omission", in relation to a lack of specifics and thus clarity in information disseminated to the public, and indicated that only those already well versed in the issues would recognise the omissions, while less aware members of the public (relying on media releases for information) could be expected to make unfounded assumptions. Participants suggested Council's reluctance to express views publicly and "serious omissions" within information disseminated to the public compounded confusion as to whether the CRTWP strategy had been adopted. Following notification of the PDP, conflict quickly escalated in the public arena, as protagonists talked at cross-purposes. This was also thought to have contributed to misinformation expressed in the ensuing debate in the wider public arena.

It was evident that a limitation of the process was that focusing on small parts of the issues, in order to reduce the debate to a manageable level in the public arena, gave rise to difficulties in presenting a strategy, able to be viewed in its entirety, along with rationales for it. Several participants considered a lack of specifics and transparency in information disseminated to the public, was a barrier to consultation, as the public could not be expected to understand the complexity of the issues and therefore provide an accurate response to the issues.

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[268] In the event, the new bridge site was chosen to be a far bridge. That bridge will be built when satellite centres expand, and traffic increases enough to trigger a cost benefit ratio to justify funding.

[269] A participant who described these uncertainties as explanations for limitations of this process, also suggested that their pointing out such problems in interpreting information, being circulated in the public arena were met with accusations that they were paranoid, distrusting, unbalanced and emotive, and were making unsubstantiated allegations and assertions.

As an ADR forum was used and did produce a consensual strategy, this was found to have heightened expectations about the influence of the public through consultative mechanisms. Public participants assumed and expected the consensual strategy would be accepted as the preferred option by Council, and would be implemented as intended by the CRTWP. However, that was not a view shared by Council, which considered other streams of information and treated the report as one piece of advice. That Council did eventually take and act on advice, other than that of the CRTWP, disappointed public participants.

12.2.11 *ADR processes initiated late in the evolution of the conflict*

An explanation for problems within the CRTWP process was that it was initiated late in the evolution of the conflict, when key interested parties had firm and publicly stated views. As such, a suggestion was that such a process would be better initiated early in considering alternatives and assessing information to inform the development of solutions. However, participants also described a need for conflict to be publicly expressed before such a process is likely to be initiated, as people are not necessarily aware of all the interests that might later be seen as relevant to resolving the issues.

> Officer "All I can say is in an ideal world it would have been preferable to have the CRTWP before the Council applied for the resource consent, in an ideal world. But, these things often don't express themselves as a need, until that conflict has emerged, which is a bit unfortunate. But I certainly don't think it came too late. I think it has been quite a positive move by the Council to do that [sponsor the CRTWP]... I suppose it requires, if it is to happen earlier, some key persons in an organisation - whether it be a Councillor, Manager or whoever else - to see that there is a real division occurring here and decisions need to be made about whether the statutory time clock should still continue to run and the process go to its end or a relief valve be put in by either, like a working party or some other resolution process to see if matters can be resolved prior to the more confrontational hearing process."

12.2.12 *The political nature of strategic planning issues arise from different visions for the future city.*

Public participants thought Council in the past, had not adequately anticipated future problems, or had inaccurately predicted how quickly the problem would escalate and cause this conflict. Participants suggested an effect was that the characteristics of solutions were constrained by what could be achieved *quickly*. Therefore some limitations in the process were attributed to a lack of foresight and necessary preparation to avoid problems and conflict in the City, in the past.

> Consultant "What sort of crossing there should be for the river would have been a straight political decision. Well, the Council has fought this for years and not done anything about it. I found their, and I still think their forward planning for this route has been defective. I believe they are going to widen the bridge and all that will do is shift the congestion to the next point and then they are going to do some more work, widen there and then the next point and do some more and so on. There has not been a proper planning process - of what are the full implications of this work - there

has been very much a reactive process, I have found, rather than a pro-active one."

Consultant "At the start the trees were really important. The traffic gradually became more important. I think if the Council had actually looked at the options, way back, before they even took the resource consent application to cut down the trees, they would have had time to really explore the options and the framework for that would have involved the Regional Council and its regional transport plans, bus subsidies were in place, Massey had less car parking at the time, the CRI's were still government departments. With hindsight, there could have been quite creative solutions come out - given time to think about the process and the cost to the community. But the process lost... it wasn't cohesive enough at the start to develop an appropriate outcome... It could have been handled a lot better if there wasn't this perception of a pressing need, to do something now to solve the traffic problem. This proposal fell out of that because the problem is now defined as a traffic capacity problem.

Consultant "The choice really became one between two different sorts of city. One was 4 laning the existing bridge which would put a major arterial giving lots of traffic through the town, it would have to extend in the long term, I believe, from the bridge right through to the centre of town, with major intersections on it. That is one scenario. The other scenario would be to build a second crossing and retain two, 2 lane arterial. They could keep the trees and Ave. with that, and that was really a choice as to what sort of city they wanted in the future and there was very little discussion or thinking on that sort of level. The discussion both at officer and politician level tended to be we have got a problem *now*, how can we fix it *now*. A real focus on doing something now. I think this was partly driven by the Council officers, [named Officer] has this 'if you have got a problem, fix it' kind of mentality, rather than a planning background."

An explanation for difficulties in addressing the problems in the Avenue more effectively in the past, was due to the political characteristics associated with this issue and with the planning process. Participants described escalating problems in the Avenue (and consequent constraints on what could be achieved, as urgency became a key consideration), that must have been recognised within Council. But, participants suggested, because of a lack of unity and integration of effort within the organisation of Council, efforts to avoid this inevitable conflict were not comprehensive enough to do so. Therefore, an explanation for limitations in this process, was that historical power dynamics within Council had hampered better forward planning within Council.

Consultant "My impression was it was fairly fragmented Council. I was certainly aware that in the draft proposed plan the trees were still intended to be protected - presumably to have got to that extent, I think, most of the planning staff must have been supportive of keeping the trees - but I think the politics took over from the staff."

Consultant "The NRB did a review... and this bit of road was no longer to be a SH. But the Council did manage to get out of NRB a promise that they would do the necessary work on the bridge at no cost to the Council and a lot of what has happened has been driven, I believe, not by consideration of what is the best transport solution, but by what is going to cost Council the least. You have to remember that despite the fact that Palmerston North is on both sides of a river, the city has never paid for a river crossing."

Consultant "I first came here in 1984. In 1983 [Council] actually made a conscious decision to list [the Ave trees] in the District Plan. Now most councils were not actually listing trees on roads or even in parks - but this council saw itself as being

ahead of the bunch. Now somewhere between 1984 and 1988, something changed."

Conclusions about the problems and limitations of this ADR process are summarised in Table 17. Participants ascribed different levels of importance to these problems. Some saw them as of major importance and described an aborted process, while others saw them as being overcome within the process as the group did reach consensus on a strategy. Additional explanations for these problems and limitations are summarised in Table 18.

TABLE 17 CONCLUSIONS ABOUT PROBLEMS AND LIMITATIONS OF THIS ADR PROCESS IN PRACTICE.

Representation issues

* As organisations chose to enter the process, some individuals felt compelled to join, or to stay in, the CRTWP process in order to exert a direct influence in it. This brought into question the assumption of voluntary participation.

* Consultation was essentially between the fourteen people active in the working party, plus the information providers to the group and the facilitator.

* Participants questioned why some interest groups were included, while others were not. Some members considered they were outsiders.

Problems informing and canvassing the wider public

* Participants were confused as to how they were to inform their constituents as they were hindered in their ability to do so, in part because of the confidentiality agreement, and in part because of a lack of time between meetings. Only the facilitator and communications advisor were to issue press releases.

* Participants suggested that full, balanced and objective reporting is necessary to inform the public and that this was difficult given the complexity of the issues and diverse views on them. Disparate abilities to disseminate information, including access to the media, was an issue for some individuals wishing to get information to the wider public. Also, disseminating information is only one half of informing the public, the public must also take responsibility to become informed.

* There was disagreement about whether the CRTWP had made the conclusions of the process and the *rationale* for its strategy clear to the wider public.

* Issues of informing and also canvassing the wider public were linked to issues of mandate held by representatives in the CRTWP. While some acted as intermediaries between Council and their constituencies, others acted as an appointed representative and did not inform or canvass their constituencies.

* There was no established mechanism incorporated into the process, or agreed to be undertaken by the participants, to confer with wider constituencies or the general public about what was transpiring within the process, or about constituents level of satisfaction in how they were being represented within it. There was no 'official' effort to check representatives were consulting their constituencies and no other effort to canvass a 'general public opinion' on the issues and therefore no agreed measurement of majority opinion on the issues.

Table 17 continues...

Table 17 continued...

Some key benefits and strengths of the process were not successfully extended beyond those directly involved with the group.

* Research participants who were not members of the CRTWP did not describe feelings of empathy or the increased understanding that members of the CRTWP described. Councillors who did not participate directly appear to have had a similar experience as the wider public, in relation to understanding the process and consequently accepting the CRTWP's outcome strategy.

* 'Ownership' of the outcome of the process was limited to members and those constituencies who had been closely consulted by their representatives.

Complimentary purposes in using the ADR approach

* Perceptions that there were complimentary purposes of the CRTWP, one its stated purpose as a problem solving forum, the other, an unstated purpose to manage the conflict and enhance public support for the LTDP, (that led some participants to observe that it had elements of a public relations exercise).

Issues surrounding the problem definition, its appropriate scope, and the objectives (criteria) to be included in the analysis

* Participants described it was necessary to convince others about the validity of their interests, values and perspectives.

* Participants disagreed over whether the problem definition and scope was inclusive of the diversity of interests and values, that all the parties thought were significant to the problem-solving endeavour.

* Some participants thought that some interests and values were either not defined explicitly (as objectives to be catered for), or were ranked and weighted within the process. The name of the working party was said to have indicated a ranking of interests, as it highlighted the way the problem had been framed for the CRTWP. Participants indicated issues of a lack of transparency as to the ranking and weighting of objectives within the process.

* Debate within the process, as to what was relevant, highlighted disagreement as to what the problem definition and scope did actually include. These debates were significant as they sought to clarify (or constrain) what was appropriate in terms of the strategy/solution that the group could develop.

* That the scope of possible solutions was argued early in the process indicated that some participants sought to preclude particular options from consideration, and also that all the constraints were not specified within the "*Terms of Reference*". These constraints were bounds on the solution, but were not identified clearly as objectives to be met.

* The CRTWP did not establish and agree to an all inclusive set of objectives, which could act as criteria, by which to measure the attainment of values and interests while evaluating options and deriving an agreed (or optimal) strategy.

Table 17 continues...

Table 17 continued...

Issues of predetermined views and difficulty maintaining the distinction between promoting and satisfying interests and values, and promoting preferred options

* Difficulties differentiating between the promotion of interests and values, and the promotion of preferred options. The distinction was not easy to maintain.

* A focus on preferred positions, was seen by others as threatening their interests and values. In one section of the Avenue, preferred positions were 'mutually exclusive' as they competed within a confined space. This was an issue as the response in that section of the Avenue could have consequences for the medium to long term security of each sides interests and values. The group did not develop a mechanism for reducing that risk, or eliminating uncertainty about the rest of the agreed strategy's ability to deliver its objectives in the future

* Promoting preferred positions affected the groups ability to formulate alternative 'mutually acceptable' solutions, and had the effect of casting the diverse interests as mutually exclusive rather than as equally important objectives.

* There was a perception that all participants (and the sponsor) were not committed to a consensual process or strategy. Participants described a reluctance by others to make concessions or deviate from preferred positions. Some described a reluctance, or malaise, in Council to change its mind (alter direction) after a decision has been made.

* Some participants described perceptions on entering the process of a predetermination on the part of others, for a particular type of outcome.

Reaching 'consensus' and issues about negotiating the strategy

* As the negotiations contained an element of pitting *interests* against each other in a competitive way, no consensus was reached on one aspect of the strategy.

* As conflict over one section of the Avenue was not resolved within the CRTWP, some later commentaries suggested that the issue was not resolved, despite the considerable accord reached in the remainder of the CRTWP strategy.

* The appearance of having voted in a consensual process gave rise to issues relating to how the recommendations of the consensually agreed strategy were interpreted by Council implementors.

* Having appeared to have taken a vote was considered by some to be a benefit in later processes, while others asserted there was no vote and variably interpreted what the straw poll indicated about the level of support for options.

* Issues related to how the CRTWP strategy was developed, given the hurried completion of the process, as members negotiated with incomplete information (with uncertainties) and without time to adequately consult constituencies.

* Some of the considerations outlined within the report were limited and all members would have appreciated more time (and information) to conclude and also more simply to fine-tune the strategy.

Table 17 continues...

Table 17 continued...

* Issues arose as to how comprehensive and integrated the CRTWP approach was, given constraints on 'the problem' to be addressed, and given the imprecise nature of the objectives (criteria) established by the group.

Terms of Reference as 'constraints' controlling the process

* While participants agreed to the "*Terms of Reference*" as they signed it, they had not come to a common understanding of what they meant. Some fundamental features of the "*Terms of Reference*" making up the CRTWP's brief were open to personal interpretation.

* Some members came to believe that the CRTWP's brief was restricted to trying to deal with traffic symptoms on the Avenue. Some participants felt the CRTWP was constrained in its problem solving endeavour due to control of the process, due to the "*Terms of Reference*".

Information issues

* The CRTWP started out with incomplete information and some contradictory information, and had to determine 'accuracy' and retrieve independently generated data and objective analysis.

* The information search was insatiable. There were limits to what could be researched and how many alternatives could be evaluated within the timeframe of the CRTWP.

* Some requested reports were provided late or did not address the concerns which had led to the report being requested. Some information was not provided at all.

* "Zealous" information providers went beyond providing their expert analysis of information to promote a preferred option or criticise alternatives, and some were also described as having debated issues with CRTWP members.

* That some advisors to the group were perceived to be attempting to influence the *political process* caused problems for participants as they mistrusted the *integrity* of information when the distrusted the *motives* of advisers. They presented a view that some experts presented 'opinions' that were based on political determination and not necessarily technical reason.

* Subjectivity within some of the analyses presented to the CRTWP, which while identified was not able to be adequately addressed, as there was insufficient time to commission further evaluations or peer review of all the relevant issues.

* Participants suggested some options were evaluated (by expert analysts) in isolation, rather than as components in an overall strategy - to consider feasibility of a strategy to cater for all the interests.

Table 17 continues...

Table 17 continues...

Committment to the process and its outcome

* There was an apparent contradiction between Council committment to the process when Councillor representatives appeared (at times), uncommitted to the process or to a consensually agreed outcome.

* Council as an 'interest group', within the CRTWP process, operated in the knowledge that it would alter or reject any part of the strategy it did not want. Councillor representatives (and some officers) were described as having subverted this ADR process.

* Information issues were related to a perception that not all participants (and importantly some officers and Councillors and by inference the sponsor) were not committed to a consensual process or strategy, but went into the process with predetermined views and preferred positions which they were reluctant or unable (had no mandate) to deviate from. Participants described a reluctance by Council to change its mind after a decision has been made.

* Participants had different views as to whether the CRTWP forum enabled decision-making to be shared with the public. Some believed it had, as the public were involved they may have had some influence. Others indicated that as Council would actually make the decisions, the public had little influence.

* Conflict continued and escalated following the conclusion of the process, despite it having appeared to have been successful in achieving its goal - to reach consensus on how to address the CRT problem.

TABLE 18 SUMMARY OF ADDITIONAL EXPLANATIONS FOR PROBLEMS AND LIMITATIONS IN THIS ADR PROCESS:

Uncertainty the process could produce a satisfactory resolution

* Council's stated uncertainties in employing this approach along with the tight schedule, exerted pressure on members to achieve a result.

* Pressure to produce a satisfactory or "useable outcome" for Council, led participants to take shortcuts they might not otherwise have taken, including not consulting widely with constituencies, taking decisions based on incomplete information, and agreeing to imprecise wording within the final report.

Distrust in the motives and agenda of Council as sponsor of the process

* A less than *willing* participation in (or input to) the process, of some individuals undermined the integrity of the process.

* Distrust in the motives and agenda of Council (as sponsor of the ADR process), and also of some officers and consultants (in the employ of Council but advising the CRTWP) affected members (trust) acceptance of information, as well as the rationales and arguments presented to promote or reject options. They came to insist that independently sourced information and/or peer review must be available to the group. Similarly those supportive of 4-laning distrusted information presented by Save the Avenue. These issues highlighted there were problems with regard the quality of information brought to inform the issues. Objective information was required to inform all the issues. Such information was not always able to be provided to the CRTWP.

Integrity of the process

* While Council and other Councillors may have been committed to the process, selecting a representative who was not, and not ensuring some information providers understood and respected the role of the CRTWP, undermined perceptions on the integrity of the process.

* Councillor representatives may have come to believe their BATNA lay in later Council decision making forums and not within the CRTWP. This contributed to perceptions of a lack of commitment by Council to the process and to a consensually formulated strategy.

* Participation in the process had not modified earlier perceptions of those who distrusted Councils motives at the outset. In addition a number of those who were not suspicious of the motives of others on entering the process also come to perceptions of a lack of commitment by Council to the process.

* The media was described as a tool for informing the wider public, but there were disparate abilities to access the media and to get information and perspectives to the public. There was a lack of specific detail and thus transparency in press releases about what Council intended to achieve.

Figure 18 continues...

Table 18 continued...

Variable views on the appropriate timeframe to apply to addressing 'the problem'

* Perspectives on appropriate solutions were linked to variable perspectives on the appropriate timeframe to apply to analysis of the problem and to possible management responses. Participants described variable perspectives about the time references necessary to consider the sustainability issues. Time references were adjusted, by participants, to suit their particular arguments on the appropriateness of options. While the problem was able to be described within a precise timeframe, there was no prior agreement about the time-frame to apply to possible solutions.

Time to initiate, and then to complete the process caused problems within, the process.

* The CRTWP process was initiated late in the evolution of the conflict, when protagonists had firm and publicly stated views.

* The time for the process to operate and conclude was artificially determined. The deadline was not extended and the strategy had to be finalised under pressure, with information uncertainties remaining, and with participants unable to canvass constituencies.

Political determination and a political issue

* Participants described Council's determination to exercise political decision-making power or authority. The trees were described as a power symbol. It was suggested that Council wanted to reassert its authority.

* As Councillors would decide whether the CRTWP strategy would be adopted, the sharing of influence achieved within this ADR process was short lived. It was indicated that had there been some prior agreement that Council would endorse any consensually agreed strategy rather than that being an assumption of the process, then 'influence' could have been said to be shared.

* Reluctance on the part of some in Council to give up control of the process to the facilitator, and efforts by some Councillors and officers to dominate the process, (in terms of seeking to describe the way information should be interpreted and also in seeking to define what the group could consider within the scope of the problem were described as undermining the process.

* That some Councillors preferred to show leadership and envisage consultation as an informing process, once a decision is taken, was linked to issues relating to the level of Council committment to this approach and its outcome.

* Preferences for solving problems were based on political (or subjective) views, as well as on a range of technical and economic factors (among others) informing the issues. Participants highlighted political undercurrents throughout the process, as protagonists sought to assert political influence as well as technical or logistical reason, in formulating a mutually acceptable strategy.

Table 18 continued...

Table 18 continued...

Confusion as to whether the CRTWP strategy was adopted by Council

* Councillor representatives endorsement of the strategy did not mean it was acceptable to Council, as the CRTWP acted as advisor to Council. In 1996, there was a view that the CRTWP's strategy was too politically correct to ignore and it was assumed to have been adopted. However, issues arising out of how the report was interpreted and begun to be implemented, suggested to some that the strategy was not adopted in its entirety.

* Council exercised discretion in selectivity implementing some CRTWP recommendations and not others. The LTDP continued to be pursued as Council *policy* by some influential officers and Councillors. Participants described that the "slate was never cleaned" to develop a strategy that all parties could live with. Only those aspects of the CRTWP strategy that complimented Council's LTDP were implemented by Council. The influence of the CRTWP and its report was perceived to be of much less importance in 1997, than in 1996.

Strategic planning issues - 'reactionary planning' versus 'anticipatory' and 'visionary planning'

* The political nature of strategic planning arising from different 'visions' for the future city was a source of conflict. It was found that political determination lay not just with influential Councillors but also with influential officers, as participants described their significant role in prioritorising issues onto the political agenda, and sponsoring projects towards completion.

* While the CRTWP was attempting to develop a strategy to resolve issues and problems, it was having to respond within the context of current problems. Urgency became a key consideration, in formulating potential management responses.

* Council had inaccurately predicted the level of conflict that would result from competition between interests in the Avenue. A lack of foresight and necessary preparation to avoid problems and conflict in the city (in the past), were attributed to the political nature of planning/decision-making and to power dynamics within the organisation of Council. A lack of unity and integration of effort within Council, to avoid this inevitable conflict meant any efforts in the past had not been comprehensive enough or sufficient to do so. Historical power dynamics within Council had hampered better forward planning within Council.

Unrealistic expectations of public participants in planning processes

* Members of the public have unrealistic expectations about what consultation can realistically be expected to achieve. The public expect to have a greater influence on the outcomes of decision making, than Council accepts they can have, as both political determination of Councillors, (as elected representatives of the community), and professional determination of officers (as experts) were also important influences on outcomes.

SECTION V

SYNTHESIS OF FINDINGS AND CONCLUSIONS

CHAPTER 13 SYNTHESIS OF FINDINGS

13.1 SYNTHESIS OF FINDINGS ON THE SOURCES AND CAUSES OF CONFLICT

The theoretical sources and causes of environmental disputes were identified in Chapter 5. The sources and causes of conflict in this case study are summarised in Chapter 7 (refer to p128-132). Dispute resolution hinged upon the interpretation of, and effectively addressing, diverse perspectives on a number of inter-related issues (refer to p138). Consideration of the range of issues that needed to be addressed within EDR processes, in order to resolve the issues *to the satisfaction of all the parties*, shows that the sources and causes of environmental dispute identified in the literature review were evident in practice. Additional sources of environmental conflict were identified in practice including:

13.1.1 *Participants described different perspectives about how local government 'ought' to operate in a representative democracy, and about how power and influence ought to be exercised in conducting the affairs of local government.*

Public participants expected to be consulted prior to major decisions, and to be able to influence Councillors to ensure that Council officers took account of all of their interests during the formulation of projects that had the potential to adversely effect the/their environment. To the public that meant each of their interests and values ought to be *at least* 'accommodated', or *at best*, 'catered for', in designing solutions to planning problems. This perspective emphasised the role of the community in directing Council as to what targets to set for its planning endeavours. *Public participants promoted a view that they were best able to describe the communities interests, values, and priorities and that Councillors and officers ought to take their direction from the goals described by the community.* This view suggests the political issues need to be debated prior to, but also within the context of planning endeavours in relation to specific problems. These participants emphasised that consultation and community debate on political issues was a democratic necessity. *This view emphasised a role of local government is to balance peoples' abilities to influence civil affairs.*

Council participants provided a different perspective. Within Council there was strong political determination to pursue the LTDP. Councillors understood earlier problems relating to alternatives, and had an understanding of priorities which indicated to them that this was the 'best' option. Influential Councillors and officers believed the planning process and considerations undertaken to develop the LTDP were appropriate. There was an expectation within Council that, *as they were the professional experts and the duly elected*

decision makers, they should show leadership in developing proposals and not shy away from taking the tough decisions.[270] Council participants did not believe there was sufficient *reason*, or momentum of public opposition, to review the entire issue. This perspective suggested that elections were the primary means by which the community can contribute to debate on political issues, as that is when the public has a direct influence, in determining their representatives. Councillors then address and determine political issues, and *Council officers take their direction from the goals described by the majority of Councillors* (who represent and thus determine what is in the 'communities interest').[271]

Councillors emphasised their role in showing leadership in determining the direction for Council. Councillors, as the duly elected representatives of the community, debated the political issues, thereby determining the objectives for Council's planning endeavours. Some implied that Councillors ought not to bow to political pressure groups, as they had to focus on what was in the 'public interest'. This *view emphasised the role of Councillors in a representative democracy as representatives of the 'public interest'*. Elections, from this perspective, play a significant role.

Officers, however also emphasised an important role for professionals in carrying out their planning tasks (in accordance with their 'ethical codes of conduct' and accepted practice, or methodologies) within their respective disciplines. Officers provide advice to Council on what targets it ought to set for its planning endeavours, and design how diverse public views can be accommodated, or catered for, during the formulation of particular proposals. This view emphasised *a role for professional experience and expertise in determining Council's objectives*, (and thus also, by inference, in describing how diverse interests and values ought to be balanced).

13.1.2 *Different and competing sources of power in attempting to influence what targets Council ought to set for its planning endeavours.*

In this case study these power bases were identified as stemming from three sources:

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[270] The public opposition was seen as a 'vocal minority' or 'political pressure group'. Council believed the project was widely perceived as being in the general public interest, and that it was supported by the 'silent majority'. Council participants described an expectation that some members of the community are always 'upset' by Council's projects.

[271] That advisors to Councillors also have political influence, within their functional roles in the organisation of Council, is described in planning theory literature and is discussed in Chapter 14.

* political power - including: the consultation 'rights' of citizens, 'public pressure' (brought by strength of numbers and/or strength of feeling), electoral power (with a consequent 'power of anticipated reaction' by the public as an influence on Councillors); elected representative status;
* The power of *'structural constraints'* - including: delegated 'authority' (decision making power), professional expertise, accountability relationships (describing lines of responsibilities and also therefore of abilities to influence planning processes), 'accepted' planning practice, 'required' processes (e.g. consultation, resource consent, Councillor endorsement of officers recommendations) and;
* *economic power* - including: the ability to purchase what one needs to influence decision-makers, and to fund proposals and projects.[272]

The established regulatory framework (TDP) and requirements of the RMA meant that no one group had the ability to take unilateral decisions, to act with complete autonomy or, to compel others to accept their preference for a solution. A state of 'impasse' arose as, in effect, the policy framework achieved a balance between competing power bases within the public dispute context. Council's decision to apply for a resource consent, so that it could implement its strategy, led interested parties into an adversarial dispute resolution forum in which the different perspectives were seen as antagonistic to each other.

13.1.3 *An ill-informed or misinformed public; 'transparency' and 'accountability' issues.*

The community was not well informed about Council's project at the time works were to begin on the Avenue, in 1993. This led to different approaches to addressing the state of conflict. Council endeavoured to better 'inform' the community about the project and its rationale for it, while opponents tried to convince Council of a need to re-evaluate the issues and to consider alternatives. Problems relating to 'informing' the public, and to 'public access' to information, were related to issues about the degree of 'transparency' of Council processes (particularly in relation to reasons why alternative options had been rejected in the past, which have never been demonstrated clearly to the public).[273] Variable perceptions about what the majority of citizens wanted, the relative importance of different interests and values to the community, and also the nature of the predominant public

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[272] Mulgan, R. 1989 and 1994, describes these sources of power in detail. The terms describing the sources of power referred to here, are acknowledged as his.

[273] These problems were attributed in part to a time-lag between decision-making and implementation, and in part to the nature of planning processes pre-RMA. However, issues of 'informing' the public and 'transparency' continued within the context of the recent dispute.

interest, reflected difficulties in informing, and also of canvassing, 'public opinion'. No group could show 'public mandate' for its views.

13.1.4 ***The diverse and competing priorities of the community were described as political issues by public participants, but as being constrained by matters of practical and rational economic necessity by Council participants***

While the public viewed resolving the substantive conflict as a 'political issue' (requiring forums in which to consider and establish Council's objectives and priorities on behalf of the community), Council participants viewed the substantive conflict as insoluble as potential solutions were guided and constrained by economic considerations which were seen as practical and rational necessities.[274]

13.1.5 ***Diverse political outlooks and philosophies as to what was 'good city form' in terms of both its functional abilities, and its desirable future characteristics, together with insufficient opportunity and effective forums for the community to debate their diverse points of view or to develop ways to reconcile these.***

13.1.6 ***Mistrust in the motives of others, as participants interpreted the level of commitment or willingness of others to achieve a resolution which would 'satisfy' all interested parties. The disputing parties suspected their opponents were unwilling to incorporate the diverse range of objectives in formulating a strategy, which would address the problem in a way that would cater for all their interests to a satisfactory level.***

13.1.7 ***A lack of agreement as to what was meant by comprehensive-integrated planning in a specific situation, and variable perceptions about the appropriate scope of the problem, how it ought to be framed, the objectives to be achieved, and criteria by which to measure their level of attainment.***

This issue underlines that the objectives and principles of the RMA are still uncertain to those having to work within the context of that Act. Its concepts and principles have proven difficult to apply in practice as different interpretations are brought to bear in particular environmental disputes, and environmental management situations.

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[274] An explanation for these contrasting views (on whether political processes could or should redescribe objectives and priorities), is due (in part) to contrasting, and competing, accountability relationships within the organisation of local government. *Economic considerations are located primarily in the management section of government, which advised the political section (Councillors and the community) on current and future 'necessities' (financial commitments), and current and future 'wants' (luxuries or disireables).* It was frequently the City Manager who told the public (or CRTWP, or Councillors) what could not be afforded by Council and about funding issues and priorities. Economic constraints and priorities were central issues in this conflict, that were unable to be fully debated within the EDR forums specifically, or in wider political forums available to the public. Economic constraints were taken as givens (in this dispute context), as they were consistently described by Council participants as beyond the realm of influence and control of the current debate. The political debate (described by the community and Councillors) over appropriate responses to the planning problem was thus circumscribed by economic constraints (described by management and influential Councillors). The financial priorities established by past Council decisions, and pursued by management as 'Council policy', constrained current political debate about possible futures for the City.

13.2 ANALYSIS BETWEEN THE THEORETICAL CHARACTERISTICS OF FORMAL EDR PROCESSES AND THE CHARACTERISTICS OBSERVED IN PRACTICE

The strengths of formal EDR processes or the 'judicial approach' were identified in the literature review and are discussed in Chapter 6 (refer to p72). A number of limitations in using the judicial or formal approach were also identified in the literature review and are also discussed in Chapter 6 (refer to p73). Local hearings are not strictly judicial forums, however, as they are statutorily required and are referred to as formal processes because the RMA prescribes their use and certain procedures. Local hearings also apply the judicial approach (for example, in following judicial principles of natural justice). The strengths of the formal consultation process, in practice were identified in Chapter 9 (refer to Table 10 p192, with some additional explanations summarised in Table 11, p194). The problems and limitations of formal processes observed in practice were identified in Chapter 10 (refer to Table 12, p223, with some additional explanations summarised in Table 13, p228).

13.2.1 *Consideration of the assumptions about the strengths of formal EDR processes.*

Some of the attributes of formal processes described in theory were observed in practice. For example, that: decisions were transparent[275]; decision were published and the rationale for the determination was given[276]; decisions were open to peer review[277]; the delegated authority made a determination that was considered binding by the disputing parties. However, in relation to that attribute, other processes may be initiated in an effort to elicit a different result.[278] In addition to those strengths, others were observed in practice. These include:

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[275] Although it is noted in Chapter 11.4 that some aspects within the *process of decision-making* were not recorded and so were not transparent, this is discussed further later..

[276] Although it is noted in Chapter 11.4, that the rationales contained some subjective considerations that were contentious.

[277] Although it was not apparent how or whether such a 'peer review' had been undertaken or was likely to be in this case study

[278] This was observed in the fact that following failure to get a resource consent, an applicant can either take the matter to appeal or can initiate a plan change to remove the policy (or rule) which required a resource consent. This demonstrates that the undertaking of a formal resource consent process acts as a means to monitor the consequences of established policy. Any participant can then respond to the results of that process by seeking to change the policy framework (s73, RMA).

Preparation for hearings was directed by, but not confined to, the requirements of the RMA.[279] The RMA describes the concerns of the regulatory authority and so provided guidance to public submittors on what could be relevant to presenting their views. Theoretically opponents are at liberty to submit an alternative AEE or s32 report to the decision-maker, however, nowhere in the RMA or in the TDP is it suggested that they do that, and problems in doing so were identified and are discussed in Chapter 11.4. The RMA does not direct public submittors on what information they ought to provide beyond the statements required by s96 (refer to Appendix IV) and indicated on formal submission forms provided by Council.

Nowhere within the RMA are the disputing parties *directed* to provide an interpretation of how the Act ought to be applied in resolving their dispute.[280] This allows an inexperienced public (or proponent) to participate. Similarly, the disputing parties are not *directed* to show support for their case in the form of principles from other 'like' cases in Environmental Court findings, interpretations of the proper conduct of hearings, or, interpretations of the relevant territorial plans. Nor are they *directed* to present counter-cases for any such interpretations brought by their opponent. However in these hearings both sides presented such 'arguments' to the decision-maker, indicating that the use of formal processes can trigger that such information was thought to be necessary. These features of the hearings gave rise to a perception of legality and formality which was equated to it being 'like a criminal court', and highlighted that an adversarial model for dispute resolution applied. These characteristics were thought a strength of the process by some participants, as they supported their perception of rationality and objectivity of the forum, process and consequent decision-making.[281]

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[279] The RMA outlines (in s88) the making of a resource consent application and requires an AEE to be prepared according to the Fourth Schedule (refer to Appendix IV), and s104, describes the 'matters to be considered' by the regulatory authority in making a decision. Sections 31, and 72 to 77 outline the requirements for district plans. The applicant (in the first hearing) or proponent of change (in the second hearing) was provided clear direction as to what information was needed by the decision-making authority, as a list of instructions (within the Fourth Schedule and also the First Schedule in the second hearing) indicated what *must* be presented (included in an AEE required by s88, and in a s32 report) and also what should be considered in preparing an AEE and therefore also by the decision-making authority in evaluating the information provided. These prescriptions also provided direction for opponents of the proposal as they were also able to comprehend what was required of the proponent, and these Schedules indicated how they could go about presenting their concerns.

[280] It can be assumed that the experienced regulatory authority (or appointed Commissioner delegated authority to act on its behalf) would determine how best to apply or give effect to the RMA, and to the relevant Council policies.

[281] However, others found these characteristics limitations of the process, as they caused them problems, as discussed in Chapter 11.4.

Determinations made in formal hearings clarify the rights of the disputing parties in relation to potential future activities. Following the lapse of the period of appeal, with no appeal being filed, and Council adoption of the recommendations of the Commissioner in relation to the regulatory framework, the 'envelope of opportunities' in the community was legally prescribed. The rights of the various parties were clear, and the state of impasse in the dispute context was broken.

Hearings undertaken to resolve this dispute, while required by the RMA, were established by Council at the local level. They did not exhibit some of the benefits or strengths of judicial or formal EDR approaches, described in theory.

The 'openness' of local hearings can be encouraged by the giving of evidence without oath, and in not allowing the cross-examination of witnesses. Local hearings can allow participants to express their views without being refuted directly by their opponents. The standard of 'absolute privilege' (as opposed to 'qualified privilege) applies so that participants cannot be sued for disclosing their opinions within local hearings. These characteristics are to allow an inexperienced public to participate, and also so the forum can accommodate a broad range of information to facilitate the decision-maker 'getting to the heart of the matters' causing conflict in a community. These features can be considered a strength of these processes in terms of EDR.

However, that 'evidence' was not given under oath and that witnesses were not able to be cross-examined, was also a limitation of the process as participants did not believe all the evidence presented by the expert witnesses of their opponents was derived independently by objective, neutral professionals. Both sides in the contest asserted that 'evidence' presented by their opponents witnesses, was presented with a view to support a particular case and was thus partisan or biased. An inability to question expert witnesses did not allow participants to probe their concerns about beliefs, opinion, the means by which analyses were undertaken, or partisan characteristics of those analyses. Such probing to uncover any subjectivity within methods of analysis, rationales, motives or partisan characteristics, was at the discretion of the Commissioner. This can be considered a strength of the process as it allows evidence and views to be expressed, and then to be interpreted by an objective third party. However, it can also be considered a limitation of the process, when that third party is not perceived by all the participants to have probed and uncovered subjective features of rationales, motives and partisan characteristics in an

even-handed or equitable way.[282]

That formal judgements are made on the basis of facts presented was found to be a problematic assumption in practice, as the 'facts of the matter' were controversial. Several issues revolved around the fact that much of the evidence presented could not be described as *irrefutable* 'fact', as key evidence essentially involved matters of (both expert and lay) opinion.[283] This led to issues as to how much of the evidence could be described as factual and how much was structured to support a case, or to undermine the opposing case.[284] Both sides in the contest suggested partisan analysis to support a predetermined preferred position, on the basis of subjectivity in their opponents case. It was considered the role of the commissioner to see through these characteristics in the adversarial forum, and to determine the 'facts of the matter'. Different perspectives were proffered as to how well that had been achieved in these hearings. Participants described that *determining* what were the facts of the matter led to subjective considerations on the part of the Commissioners.[285] The arguments presented by both sides can be interpreted as the facts of the matter, with regards to the dispute context, and these contradicted each other, hence the dispute.[286]

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[282] Part of inequitable treatment of these features was attributed to the fact that counsel for Council was primarily responsible for highlighting unquantified, subjective and partisan characteristics of the opponents case with no counterpart working to highlight those features during the presentation of the proponents case. This issue was identified in 11.4.

[283] It was apparent that evidence presented was not irrefutable, as each witness derived or extrapolated their views from applying a variety of methodologies and interpretations which were shown to have involved subjective elements and subjective extrapolation.

[284] Differentiating fact from opinion within the s32 report and in other 'submissions' presented to the hearing is problematic as the content of all the submissions was in actuality, part 'factual' and part 'extrapolation' or 'opinion' intertwined into a rational view (or perspective) on the particular issue, which could then be presented as an argument to show support or to refute a particular case (position). Also opponents indicated that what was *not* included in Council's evidence was as important as what *was* presented, as they described that only some of the 'facts' were presented, and alternative interpretations and extrapolations were not presented. This was referred to by opponents as 'deceit by omission' and 'deceit by commission' on the part of those who prepared the evidence.

[285] For example, in relation to the first hearing Council participants disagreed with the Commissioner over the meaning of 'adjacent' (as it appeared in the rule which necessitated the use of a formal process) and thought that 'misinterpretation' had been the crucial reason why Council had lost that case. In relation to the second hearing, the basis on which opposing arguments and evidence were 'weighted', balanced, and accepted or rejected by the Commissioner, was also observed to include subjective features.

[286] It was evident that even at the level of 'raw data' gathered to 'inform' analysis, facts were not always irrefutable. As much of the data *informing* the issues relevant to the dispute was gathered *after* the LTDP had been generated, allegations were made that it was research undertaken with a view to support or validate particular predetermined conclusions, or to discredit alternative views, rather than simply to inform an evaluation of issues in order to derive an appropriate solution. This criticism was levelled by public participants at analysis undertaken by Council in relation to: the use of public transport; the life expectancies of the mature trees; the measurement of 'values' associated with these trees, 'safety' concerns,

Also, it was apparent that subjectivity was not eliminated from the analysis of the issues, or during the making of a determination, or in the resolution. The forum could not base its findings on the facts, but could only hope to differentiate between arguments presented, by evaluating their 'rationality' in light of supporting evidence, and determine which views were most 'rational', 'well considered' or 'supported by strong arguments and evidence'.[287] Therefore, the facts were only a small part of the considerations relevant to making a determination.[288] The issue then becomes one of how well the parties were able to present rational, well considered arguments with supporting evidence to substantiate their views, and to strongly present these within the hearing forum.

That decisions are transparent, was brought into question by issues relating to evaluating the *process* of decision-making (the analysis and consequent rationales by which conclusions were made in getting to a decision). Participants could understand how decisions were made, but could not necessarily understand why.[289]

That decisions are guided by legislation and can then be judged by the criteria set out in the legislation, were difficult assumptions to test in practice. Assessing whether hearing decisions did *match the criteria* set out in legislation was found to be a perspective dependent undertaking, as the disputing parties had different views about whether the

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and 'costs' and 'benefits' associated with 2, 3 and 4 laning. It was also levelled by Council participants at analyses undertaken by public opponents and their expert witnesses, in relation to critiquing forecasts and the likely effectiveness of the proposal in achieving its objectives, and measuring the level or community support for various options and the priorities of citizens.

[287] That is not to say the accepted 'evidence' could then be described as 'irrefutably correct' (fact) or incorrect, as the 'proof' of their being 'true' or otherwise will depend on what transpires in reality. It was an issue to opponents that because of the nature of the determination (black or white, no shades of grey), their arguments will not be tested in reality, and that because of the nature of the project some of the proponents arguments will also not be able to be tested in reality (for example that the mature trees would need to be removed within 20 years because they were diseased and dying, that 3 laning is 'unsafe').

[288] The Commissioners made judgements on the basis of which arguments were strongest, (well considered, most rationale or supported by evidence) and thus which were 'preferred'.

[289] For example, with regards questions raised by opponents about Council's dealing with s32 of the Act, Commissioner Bornholdt (1996, p87, MI) noted, "they [*sic*] were all of the view that Council had failed to meet the requirements of that Section. In my view, their assertions were based upon very little *fact*. I do not accept their submissions or their assertions in this area." This statement is a clear rationale, and is supported by reference to comments of the proponents witnesses about the nature of s32 reports and that the Commissioners conclusion was based on "the totality of the evidence" (Bornholdt, 1996, p88). However in its succinctness, this rationale illustrates the difficulties opponents had in evaluating the 'rationale' for decisions, as they described the Commissioner did not actually state on what basis their evidence was not considered 'factual', when to their minds their assertions were honest and true, nor did it describe on what basis Council's evidence was preferred. They knew Council's evidence was preferred, but not why. They were left uncertain as to how they could have convinced the Commissioner that important considerations had been omitted from that report.

'criteria' established in the RMA, had been met. While the determinations of the commissioners were guided by interpretation and application of the RMA, these decisions did not settle the conflict over competing values. The RMA does not provide a clear guide to decision makers on how to do this.

It was observed, in theory, that when *courts* (or hearings) do make a determination in what may be 'distributional disputes' they play a vital role in fashioning norms and articulating values for wider society, in the form of legal principles which operate as precedents. This practice appears to been adopted in the case of the determination made in the second hearing,[290] as the decision established a priority in "the transport imperative" (Bornholdt, 1996), so fashioning a norm or articulating a value for the community. What is not apparent is whether a history and common threads or principles (accepting that there are no 'legal principles' in planning law, but guidelines) which can be applied in future, like cases have been established, or were maintained through these local formal hearing processes, even within the district. Nor is it clear whether inter-regional comparisons can be made.

13.2.2 *Consideration of the assumptions about the limitations of formal EDR processes.*

Hearings undertaken to resolve this dispute were found to have exhibited all of the characteristics described in theory as limitations of formal processes (or the judicial approach). Refer to the conclusions of Chapter 10, Table 12, p223. It was significant that participants from all groups represented in the research, commented on most of these limitations, indicating they were not perspective dependent observations on the process (perhaps as, at some stage in the dispute context both 'sides' had lost a case in a formal

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[290] The second hearing was very focused on issues relating to solving traffic problems and widening the Avenue from Te Awe Awe St to the Fitzherbert Bridge. The determination found in favour of widening that section of road and so removed (and omitted) protection for trees in that section, but also the other trees along the Avenue as that was the nature of the policy being removed from the TDP and omitted from the PDP. The assertion that a 'principle' was effectively set by the finding of the Commissioner, which 'fashioned norms' and 'articulated values for wider society' which operated as a 'precedent', was observed in the fact that Council's perspective changed between the time of introducing the plan change option (in 1995) and following the decision of the Commissioner (in 1996). In May 1995, Council brochures and media releases informed the public that, in the event of 4 laning over 3 laning, "Of the trees between Te Awe Awe St and the bridge, eighteen will be removed. *The trees from Te Awe Awe St to the Square will remain*" ("*Crossing the Manawatu*", PNCC, MI). This and other statements (about securing a second bridge) implied that Council was working to the CRTWP's recommendations. Following the hearing decision, of September 1996, as a 'principle' had been set, a report by the Roading Manager (dated 31/10/96) was tabled at the Goals and Strategies Committee (11/96) in which it was noted that, "In 1993, the [LTDP] was brought to a halt when Council was challenged to their rights to cut down the existing mature trees given [the rule in the TDP]. With the plan change and [PDP] decision from the Commissioner finding in favour of Council, the strategy of 1988, should now be restarted." Within the ensuing year, all the mature trees to The Square were felled, against the recommendations of the CRTWP's strategy, showing a different perspective had been adopted by Council as a result of the hearings findings.

hearing). In addition, these forums were found to have exhibited other problems and limitations not identified in theory, during the literature review. It is also relevant that most of these problems were related by public participants who were opponents in the second hearing.[291]

One set of problems within hearings related to the perspective of inequitable treatment described by opponents when making submissions to the hearing. They are serious assertions as these participants described seriously undermined beliefs in the integrity of the formal processes, and on the publics' ability to influence civil affairs. These issues appeared difficult to address, partly as they are based on subjective interpretations of experience, within what are known to be formal and adversarial processes, however participants themselves provided some suggestions as to how they could be addressed.[292] Their suggestions for EDR are summarised at the end of this chapter (Table 19, p351).

Another set of problems related to the 'pressures' associated with having to 'react' quickly to events, to comply with the timeframe established within the RMA. There are contrasts between the amount of time to prepare for hearings between proponents of change and the opponents of those changes.[293] The decision to appeal a decision has to be made within 15 working days, which was difficult for potential public appellants with limited personal finances, especially with threats of costs being made. Effectively, individuals believed they could not *risk* an appeal in those circumstance, despite sincerely held beliefs

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[291] A reason for that may be that these issues are perspective dependent observations. They are important considerations however, in terms of EDR, as theory does indicate that the 'effectiveness' of these processes, must also be measured by referencing the *perspectives* of the participants and not simply by 'observing' the process. It has been noted that more and greater problems were experienced in the second formal process and that was attributed to it being not just an adversarial hearing, but an 'aggressive' one in which the level of formality was greater than in the first. These characteristics describe a rapid escalation in the dispute context as it was played out in the second hearing. A reason could be that this forum was anticipated to be the final 'resolution' forum necessary to 'resolve' this dispute and to break the impasse, even though it was a policy-formulating forum (expected in the planning model described by the RMA, to be the first stage of planning, in which interests and values are identified in an effort to cater for these appropriately so that future disputes will be less likely, and can be guided by the policies/rules so derived).

[292] For example, that in controversial public dispute involving a Council as proponent of change versus members of the community, that the hearing Commissioner ought to be appointed by the Commissioner for the Environment and not be Council (as regulatory authority). This would remove perceptions of 'selection' of a Commissioner *by the proponent*.

[293] Preparation for a resource consent application or proposed plan change can take as many months as the applicant or proponent requires, while the written submissions to those, upon notification, have to be prepared within a 20 working days or 40 working days respectively. Following that, the public submissions were able to reviewed and a counter-case prepared over 25 working days in the case of a resource consent application (as the hearing is to commence no more than 25 working days from the closing of submissions), or over months in the case of the proposed plan change, while opponents had approximately a week to prepare their counter-case, on receipt of the 'circulated evidence' of the proponent prior to the hearing.

that they had good reason *and* a 'right' to appeal. In effect they personally were beaten, rather than the dispute resolved to their minds. The RMA, was designed to streamline and to provide certainty to those having to follow the procedures.[294] Supporters of Council's project appreciated this certainty, as they sincerely believed road widening was the most appropriate solution, and did not want implementation to be delayed any longer than necessary. They felt they had been 'held to ransom' by a vocal minority.

There were problems relating to the acceptability and reception of public comments, as submittors evidence presented in the hearing. Assumptions made by the public that they could air their views 'in their own way' within a hearing were found to be incorrect, as participants described problems relating to: the ignoring of evidence if it was not substantiated by hard fact (data); the 'striking out' of 'inappropriate' evidence; the underlining of lay 'opinions' and any 'subjectivity' shown by opponents; down-grading of public (lay) opinion and local knowledge, and; frequent interjections and objections by the proponents counsel and witnesses. Participants described inferences that as they were partisan and made subjective observations that they were also 'emotional', 'irrational' and unable to also make objective observations (even when speaking in expert capacities). Opponents suggested that while they were partisan, so were Council's witnesses. However they believed that their own evidence was assumed biased, on the basis of their being partisan and resented inferences that their evidence was not a rational reasoned argument, was less factual, or was less credible than that of Council's witnesses.[295]

Participants also came to a belief that only evidence which had been noted in the written submission could be presented in a hearing, and that only a highlighting or extrapolation on written submissions was allowed to be made. Submittors gathered they were expected to have correctly speculated as to what evidence the proponent would present, when writing their original submission. Public opponents described these features of the hearing as inequitable, as they could not anticipate all the details of the proponents case they could wish to comment on, on the basis of information provided at notification.

Another set of problems related to perceptions on the tone of the hearings and that this

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[294] The philosophical and practical reasons for that, along with other characteristics of the RMA were outlined in Chapter 2.

[295] Opponents consultants described that they were not partisan and importantly they had not taken umbrage that their evidence was not 'preferred'. The Commissioner's determination was accepted as 'par for the course'. The inference is that they did not 'care' one way or the other about the result as they were not emotionally attached to the case.

was engendered by counsel for Council, if not 'controlled' by him. While the forum was open to all members of the public it became apparent to opponents that it was not open to them as individual personalities, (as they were told not to write on the whiteboard while trying to explain their views, castigated for using incorrect titles, belittled for being naive to the process, interrupted to have it brought to attention when they were expressing an opinion). Opponents also described an inference that their interests and values, which they hold in high regard (as part of their personal worldviews), were not respected as important or worthy by comparison to other interests and values. The tone of the hearing led opponents to believe they had to *prove* their interests and values were *worthy* of being taken account.[296]

Another indicator of a limitation in this forum related to issues of accessibility (and therefore also of equity), apparent when submittors perceived a reference in the Commissioners decision to their being expected to attend the entire hearing to show that they were 'committed' to the case and process, and able to criticise the submissions of others.[297] The opponents indicated that very few of them were able to take a week 'off' work to attend the hearing, and that they were lucky to have a day to present their own evidence. They described that those presenting the proponents case were 'at work' and were paid to attend. Some participants were outraged by these characteristics and described it as grossly unfair that they did not find out about such expectations of them until well after the hearing, in the Commissioners decision.

A number of problems experienced by public participants were underpinned by limited resources and an evident disparity of resources between the disputing parties. Public participants described limited accessibility to information, experts, and support services as

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[296] Some opponents described that a reason it was difficult to 'validate' their concerns, was that *some* of their interests were not easy to quantify as they are (generally described as) esoteric (or 'culturally' determined) by nature (e.g. in describing the importance of symbols of 'home', landmarks, identification with place, or heritage). However, they also described that some of their interests were practical (e.g. 'safety' issues) but that their views on those were rejected along with the esoteric ones, when their entire case was rejected. There were also comments that some interests promoted by proponents were also esoteric, (e.g. references to 'stress' caused by traffic delay, and philosophies that suggest every individual who wants to, ought to be able to drive their car from their home to their workplace, and that a role of Council is to ensure they can do that).

[297] Consideration of the Commissioner's decision, noted the following comment which is probably from were this perspective arose "It makes it difficult for a commissioner, or for any hearing body for that matter, if parties in their submissions and/or evidence make criticisms of others or expert witnesses who have themselves given evidence, without the party actually making the criticism having been present during that other party's or expert witnesses' submission or evidence. As a Commissioner, that *absence does have a bearing on the weight that I might give to a particular submission and/or evidence*." (Bornholdt, 1996, p90, MI).

required to describe and support their perspectives. The need for expert witnesses and legal representation in 'fighting' an adversarial contest became apparent to opponents, as expert opinion *always* prevailed over lay opinion, and the expert opinions of Council witnesses were preferred over those of the public's expert witnesses. As individuals, public participants could not afford the 'calibre' of consultants, that the Council could afford, or to undertake the research and analysis they would have liked to support their perspectives. Those public participants that joined together as an interest group still had constraints on funding an opposing case. Opponents described Council as having unlimited access to the public purse of 'their' money, while they had to rely of personal funds. They presented a view that they were not simply individuals representing parochial interests, they were also representing the/a 'public interest' and believed there ought to have been some funding available for them to present their alternative public view, to that supported by Council.[298] There was also an issue that the supporting public did not have to spend personal money in presenting their case, as Council funded their case on their behalf. Opponents found that inequitable, as they described Council worked for some in the community, but not for others. [299]

This issue is linked to a related problem from the Council's perspective, that the public have unrealistic expectations as to how many and how thorough feasibility studies and AEE can be on all the alternatives, when designing and selecting a preferred option to address a particular problem. Council officers described that cursory expert appraisals are accepted practice in their professional disciplines, as they acquire knowledge based on the experience of others within their field of expertise, in addressing like problems.

The approach to evaluating the evidence, within the decision, was also described by opponents as inequitable. Public opponents were not able to see how they had been shown to be 'wrong' and the proponents 'right'. References to having 'preferred' one set of evidence over another did not explain 'why' it was preferred and opponents did want to know on what basis their (and their experts) views had been rejected. Opponents came to a view that the credibility of evidence is directly related to the size of the purse that

[298] They suggested that Council ought to fund research into evaluating the merits and evidence in relation to alternative views as the rationales remained contentious to opponents, in light of a lack of 'hard' evidence and analysis.

[299] If taking an appeal, the 'interest group' would be treated as a group of 'individuals', with each at personal risk of being burdened with 'costs'. Some described the possibility of losing their homes if they lost an appeal and described this as unjust, as if Council had been in a position to take an appeal, and then lost that, the individuals involved would not be personally liable for costs and were not under threat of homelessness as a result. While talk of 'losing homes' may appear extreme, it does illustrate the pressures that opponents face in contentious planning hearings.

commissions it. They also considered the method of balancing pros and cons of the project, and weighting interests and values was subjective, as the actual (intellectual) analysis was not recorded and thus open to public or peer review.[300] It was evident that part of what the Commissioner was asked to do, was to make some value judgements on behalf of the community in order to break a deadlock in the dispute context. Even if this undertaking was shown to be rational, well considered and guided by principles found in legislation and also by guidelines provided by findings of the Environmental Court,[301] the aggrieved parties felt no less happy about the terms of the resolution or about their abilities to influence decision-makers to accommodate (or cater) for their interests and values.

Perspectives of an inequitable forum and of unjust treatment of submittors and their evidence then, were attributed in part to funding problems, in part to the order of presentation, in part to the adversarial conduct and tone of the hearing, and in part to issues surrounding the partisan characteristics and thus credibility of the cases.

13.3 ANALYSIS BETWEEN THE THEORETICAL CHARACTERISTICS OF INFORMAL (ADR) PROCESSES AND THE CHARACTERISTICS OBSERVED IN PRACTICE.

The theoretical strengths of informal EDR processes or the ADR approach identified in the literature review were discussed in Chapter 6 (refer to p88-91). A number of criticisms of the ADR approach identified in the literature review were also discussed in Chapter 6 (refer to p91-95). The strengths of the working party consensual process observed in practice were identified in Chapter 11 (refer to Table 14, p258, with additional explanations summarised in Table 15, p261). The problems and limitations of informal processes observed in practice were identified in Chapter 12 (refer to Table 17, p318, with additional explanations summarised in Table 18, p323).

Participants in legislature reforms encouraged ADR efforts early in the development of projects, perhaps in conjunction with or as a result of AEE undertaken to inform the design

[300] That is, the actual considerations and weightings made within the balancing of positive and adverse effects of the project was not transparent and thus open to comprehension, critique or peer review by others, following the determination of the commissioner.

[301] It was not an intention of this research to attempt to undertake such an analysis and it has been observed that any such analysis would be wrought with difficulties, in trying to evaluate the different perspectives in an objective all inclusive way.

and selection of an appropriate project.[302] In this case the CRTWP was not a supplement or extension to either a resource consent or appeal process, as it stood alone as an EDR effort outside of the formal planning and decision-making, or EDR framework. As it was set up as a facilitated/mediated, collaborative, problem-solving forum the characteristics of mediation, within a problem-solving process, could be assumed to apply (refer to p88-95).

This ADR process was to evaluate issues and options and to derive an 'optimal solution'. As that was the case it was similar to an AEE exercise used to scope effects and evaluate alternatives, and then to design a project. It was noted in theory, that agreements reached by these processes tend to be endorsed by the sponsoring organisation, as it is inherent to the process that that organisations interests, as well as others consulted, must be met to each parties satisfaction for a consensual strategy to be developed. It was thus an opportunity to avoid 'unnecessary' litigation, or formal processes as, if all the interested parties agreed, the regulatory authority could also endorse the strategy (unless they found it wanting in relation to the regulatory framework and sustainable management).[303]

It is important to conceptually differentiate, within this analysis, between the benefits and strengths, and problems and limitations of the ADR process itself, and the benefits and limitations of the process that became apparent later, due to how its results were linked to Council's normal decision making processes, and the organisational response (as both sponsor and as regulatory authority) to the consensual strategy.

13.3.1 *Consideration of the assumptions about the strengths of ADR processes.*

The consensual approach exhibited many, but not all, of the characteristics described in theory as benefits and strengths of alternative approaches to EDR. There were also 'exceptions to the rule' with regards some of these strengths (for example, an issue about how voluntary the involvement of some individuals was). While these strengths can be said to have occurred in practice there were 'issues' relating to their attainment. Consequently, there were different perspectives on the levels or degree to which these strengths could be said to have been attained. Most of these issues revolved around perceptions on the

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[302] Some councils have extended consultation to the formulation of draft plans, while some projects have included major consultation efforts in their design phase (eg, The "*Wastewater 2000*" project undertaken by Auckland's territorial authorities). It has been noted in (Chapter 6), that such approaches are becoming more common in the current planning climate.

[303] This working party's results did still required the 'seal of approval' or endorsement by the organisation (of Council), as can be expected when any organisation sponsors such process and forum, but also as can be expected of Council as regulatory authority.

'legitimacy' of the process, confirming the suggestion, in theory, that the extent to which ADR processes offer the benefits suggested is likely to depend on "perceptions of the legitimacy and fairness of the process" (Chart, 1988).

That ADR processes are voluntary and 'discretionary' was a benefit observed in practice, as Council chose if and when to sponsor such an approach, and the interested parties chose whether to participate or not. Council chose to open a dialogue with the interested public, to include them in a new evaluation of the issues and to develop a strategy in response to the planning problem. Therefore it was a voluntary consultation effort, complimentary to formal consultation required for the PDP.[304] The reasons Council chose to employ this approach were outlined in Chapter 8, and while different perspectives were taken on those reasons (and Council's motives) most participants applauded the initiative, believing it was the best approach to seeking to 'resolve' the public dispute.

ADR processes present an opportunity to resolve disputes at a lower cost. This was difficult to assess in practice as costs to Council were complicated by the linkages between different processes.[305] The CRTWP strategy made a recommendation which led Council to chose to 4 lane part of the Avenue. That decision meant another hearing was still required as the TDP did not allow replanting of trees in a new alignment, on that part of the Avenue. Therefore, this ADR process did not preclude the use of a formal consultation/EDR process. The omission of any policy on the Avenue trees altogether in the PDP, followed 7 months later by a proposed plan change to remove the policy and rule from the TDP, again led to strong public opposition.[306] That such an opposition did arise, together with Council's committment to succeed in winning its case, led Council to choose to employ 'the best' consultants and legal services. Each of these choices contributed to high costs in

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[304] The process in train for the PDP did exert an influence on the timeframe established for the working party, as the results of the process were intended to be linked to that process.

[305] In relation to the CRTWP Council paid for: peer review consultants in addition to those commissioned to undertake the initial research; a facilitator; considerable officer commitment in providing support services or information to the group; the attendance of officers and Councillors in the group; food and beverages for the group. Some of these costs were available in Council records and it appears the process was less costly by comparison to those associated with the second hearing. Those costs included: considerable officer commitment; consultants prepared the plan change and section 32 report, analysis of submissions, and prepared and presented planning evidence; consultants undertook analysis of all the issues, prepared and presented evidence to the hearing; legal advice, preparation and representation in the hearing, the commissioner.

[306] It is speculative to contemplate what level of opposition would have arisen had the PDP offered some protection to trees recommended to be retained by the CRTWP and had Council not pursued a plan change, but applied to 'fast track' the relevant part of the PDP. It is also speculative to contemplate whether participants in the CRTWP would have endorsed such an approach and offered no opposition to the proposed policy framework if it had more closely reflected the CRTWP's recommendations.

relation to the second hearing. The working party was described however, by all participants, as beneficial to that hearing, as it had generated a lot of information which did not have to be retrieved during preparation for the second hearing. The CRTWP then, did not preclude a second hearing, and did help to reduce some costs associated with it. However in the final analysis, the CRTWP contributed to the total cost to Council, as Council still had to develop its policy framework, through the formal process.

This ADR process took a short time to initiate and establish, relative to the time needed for a formal process. However the process itself took five months and that was not considered long enough by most participants. A reason more time would have been preferred was that information needed within the process was not generated before it began, (and some was not presented before the CRTWP had to conclude). Much of this information could have been predicted to be required and efforts could have been made to gather it, prior to initiating the process. However, as participants discussed what was 'relevant' and requested information, a committment to further research was inherent to the process. This in turn contributed to another benefit, that the information search was more directed at addressing the concerns of the parties.

ADR processes preserve on-going relationships. This was found to be the case in some instances (when allegiances were formed between participants), but not others, as some participants remained or became adversaries during and following the conclusion of the process. Some relationships deteriorated as the parties were personalized to each other, while others were enhanced for the same reason. Council did gain both allies and enemies, as did Save the Avenue.

ADR processes involve affected parties more directly and heighten their sense of participation. This was found to be the case, as most participants described a greater sense of personal influence and empowerment through this process, which was reflected in the fact that constituencies also supported the process. However, this benefit was most obvious to those directly involved in the process, as some of its features were not extended to other interested parties outside of the process.[307] Only a limited number of representatives could feasibly be involved directly and some people would have liked better access. A better sense of participation was observed in practice, but to varying degrees depending on the level of direct input, and informing and canvassing undertaken between representatives and their constituencies.

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[307] This was attributed in part to constituencies not being 'carried along' with the process. That they were not was attributed in part to time constraints, but also to the limitations of a 'small' group process.

ADR processes are more appropriate to resolving disputes surrounding questions of social equity, philosophical issues, or matters which call for what are essentially value judgements. This was a strength of this process, as participants came to understand each others philosophical outlook, and were able to isolate matters of fact from matters of opinion, and to incorporate both into the problem-solving equation. The CRTWP was able to identify the political dimensions of issues and did debate these within the forum. Public participants described that the CRTWP strategy was therefore derived from political as well as practical (technical, economic and legal) considerations, and thought it an appropriate and effective forum for debating equity, philosophical and subjectivity issues (that is, political issues).[308]

The flexibility and adaptability of this processes meant it was able to better accommodate a range of considerations including: the underlying interests of the parties; unquantifiable values; the variety of perspectives on the environment (including cultural and humanist qualities such as historic, aesthetics, amenity, emotional, spiritual, accessibility, safety and convenience); as well as the rational, scientific, technical, legal, and policy framework relevant to resolution of the issues. This inclusivity of information provided a comprehensive and integrated base from which to inform the issues. This achieved less distortion of issues, as issues did not have to be pinned to the established policy framework or legal principles. There was also little point in exaggeration or not being honest in describing motives, as others picked up on inconsistencies, half truths, or deceit by omission or commission. These features were described as having led to a better balance in the making of any 'value judgements' during considerations.

ADR processes generate options for mutual gain, which are fairer or more 'just', and which can be owned by the participants rather than imposed upon them. Consideration of the CRTWP strategy together with participants views on that strategy suggests this was a strength of this process. The most obvious indicator of this characteristic was that all the representative 'members' and 'participants' did sign the CRTWP Final Report, thereby showing their satisfaction in it, or agreement with it, in endorsing it. That they did so also implies approval of the process used to derive it.

This process then, exhibited many of the benefits and strengths identified in theory.

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[308] However, following that process, it became apparent that Councillors and officers did not agree that the CRTWP had been the most appropriate forum to consider or to address those issues, (or, perhaps that members had not fully comprehended the issues), as the 'Council' re-assumed its political role and determined the final form of the strategy implemented during 1997.

However, when the subsequent processes are taken into account, many of these benefits were found to have been short-lived. That can be attributed to the fact that the results of this informal process were non-binding on the participants. The *accord* developed within the process and in the strategy itself, was not carried into later formal processes. It was found that subsequent decision-making processes (both within the sponsor organisation and in later formal processes) did not necessarily endorse its recommendations.[309]

The theoretical benefits and strengths that were observed in practice, even if they were only temporary, are summarised as: the consensual resolution of the dispute (settlement of the conflict); that power relationships were put aside and power was balanced; power sharing in developing a 'satisfactory' agreement (to all interested parties minds); voluntary participation; that resolution was not 'black or white' as shades of grey were acceptable (as accommodation of others needs and values was a characteristic of negotiations to reach consensus and reconciliation); the development of 'all gain' resolutions. Each of these characteristics were observed of the process itself and were evident in the consensual strategy, but were overturned in later formal processes which resumed the adversarial model, where disputing parties returned to their original positions.[310]

13.3.2 *Consideration of the assumptions about the limitations of ADR processes.*

The consensual approach undertaken in this case study exhibited many, but not all, of the characteristics described in the literature view as potential problems and limitations of alternative approaches to EDR. It was these issues that gave rise to different perspectives on the levels of degree to which the strengths of the process could be said to have been attained. Most of these issues revolved around perceptions on the 'legitimacy' and 'fairness' of the process. In addition this ADR process was found to have exhibited other problems and limitations, not noted in the literature review.

This ADR process was found to have been treated with some scepticism by some groups, who were described as uncertain as to whether it could produce a satisfactory outcome, or a lasting consensus. Some participants were described as uncommitted (by other participants) or as having 'conflicts of interest', 'vested interests', or 'predetermined

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[309] That ADR processes are 'adjunct' to formal and/or judicial process was considered essential, as access to official and/or judicial determination must still be available.

[310] Explanations for that change in the dispute context were presented in Chapter 8, which described Council's decision-making processes in initiating the formal processes and also following the determination of the Commissioner of the second hearing.

positions' that they were reluctant to deviate from.

There was an apparent mistrust in the motives of other members of the CRTWP and some information providers involved with the group, which undermined the abilities of this ADR process to produce a lasting consensus. The credibility of the information presented to the group, or by members, in particular, was questioned by other participants.

Issues of 'trading-off' values, as a feature of negotiation being carried into mediation, and a potential for 'inappropriate compromises' were not described by participants in this facilitated ADR forum as all 'interests' and 'values' were sought to be catered for. Participants described how the CRTWP strategy had supported their interests and values and they did not feel forced to compromise. However, it was evident that the CRTWP strategy, while described as an 'all gain' solution, did contain features of a compromise solution.[311] Therefore while values were not traded-off, the levels to which they were accommodated within the strategy were negotiated. None of the parties got exactly what they would have preferred, but instead what they could live with in having to accommodate others interests and values as well as their own.

While all participants indicated that they had not compromised, or made 'inappropriate' concessions, and were satisfied with the outcome, some participants having endorsed the report and CRTWP strategy did seek to affect further influence on it indicating they may have come to believe that they had made inappropriate concessions.[312] Other influential people (Councillors, officers and consultants) were allowed opportunity to influence the

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[311] For example, the programme in regards the design layout of the Avenue sought to limit road widening to one section, the retention of the mature trees to another section, and the final outcome in the middle section was negotiable (in the medium term) depending on monitoring and the necessity or otherwise of road widening in that section. The road would not be widened throughout its length (as preferred by those promoting the motoring publics interest), but neither would all the mature trees be retained (as preferred by those promoting values associated with those, and secondary interests in relation to other functional forms for the city).

[312] One of those participants described that he attempted to further influence the strategy in reaction to the fact that another member of the working party had included 'riders' to his endorsement and continued to exert an influence on the strategy from within Council, rather than due to a belief he had made inappropriate concessions. He was agreeable to the strategy unless others began to change it, then he would also want to make some additional changes. The Councillor who did include a rider was an influential participant in Council processes following its conclusion. Comments of that participant, described by others, suggest that Councillor may have felt coerced into agreeing to the strategy, perhaps due to the weight of numbers that did agree, and in that respect the agreement may not have been a 'true consensus'. That Councillor however, when asked directly, stated he had not 'compromised' interests or values in regard to the strategy. As that participant was a Councillor, it is likely he also felt some compulsion to comply with the wishes of 'the community' represented in the working party, within the process), even though, outside of the CRTWP forum, he continued to believe the strategy, 'inappropriate' by comparison to Council's earlier option.

strategy in later Council decision-making forums, as the 'normal' decision-making process was re-initiated and the CRTWP strategy was drawn into that process.[313] Following the decision of Commissioner Bornholdt, Council demonstrated that it came to believe the consensual solution was not the 'best' option, from their perspective, as only parts of the CRTWP strategy were implemented.

The 'whittling' affect of ADR due to its promotion as non-precedent setting in 'unique' and independent circumstances. Participants did not suggest a 'whittling affect' of ADR due to its promotion as non-precedent setting in unique and independent circumstances. However, such an effect was described by participants comments. This was considered a very unique and isolated dispute in this community, however it was also described as symptomatic (or the tip of the iceberg) of other issues and conflicts. The results of these negotiations did have ramifications in relation to other issues.

It was noted in theory that, while the courts are not the most appropriate forum to conduct a debate over 'fundamental issues',[314] (as these are political and based on value judgements), ADR processes established in relation to a particular dispute may not be either, as debate over fundamental values, and the appropriate degrees of expression of these may not have concluded. It was suggested that such issues should be addressed in open forums, which ADR forums frequently are not, and parties to a conflict do not have mandates to decide such matters on behalf of a community.

In this dispute context the debate over *fundamental* values, and the appropriate degrees of expression of these philosophical and political issues, had not been concluded (for example, debate about future characteristics of the city, and, about the 'proper' relationship between the interested parties in the community, Councillors and officers in determining the public interest). It was observed that debate in the open, public arena was considered ineffectual by public participants, who therefore used the working party forum as an

[313] The other participants within the CRTWP did not have further opportunity to influence the strategy although they described they would have appreciated time to reflect, consider and to canvass constituencies during the final stages of its formulation, and to fine-tune the wording of the report and recommendations. A liaison group was to be set up to contribute to issues arising over implementation of the strategy.

[314] "Primary issues" according to Sheppard's (1988) classification, or 'constitutional disputes' according to Susskind and Weinstien's (1992) classification.

opportunity to express their views on a number of fundamental issues in the City.[315] However, this process was not an 'open forum' and the interested parties to this conflict did not have mandates to decide fundamental issues on behalf of a community.[316] Never-the-less the conceptual widening of the debate within the ADR forum reflects that the whittling effect (of focusing on unique and independent circumstances, and losing sight of the 'big picture') was a consideration to some participants, and shows that this forum did endeavour to address those concerns. The CRTWP forum did extensively debate some of the *fundamental* values. However these issues remained contentious in the later formal process, indicating they had not been satisfactorily concluded within the ADR process, even though a consensual strategy was developed in relation to the central conflict and specific problem.

Participants also described a whittling effect in relation to negotiating the agreed strategy as they were reluctant to adjust the level of their demands for fear that in giving up anything they could eventually loose everything.[317] The facilitator observed that participants in these processes tend not to agree to anything, until they agree to everything, thereby describing fear or uncertainty in stating agreement on individual components, as this may reduce grounds for negotiating the entire 'package deal' making up the strategy.[318]

Currently no history or common threads are being formulated for ADR processes, as each event is considered unique and distinctive. This concern was validated, in terms of the official records kept of such processes. They are not compiled together or cross-referenced

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[315] That some participants did introduce such issues was described as efforts to broaden the scope of the problem being considered by the CRTWP, and most participants did believe that forum had achieved that conceptually, (if not in actually redefining the problem 'definition' as the "*Terms of Reference*" were set). The strategy was described as having reflected that 'reframing' of the problem as its recommendations were broad in scope as a result.

[316] This ADR forum was not as open as participants would have liked, primarily due to limitations on the number of people who could be involved directly, time constraints, the 'confidentiality agreement', and problems informing and eliciting feedback from the wider community. In addition to those limitations in this process, none of the parties in this forum could be described as having a mandate to 'decide' the wider philosophical and political matters on behalf of a community. It is likely these characteristics were contributing factors in that forums inability to conclude these issues, although it can be said to have provided Council with a clearer specification of what the concerns and thoughts of these representatives of the community were on some fundamental issues.

[317] This perspective led for example, to tree advocates efforts to save all the trees not just some of them. Cyclists wanted separate cycle lanes throughout the Avenue and bridge, not just along parts of it. Drivers wanted no delays, not half the delay and they wanted this now, not in seven years time.

[318] That was not totally avoided as some participants described an assumption they had agreed to 3 laning, having offered it as a compromise solution between 2 and 4 laning. Once the compromise was on the table, those preferring 2 laning could not go back to that position as they had indicated they could live with 3 laning. The debate then became 3 versus 4 laning.

to like cases or processes in a national register or within the local records office. However, a contrasting observation is made, that, as all the participants and many of their constituents developed a knowledge of the process and how disputes can be resolved through ADR processes, they each have gained considerable experience from this process. Most believed they would achieve a better process and result if they were to be involved again. This is an important outcome of this process, as it is suggestive that the community and Council are better prepared for the inevitable next conflict and most participants indicated a willingness to pursue ADR approaches in the future.

ADR may disempower interest groups, by channelling them away from precedent setting litigation. This was observed in practice but not in the sense that channelling them away from 'precedent setting litigation' was bad thing. In this case, the ADR approach *intended* to channel all interest groups (including Council) from the necessity of a formal process that had the potential to set a standard, as both sides had uncertainty as to exactly which view any arbitrator would support, and neither side (at that stage of the conflict) demonstrated they believed such a determination was a necessity in resolving the conflict. The ADR process, in fact, empowered all interest groups precisely because it was not 'precedent' setting, and also as participants retained the ability to determine outcomes of the process. These characteristics were described as having reduced participant groups fear and uncertainty over the outcome, as they also knew they had recourse to formal processes if 'necessary' following the process.

Having made that observation however, this ADR process did diminish the power of the public interest group, as it did channel it away from the open debate in the public arena, which was how it had acquired its popular support base.[319] As the interested parties collaborated in the problem-solving endeavour, the key public pressure group lost its high media profile. Following the conclusion of that process it was more difficult for that group to re-establish its profile and to reassert its (political) influence.[320] The inference was that the ADR process had complicated the issue and the opponents ability to explain why, as explaining its views on the issues was made more difficult by that complexity.

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[319] It has been noted that this group's 'power' was derived from a 'groundswell' of public support as it was an ad hoc 'pressure group' that formed in response to the conflict.

[320] The 'public pressure group' found itself having to inform the general public about the nature of their concerns, which had become more complicated as a result of the complexity of the CRTWP process and its resultant strategy. The dispute context prior to the ADR process, was clearly a conflict over opposing positions, following the ADR process the dispute was less clear as the key protagonists made contradictory statements (for example about what Council intended to achieve as a result of the hearing, and in providing information to the public).

Agreements are considered not to be precedent setting, and so tend to be non-binding. This occurred in practice. The agreement reached within the CRTWP was not considered to be precedent setting, and was non-binding. Following the ADR process, Council pursued a formal approach to EDR, and the Commissioner then found in Council's favour.

An inability to predict and compare the costs and time expended to resolve issues in the different forums, along with the fact that a failed ADR effort will require additional formal processes. This was found to have been a concern in practice. Council did have to fund two processes, rather than just the PDP process which was a necessity regardless of the outcomes of the CRTWP. However, it is speculative to consider what level of public opposition would have arisen to the PDP, had there been no CRTWP, or if the PDP was to have promoted a policy to retain some or all of the mature trees. It has been noted that the ADR process was successful when evaluated in isolation, but was found not to have been so in the longer term.

A similar observation was made in relation to the limitation identified in theory, *that realising a power-balance may be difficult in practice*. A balance of power was realised internally in the CRTWP process, which was attributed to the integrity and professionalism of the facilitator. However, this balance was not long lasting following the conclusion of the process, as influential Councillors and officers re-assumed their roles. The CRTWP strategy came to be seen as only one stream of information within the normal decision-making processes of Council in carrying out its duties and responsibilities as local government.

It has been noted that the level of commitment of a sponsor can not be assumed at the outset, as the organisation must be allowed to evaluate the full implications, and pros and cons of any consensually strategy in relation to other organisational goals. To further complicate the matter of commitment, in this instance, Council has civic responsibilities prescribed in statute. Councillors were keenly aware of those and also of their personal responsibilities, and of the 'authority' that goes with those responsibilities. In addition, as regulatory authority Council had to take into account the wider statutory framework, prior to making any commitments to the CRTWP strategy. Therefore, as sponsor, Council did have concerns (based on past experience, professional expertise and organisational priorities) that were not thought to have been well considered within working party.[321]

[321] The need for further 'organisational' endorsement of the consensual strategy was complicated by the fact that the sponsor organisation was a council, as participants described issues of civic responsibilities, accountability relationships, the 'proper' functioning of democratic influence in representative government, and professional expertise, contestability and 'autonomy' in the 'civil service'. That is participants described concerns about the function of government and democratic processes,

13.4 RESEARCH PARTICIPANTS' SUGGESTIONS FOR IMPROVING CONSULTATION / PUBLIC PARTICIPATION and EDR PROCESSES

The suggestions research participants provided for improving EDR ranged from general observations on how Council could reduce the level of conflict arising in the first instance, to specific suggestions for improving particular processes. As these suggestions are those of the research participants, this is not an exhaustive list of possible approaches to improve EDR in the future. Other suggestions could be elicited from the findings of this research, but it is considered beyond the scope of this research to fully develop these ideas. Furthermore, most of these suggestions offer substantial difficulties, in considering how one might attempt to go about achieving them.[322] The issues surrounding these ideas, are discussed further in the conclusions, Chapter 14. The selection of suggestions presented in Table 19, then, provide scope for further research, to fully develop the ideas described.

TABLE 19 RESEARCH PARTICIPANTS' SUGGESTIONS FOR IMPROVING EDR AND CONSULTATION PROCESSES in the future.

A	***General suggestions for EDR***
*	Keep strategic planning issues 'live'. Issues which have proven difficult to resolve or to find solutions to should not be allowed to fade from public view, as the community needs to be well informed about issues that will need to be resolved.
*	The public need to monitor Council plans and projects, as it is important for the public to make views, interests, values, and the strength of their feelings known to Council early (rather than later when a project is about to be implemented). As Council needs early warning signals of impending dispute, interested citizens need to be more pro-active in communicating their interests, ambitions and views to Council, so that they can be less reactive to specific projects.
*	There is a need to anticipate the potential for conflict in setting planning objectives and priorities and over specific projects. When conflict is anticipated, planning a public education and informing process ought to precede any efforts to implement controversial projects (if they are certainly intended to be implemented).

Table 19 continues...

[322] For example, there was an evident frustration at an inability to determine exactly what was meant by some concepts as applied in practice (for example the concepts of 'appropriate', 'comprehensive' and 'integrated' planning were referred to frequently). There was also disagreement about how to measure whether the intentions of the Act are being met in practice. Participants variably interpreted whether specific principles and objectives could be described as being achieved (or given effect) in practice and no effective, objective means to determine which views were most accurate.

Table 19 continued...

* There is a need for Councillors and officers to be in touch (effectively communicating) with their community. Develop networks and forums for discussing and debating (fundamental) issues outside of the official Council forums, so the community is better able to provide directions for their Councillors and Council. The community needs to organise its own networks and means of bringing issues to Councils and the publics attention and also establish additional forums for discussing issues with both Councillors and officers. Such forums would provide additional means by which members of the community could debate 'on going', dynamic, 'fundamental issues' with Council.

* Maintain an open dialogue on issues, as the public needs to be aware of what steps Council is taking in its problem-solving endeavours. The exploration of potential strategies/solutions should be revealed to the public *as they are undertaken* as the public needed to be as informed about why alternative options were rejected, just as they needed to be informed about the details of a particular option which was preferred. Make a thorough record of any analysis undertaken and the rationale for rejecting suggested alternative options and do not allow these analyses and rationales to fade from memory. Analysis of options must be demonstrable to the public and rationales transparent. These should not be concealed from public view.

* Better communication strategies are needed to both inform the public and to canvass public views. More effective means for informing the public and Council are needed, particularly in the early stages of planning processes.

* Some processes encouraged the public to believe they could have a greater influence than they could have, when Council was committed to a particular strategy. As some 'consultation' processes are mainly informing processes, (when Council has made a decision or determined a particular view, and is firmly set on achieving certain outcomes) participants suggested this ought to be made clear to the public, and Council ought to have gone straight into the process which most clearly demonstrated its commitment to the project (in this case the plan change to the TDP).

* When a public dispute emerges involving Council and the community consider whether it would be beneficial to go back to the beginning of the planning process and begin from scratch to resolve issues and design an appropriate strategy for solving the planning problem.

* Include the public early, to identify interests, values, views and concerns, so that these can be taken into account (or accommodated), in the design of responses to planning problems (or of civic projects). Transparency helps reduce and resolve conflict. Don't wait until a preferred solution to problems is chosen or projects are near completion in their design to consult the public.

* Provide the public with information and allow for frequent opportunities for the public to have an input during the design of solutions to problems which concern the/their environment.

Table 19 continues...

Table 19 continued...

* Councillors described a need for a change in Council's approach to consultation, they would prefer that when there is a planning problem, that it be presented to the public and the question asked 'how do you propose we deal with this and what do we need to consider in solving it?', and that issues need to be appraised openly in public view and with the interested public involved early in discussions. There is a need for a more facilitatory planning approach. There were references to Council struggling to cope with the demands of public consultation and conflict with the community, and of a need to develop strategies to better define and manage the relationship between Council and its community.

* There is a need to educate participants in 'consultation processes' about the principles, objectives, intentions of participatory and EDR processes. While those responsible for undertaking consultation need to better skilled in how to conduct effective processes, the public also needs to be better educated, so that they have realistic expectations.

* Reference to the principles and objectives of consultation ought to precede the selection and design of public participatory and EDR processes, for particular situations. Concentrate less on procedural correctness and more on the intentions of the RMA, and on the constructs informing the purposes of public participation in planning.

* Public participants described a sense of frustration, over an impression of Council 'going through the motions', and that consultative processes allowed the public little effective influence on the business of Council, in providing for the needs and aspirations of the community. The role of local government and its relationship with its community needs to be more clearly defined. Clarify the role of Councillors and provide means for them to keep in touch with constituents so that constituents are better informed and so that Councillors are able to canvass community concerns and needs.

* Efforts should be made to resolve issues and disputes outside of the formal processes, in part because of the general formality of required processes. Participants would prefer less formality and more 'user friendly' forums and processes. Provide opportunities for open discussion between interested parties prior to formal processes. Prior to formal hearings, opportunities for ADR ought to be provided. Establish forums and processes which can seek to accommodate diverse interests and views and which allow the disputing parties opportunities to settle their differences.

* Refer to all relevant plans and the policy framework early in the development of ideas in scoping for potential issues and environmental concerns that could be relevant to the design or responses to planning problems and needs.

* Better coordination between the divisions of Council would reduce the likelihood of conflict within Council and with the community. Council's policies and directions need to be clearly described for the community.

Table 19 continues...

Table 19 continued...

* Encourage a high level of 'contestability' within Council to encourage the identification of issues, and an open and frank dialogue between officers.

* Appoint a community officer to act as liaison between Council and the community, who would have a role in monitoring the upcoming needs of Council, as indicated from both within Council and by members of the community, and who would organise forums and means by which to canvass community views and concerns and in which the community could debate 'fundamental issues'.

* The public need help in preparing submissions, and in presenting submissions. Some mechanism for advising and supporting public submittors ought to be available, particularly when the public participants are not representing private interests but alternative public interests.

* Try to reduce the importance of a disparity in resources between the disputing parties. The amount that can be spent in a hearing should be capped so that one side can not exploit its superior financial position to full advantage.

* Amend the RMA, or provide some other means to clarify what certain concepts mean, and also to prescribe certain characteristics (or standards) for consultation and EDR processes more explicitly.

B ***Specific suggestions for ADR processes***

* Ensure that the terms of reference, problem definition, and other characteristics which describe the particular ADR endeavour to be undertaken, are clearly described, understood, and accepted by all the participants in the process.

* Ensure participation is voluntary and that participants understand the concepts underpinning the ADR approach and that they are prepared to work with that approach. Seek some agreement that the sponsor is committed to the process and is open to a consensual strategy.

* More effort and time taken to establish the process, with the interested community, Council and the facilitator all involved, could have reduced some of the problems experienced within the process.

* Ensure that information providers do understand the process, and their role within it, as it is the participants and not the 'traditional' advisors and consultants who have to resolve issues and the interested parties who must put the conflict to rest. Expert 'informers' who have traditionally been advisors must be, not only cooperative with the ADR process and conducive to the use of it, but *committed* to it if the process is be as effective and successful as it could be.

* Local authorities need to identify suitable candidates to educate and train as facilitators and mediators of environmental disputes, so that a core of skilled aids to ADR, and also to formal processes, are available when such processes may reduce the level of conflict in a dispute.

Table 19 continues...

Table 19 continued...

C ***Specific suggestions for formal or required EDR processes (hearings)***

* Public "I think the RMA should be changed so that hearings go to an independent body, and the government should provide a group of government funded mediators, or even, all of local government could fund it if necessary, so mediators [commissioners] can be appointed, rather than selected. The commissioner of this agency would appoint someone to hear a particular dispute."

* The Commissioner for the Environment or the Ministry for the Environment could appoint hearing commissioners, particularly when the dispute is between Council and members of the community.

* Public "Council chooses whoever they want. I think an independent agency should appoint people [as commissioners/mediators] well qualified in the issue, and also in the legal issues to help work it out."

* Establish a pool of fulltime commissioners and mediators attached to either central government agency.

* Provide funding to public interest groups trying to present an alternative view to a hearing in opposition to a comparatively wealthy opponent. There ought to be some funding agency to which interest groups can apply for assistance in taking a case to a hearing and to an appeal.

* The PCE's Office should take a greater monitoring or overseeing role of EDR processes and be more active in establishing appropriate processes/forums.

* Maintain a local and/or national register of all ADR and EDR processes and of their outcomes, so they are able to accessed for reference in later processes.

* There is a need for peer review, or an overseeing role for some agency in monitoring that the EDR processes are being conducted as intended by the legislation, and that the outcomes of those processes are appropriate. Reports to hearings should be professionally and independently evaluated, not just within the course of the hearing by an individual who is expert in law but not necessarily in the substantive issues under consideration in the wider dispute context.

CHAPTER 14 CONCLUSIONS

"People need to go back and look at the RMA and say, 'how is this actually working in practice and are we achieving this?', because I don't think we are meeting that balance at the moment and people clearly feel that the process failed because people didn't feel satisfied with the result. Not just whether they had won or lost, they were not happy with the process. They didn't feel the matter had been laid to rest. It wasn't resolved, and I would say a lot of it was because of the way they chose to run it" (Public participant).

14.1 THE RESEARCH PROBLEM AND AIM.

Deficiencies in past resource and environmental management together with changed political and environmental philosophies led to new ideas being given expression in the RMA. In Section II of this thesis, the consultation objectives and principles intended to be realized through statutory based EDR processes were examined. This thesis focused on consultation which endeavoured to 'resolve' a dispute to achieve 'sustainable' management and a more sustainable society, through a greater expression of democratic principles and diverse interests and values.

Monitoring whether the principles and objectives of consultation are given effect in practice was suggested as requiring reference to participants' perspectives on, and experiences in, consultation processes. This research therefore sought to ascertain when, why and how EDR processes are applied in practice and the perspectives of participants in these process. It identified the timing, motivating factors, purposes and design of consultation processes and forums that were utilized during 'resolution' activity in the case study (in Chapter 8). The sources and causes of conflict, as these evolved throughout the period of EDR activity were examined and provided a rationale for why the dispute continued despite a number of formal and informal 'resolutions' of it. This research also identified the benefits and strengths, and problems and limitations associated with formal or required consultation processes which employed the *judicial approach*, and those associated with a voluntary, ADR process which employed a *consensual approach* to EDR (in Chapters 9 to 12).

The observations and experiences of participants in consultation processes also provided a means to monitor how the 'new era' of public participatory planning under the RMA is being implemented in practice.

14.2 COMMON THEMES IDENTIFIED DURING THE REFORM PROCESS.

Problems and shortcomings of the system prior to reform included:

* A lack of clear conservation and development objectives.
* A lack of balance.
* A failure to incorporate externalities in decision-making
* A climate of uncertainty, within a fragmented, time-consuming and costly process...
* which was neither comprehensive nor integrated in its approach.
* A tendency to foster adversarial relationships.
* An inability to monitor and consequently influence future performance.

Observations which aided in defining environmental management concepts included:

* An anticipatory approach is required, which involves integrated planning.
* Environmental thinking or management that views the 'environment' concept as all encompassing and dynamic. An holistic approach is needed.
* The notion of 'sustainability' incorporates: inclusivity (e.g. of local and indigenous knowledge, intrinsic values, and externalities), 'wise' use, diversity and balance.
* Consider the solution in terms of 'planning mechanisms' as well as 'environmental management.
* Planning and decision-making should take place at the community or local level.
* The 'public' must be included early and effectively in planning processes.
* The 'user pays principle' and public access to information and government are at odds, therefore careful consideration of responsibility for cost burdens is needed.

Environmental management should aim to achieve the following objectives and ideals:

* Meet the ends of economic development, social equity and balanced and sustainable resource use; to reflect social, cultural and spiritual values, preserve the qualities of the landscape, and provide for the needs of future generations.
* Consider all the impacts (or effects) of proposals on the environment.
* Achieve balance by taking full account of all environmental values.
* Promote consensus-building through *early* public participatory planning.
* Give greater effect to democratic principles.
* Advance effectiveness and efficiency by introducing integrated and explicit objectives and procedures.
* Avoid complications and difficulties by introducing simplified and streamlined resource allocation procedures and processes.

14.3 MONITORING AND ASSESSMENT: WERE THE PRINCIPLES AND OBJECTIVES OF CONSULTATION REALISED IN PRACTICE?

Many of the points noted in 14.2 were included in the purpose and objectives of the RMA, both in terms of sustainability concerns and consultation provisions. In undertaking consultation or EDR processes, planners, managers and decision makers need to reflect on the intent of the RMA and how citizen input into planning and decision making processes can be enhanced, as effective participation is more than adherence to prescribed procedures.

No comprehensive, objective criteria by which to monitor and assess the level of attainment of each of the principles or objectives of consultation was available to *determine* absolutely the efficacy of consultation processes in realising their goals. Participants' descriptions of benefits/strengths and problems/limitations of EDR processes provide contrasting, and at times contradictory, indicators of whether the principles and objectives of consultation processes were given effect in practice.

The importance and relevance of perspective in interpreting and resolving environmental disputes was noted within Section III of this thesis. While diverse perspectives were presented in that section, in addressing the question, '*were the principles and objectives of consultation given effect in practice*?', the perspective to take depends on 'for whom the goal is intended to apply', (i.e. the consulter or the consulted). The public participants, as the objects of consultation processes, are key to determining if the goals of public participation have been met.[323] While the public described a *right* to be consulted (and also rights within consultation processes), the proponent of change or applicant described either an *obligation*, a *duty*, or a *responsibility* to consult.

To address the question, '*how well were the principles and objectives of consultation given effect in practice*?', conclusions are drawn from consideration of the characteristics of each of the consultation processes observed in practice (as employed in this case study and derived from participants experiences and observations), and contrasted with the principles and objectives of consultation.

Conclusions as to the efficacy of the formal or required processes (which used the judicial

[323] This approach is taken as most of the principles and objectives of consultation (summarised in Appendix II) describe features which can be considered either public rights, consulter obligations or duties, or, general features for a good process that benefit all the parties to consultation processes.

approach), in realising the principles and objectives of consultation, are presented in Table 20 (p360). These conclusions address the question, '*in what ways did the formal / required consultation processes give effect to the principles and objectives of consultation*?'

Conclusions as to the efficacy of the informal or ADR process (which used the consensual approach), in realising the principles and objectives of consultation are presented in Table 21. These conclusions address the question, '*in what ways did the informal / ADR consultation process give effect to the principles and objectives of consultation*?' The format within these tables, for presenting conclusions, is to classify each of the principles and objectives intended to be realised through consultation processes (refer to Appendix II), into one of five categories as follows:

A The principle/objective was thought not to apply in this dispute context.
B The principle/objective was given only *some* expression in practice.
C The principle/objective was given effect in practice.
D It was difficult to assess if the principle/objective was given effect in practice, due to contrasting indicators provided by 'perspectives' of the process.
E The principle/objective was not given effect in practice.

A note of caution is necessary in presenting these findings, as a need for brevity does not allow a full explanation for why each principle or objective has been placed within a certain category. It is assumed that a reading of the last three sections of this thesis will provide the necessary explanation to validate the conclusions.

14.4 IN WHAT WAYS DID THE FORMAL CONSULTATION PROCESSES, (WHICH APPLIED A JUDICIAL APPROACH TO EDR) GIVE EFFECT TO THE PRINCIPLES AND OBJECTIVES OF CONSULTATION?

The benefits and strengths of the formal or required consultation processes were described in Chapter 9. The problems and limitations of the formal EDR processes were described in Chapter 10. Comparison between the expected characteristics of formal processes, using the 'judicial approach', as described in the literature review (in Chapter 6) and those observed in practice was provided in Chapter 13. This comparative analysis identified that many of the assumptions about the judicial approach were upheld by observation of practice. However, a number of assumptions were not supported by observation of practice. Participants also identified additional benefits/strengths and problems/limitations, in relation to participating in required consultation processes, to those described in the literature review.

TABLE 20 IN WHAT WAYS DID THE *FORMAL* CONSULTATION PROCESSES GIVE EFFECT TO THE PRINCIPLES AND OBJECTIVES OF CONSULTATION?

A **The principles and objectives thought not to have applied in this dispute context or within the formal process:**

* That consultation is an essential component in giving effect to the principles of the Treaty of Waitangi was not thought relevant in this dispute context.

* The precautionary principle was stated to be irrelevant in the second hearing.

* The 'polluter pays principle' was not applied in this dispute context.

B **The following principles and objectives were given only *some* effect within formal processes:**

* *Public participation was promoted*, in that the opportunity to comment was provided.

* Consultation requires *sufficient information to be provided to the consulted party so that intelligent and informed decisions can be made.*

* For public participation to be most effective, *interested parties need access to key documents and data in enough time to prepare submissions.*

* *Introducing simplified and streamlined resource allocation procedures and processes to avoid complications and difficulties* was achieved to some extent, but there were difficulties in the consent hearing for those promoting interests and values other than amenity values associated with the trees (e.g. integrated transport management and alternative city 'visions').

* *Advancing effectiveness and efficiency by introducing explicit objectives and procedures* was achieved to the extent that the purpose of the hearings was very focused. However, explicit objectives and procedures constrained considerations in the hearings, so that in each case the losing side did not think the process had been able to take an 'integrated approach' to resolving the issues.

* *The intended outcome of the hearing process was clearly stated.* However, that did not mean all people had *realistic and unambiguous expectations* about what could be achieved within the formal hearing process.

* *Consultation involves a statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done* was given some effect as Commissioners decisions were made after listening to all the interested parties. However, the losing side in each of the required processes described that the formal consultation process was not able to *'decide' what was best or ought to be done* as the forum and process did not formulate a proposal to address the problem or issues.

Table 20 continues..

Table 20 continued...

* This environmental dispute was about competing interests and values in the built environment. Not all the interests and values were able to be considered 'relevant' given the scope of hearings, the policy framework, and the weighting of interests that took place within the two hearings. The public described that qualitative values were less well considered and provided for, and that the problem definition, framing and potential solutions were constrained within the formal process. *The promoted view of an holistic environment and of decision making that seeks to cater for a diversity of peoples values and interests* was, therefore, given effect only in part. That *sustainable management applies ideals for the cultural environment as well as for the ecological or natural environment* was also given effect only in part.

* Similarly, *that 'sustainable management' incorporates: inclusivity (e.g. of local and indigenous knowledge, intrinsic values, and externalities), diversity and balance* was given only some effect in formal processes, as, while all the issues were introduced within the process, and a range of perspectives on these issues were presented, the decision making process was limited in its ability to incorporate the range of information, all the externalities, or the strategic implications and so can not be considered inclusive.

* *That the process was transparent and decision makers provided a clear decision rationale and thus also promoted greater accountability* was only given some effect as, while the consultation process was transparent, aspects of the decision making process and of the decision 'rationale' were not transparent. The public did not always know why their evidence and views were not preferred over the proponents evidence and views. However, the public certainly knew who was 'responsible' for the management response and environmental outcomes.

* *Costs as well as benefits were considered.* All the environmental effects of the proposal were introduced within the formal process. However, not all the costs and benefits were able to be taken into account as the explicit purposes of the hearings constrained the problem definition, framing and potential scope of 'resolutions', so that wider and strategic issues were not able to be addressed within the process.

* *Undertaking an independent, objective, and thorough review of issues* appeared to have been a feature of these processes. However, participants challenged the adequacy and neutrality or objectivity of these reviews. Reviews undertaken by the consultants were not preceded by any public scoping exercise, to ascertain the relevant significant issues. The hearing forum itself could be considered a public scoping exercise to test the proposals acceptability. The considerations of the Commissioners also acted as a review, as the consultants reviews of issues were included in the decision-making process.

Table 20 continues...

Table 20 continued...

C ***The following principles and objectives <u>were given effect</u> in the formal process:***

* *Interests and values in the community were identified, and hence also all the effects of activities and outcomes of these were also identified. Consultation was a barometer for identifying the community values and issues.*

* The 'place' of planning and decision-making was at the community or local level, although the proponents professional consultants and the appointed Commissioners resided outside the region.

* Public participation did *enhance accountability by reminding decision-makers of the potential impacts of decisions, and by testing decision processes and the outcomes for appropriateness*. The public was able to monitor the process and its outcomes.

* Decision-making did involve resources held in common and concerned many parties. That *democratic societies have mechanisms for allowing citizens' opinions to be heard prior to some decisions being made*, was realised. The process and forum gave greater effect to democratic principles as it was *open to any interested person* who had asked to be heard within their written submission.

* *Formal (independent) review or assessment was prepared and was publicly available to help understand the issue*, although the public did not believe they had sufficient time to prepare their responses to that information. *The procedures did enable these reports to be included in the decision-making process.* However, there were contentious issues raised about the accuracy and thoroughness of some reports which drew into question the objectivity of 'independent' reviews undertaken by consultants on behalf of Council. While Commissioners also undertook an independent review of all reports, they were specialists in law and were not therefore peer reviewers of the assessments submitted by officers and consultants.

* *Decision-makers made their reasoning clear and public, including the reasons why they rejected the views of any interested party.* The reasons given for decisions were stated, however that reasoning was contentious in both Commissioners' decisions, and the underlying rationale was not always transparent.

* Consultation undertaken during the policy formulation stage of planning was an effort to *avoid policy issues being debated* when a resource consent is applied for. However, the deletion of all policy on the Avenue trees became a contentious issue because it meant that future activities in the Avenue would not be open to further public input (except for funding through the annual plan process, which incidently was by-passed by rapid implementation and diversion of funds).

* That *consultation can be a means of promoting understanding of what the agency is trying to achieve i.e. winning acceptance*, was achieved as the public had access to more information, and both support for, and opposition to the proposal grew.

* As a decision was 'required' by the statutory authority *the option of appeal to the courts was retained for aggrieved parties.*

Table 20 continues...

Table 20 continued...

D **It was <u>difficult to assess</u> whether the following principles and objectives were given effect in the formal process, due to contradictory indicators:**

* *Promote a greater expression of democracy.* The public did have opportunity to describe interests, values and views and to influence the decision maker. However, the judicial approach was unable to 'formulate' a response which could 'tolerate' minority views, wants or needs. (Democracy is defined in "*The Oxford Dictionary of Current English*" (1987) as "government by all the people, direct or representative; State having this; form of society ignoring hereditary class distinctions and tolerating minority views.") Also, in the analysis leading to a decision on the resource consent, only those views which could be pinned to established policy were relevant, and other interests, values and concerns struggled to have any status among the considerations. In the proposed plan and plan change hearing the legal tests were less clear, and an influence on the decision maker was the ability to purchase information and professional, expert support (as a means of establishing credibility) in order to present a strong argument. Establishing 'credibility' was important to how evidence and perspectives were received.

* *Identifying the public interest* was a contentious issue, as to which of the different interests and values truly reflected 'the public interest'. A number of *public interests* and not a singular over-arching public 'interest' were identified as 'relevant' to this dispute The Commissioner in the second hearing stated that there was a 'transport imperative', and thus determined the public interest in the matter. This affirmed Council's view, and led the Commissioner to support Council's specific project proposal, which was shown to be also underpinned by another interest, that of minimising financial costs to ratepayers. Other interests (e.g. amenity and heritage values) were given less weight in the Commissioner's decision.

* *Intra and intergenerational equity* was difficult to assess. It does seem that some interests and values in the context of the Avenue were subjugated or over-ridden, so other interests and values could be better catered for.

* *An anticipatory approach is required, which involves integrated planning.* The Council's response time-frame focused on 'immediacy', there was no time in hand. The parties were not able to expand the problem definition and scope to include other wider and strategic implications they connected to the central issue. The range of interests and values was limited to those related directly to the Avenue.

* It was difficult to assess whether *the community was supportive of the decision and project, as a result of 'involvement' in a formal consultation process.* Participation within a hearing can not be described as helping to 'develop' either the policy framework or the project. Public input tested the consequences of a proposal, helped to assess its appropriateness and thus helped to finalise decisions about whether a proposal would proceed. However, public opponents felt the project was imposed upon them, even if their concerns were 'considered', as they did not see the forum had 'developed' mechanisms to cater for their interests and values.

Table 20 continues...

Table 20 continued...

* *Redefining the problem so as to see the solution as much in terms of 'planning mechanisms' as of 'environmental management'* was given effect to the extent that 'the conflict' was dealt with by employing different planning mechanisms in order to achieve a decision. This legally 'resolved' the conflict, as opponents had no further formal rights, beyond taking the matter to appeal. However, the substantive issues were not addressed by employing a different 'planning mechanism or approach' to generate a 'management response' that could more effectively 'settle' the conflict.

E **The following principles and objectives <u>were not given effect</u> in the formal process:**

* *That consultation ought not to be seen as the quickest and most 'efficient' path to follow, as 'efficiency' involves not only speed but also direction* (indicating a predetermined management response is not appropriate) was not given effect in formal processes. Formal consultation processes were recognised as lengthy and costly, and a reason for the high costs is that this form of consultation was adversarial. All submittors (proponents and opponents) argued for or against a particular management response. Both Commissioners indicated that they had only two options, accept or reject the proposal. The direction was therefore set prior to the consultation efforts within formal processes. When it came to making a decision, the crucial factors were the Commissioners interpretations of the legal provisions informing the two options, together with their own views on the issues.

* *A 'sustainable' future which includes 'sustainable' conflict resolution* was not achieved, as, although the legal impasse was broken as a result of a 'formal' process, some participants continued to feel aggrieved. Continued dissatisfaction in both 'the process' and environmental outcomes caused discontent and mistrust of Council. Repercussions continue to affect the community-Council relationship.

* *Early involvement of the public so that planning can include citizens concerns, and cooperative management can be designed* was not achieved through formal processes, even though one of those processes was at the 'policy formulation' stage of planning. Public participants did not think responding to notified proposals was early involvement in planning, as they reacted to fully developed responses to planning problems. They then tried to have their perspectives, interests and values considered in the design of a management response which they could be better satisfied with.

* *Promote consensus-building (through early public participatory planning) to avoid adversarial relationships and conflict.* Formal processes were adversarial, confrontational and exacerbated the state of conflict. They were not able to promote consensus. The initiation of formal processes was considered a late consultation effort, as these were initiated after a fully designed proposal was notified.

* *Inclusive methods are preferred to address concerns in the design of decisions and to preclude the need for appeals.* While formal processes were open to any interested person, it was not regarded as inclusive. Rather, hearings were described as, aggressive, intimidatory and alienating to the inexperienced, unskilled and underfunded public participants.

Table 20 continues...

Table 20 continued...

* The process was formalised with procedures, rules and protocols so that it was described as being like a criminal court. Also, opponents used the hearing forum as their venue for 'appeal', (none of the public participants felt able to take an appeal to the Environmental Court).

* *Inclusivity of local/indigenous knowledge, a 'multi-cultural approach, and improved communication between the interested parties.* The formal process was mono-cultural, that being the 'culture' of the court or the 'justice system'. Participants described an inability to use personal methods and means of communicating their ideas, and an inability to question others or explain themselves when they had been misinterpreted. Mis-communication and distrust was a feature of hearing forums. Qualitative, subjective, and emotional evidence was not well regarded and local knowledge was considered less credible than analysis undertaken by experts, even when evidence related to qualitative values, e.g. any 'amenity value' of the trees.

* *Balance the wants and needs of diverse perspectives in relation to resources and the environment, by taking full account of all environmental values. Recognise that no one value should be over-riding in the planning process.* Opponents could not see how the ranking and prioritising interests and values had 'balanced' or taken full account of their interests. Opponents, described that their interests and values were over-ridden to cater for other peoples interests and values.

* *Inclusivity of externalities.* Some wider and long term effects (e.g. strategic implications for the city as a whole) were not considered within the scope of the 'certain matter' to be determined and so were not integral to the analysis of issues in each of the hearings.

* *That consultation can be a way of sharing power in decision making* was not considered to have been realised, as most public participants considered their involvement was ineffectual. The consulted parties had no influence in the choice of consultation process, its timing or purpose. They did not help to design the process, the procedure to be used within it, or the analysis undertaken within it. Nor did the public help to formulate a response to the problem. They sought to influence the decision maker. Councillors had to endorse the Commissioners decision and so retained power, or authority, and responsibility that goes with that.

* *Community ownership of environmental problems* can not be described as having been achieved, as the public was not seen as responsible for addressing the problems, even though commuting behaviour gave rise to 'the problem'.

* That *consultation can be a powerful tool for obtaining genuine input into policy formulation* was not given effect in the formal process, as the hearings did not 'formulate' policy or design any new initiatives in regard to either the design of the environmental management framework (i.e. policies or rules) or in the design of the project. Consultation in these forums was a weak tool in terms of 'formulating' policy, as policy was designed prior to the consultation exercise. Consultation was a means to monitor the effects of the proposal, in deciding if it would be accepted.

Table 20 continues...

Table 20 continued...

* *For decisions to be sustainable and not worsen inequities or resentments, methods need to be found for addressing the concerns of all interested parties*. This process was not able to address the concerns of all the interested parties. It worsened resentments as some public participants believed that their interests and values were poorly accommodated in the decisions.

* *Equitable access to appeal and redress*, was not achieved through formal processes as only those with considerable financial resources, as well as time and skills, had an ability to appeal. None of the public participants felt in a position to do so as they knew an appeal would cost a lot and as they were also threatened with costs.

14.5 CONCLUDING ASSESSMENT OF THE FORMAL PROCESS.

The characteristics of required consultation processes indicate that many of the principles and objectives of consultation were either not realised in practice, were only given effect in part, or that the level of their attainment was difficult to evaluate. Those objectives and principles that were realised were associated with a citizens entitlement to express their concerns, as these related to Council's ability to manage environmental outcomes through the management framework established within policy and regulatory plans. These processes only provided limited, and legalistic, opportunities for the public to tell the decision-makers about their interests, values, views, the potential effects on these and the environment. Other realised objectives were associated with the publics' entitlement to monitor the activities of local government in carrying out its responsibilities to the community, so that those responsible for the conduct of democratic processes and for environmental outcomes can be held accountable.

14.6 IN WHAT WAYS DID THE INFORMAL OR ADR PROCESS, (WHICH APPLIED A CONSENSUAL APPROACH TO EDR) GIVE EFFECT TO THE PRINCIPLES AND OBJECTIVES OF CONSULTATION?

The benefits and strengths of the informal consultation process were summarised in Chapter 11. The problems and limitations of the informal EDR process were summarised in Chapter 12. Comparison between the 'expected' benefits/strengths and problems/limitations of informal or ADR processes, as described in the literature review (in Chapter 6) and those observed in practice was provided in Chapter 13. This analysis indicated that many of assumptions about ADR processes were upheld in practice. Participants also identified additional characteristics, both benefits and problems, to those described in the literature review. The following

presentation of conclusions, in Table 21, as to the efficacy of an informal or ADR process (which used a consensual approach), in realising the principles and objectives of consultation, follows the same format used in relation to assessing the efficacy of formal or required processes.

TABLE 21 IN WHAT WAYS DID THE *INFORMAL* (ADR) PROCESS GIVE EFFECT TO THE PRINCIPLES AND OBJECTIVES OF CONSULTATION?

A **The following principles and objectives were thought not to apply in this dispute context or ADR forum:**

* Consultation is an essential component in giving effect to the principles of the Treaty [of Waitangi] rather than an accepted principle of the Treaty itself.

* *The 'user pays principle' and public access to information and government are at odds. Careful consideration of responsibility for cost burdens is needed.* The Council as proponent of change carried all the financial costs of the ADR process, while the public participants volunteered their time, information about public perspectives, interests and values, and ideas for a management response.

* *That the 'polluter pays principle' can be applied as necessary for 'sustainable management'* does not appear to have been relevant in this process.

B **The following principles and objectives were given only *some* effect in the ADR process.**

* That *consultation undertaken during the policy formulation stage of planning, is an effort to avoid policy issues being debated* (when a consent is being applied for) was given effect in part, as the consensual approach was an effort prior to policy formulation, to avoid a need to debate policy issues. However, this ADR process could not make recommendations on the policy implications of its consensually agreed strategy. In the event this process did not avoid the policy debate.

* There was *equitable access* to the 'required' formal processes subsequent to this ADR process and to the right of appeal following the determination of the policy hearing. However, there was inequitable access to 'redress' the findings of the consensual approach, as only officers and Councillors were able to exert further influence of the strategy within subsequent Council decision-making processes. In the event the crucial decisions as to whether the consensual strategy would be implemented were not made within the policy hearing to which the public did have access. They were taken later within Council, a forum to which the public had limited and ineffectual access.

* *That the notion of 'sustainability' incorporates: inclusivity (eg of local and indigenous knowledge, intrinsic values, and externalities), 'wise' use, diversity and balance* was given some effect in this process as it endeavoured to incorporate and consider all the issues and a range of perspectives on these issues. However, there were some issues that could not be incorporated due to constraints on the process (timeframe, problem definition and scope, and consequent scope of 'solutions')

Table 21 continues...

Table 21 continued...

* *Consultation should be open to any interested person (legal standing to all).* While the ADR planning process and forum was more inclusive than 'required processes', it was not open to any individual directly, but only to the 'representatives' of interested parties. However, there was opportunity to air views to the group, just as in a hearing, so that these de-facto decision makers could consider others' views and ideas. Issues surrounding 'representative status' and the quality or 'representation' made it difficult to assess how well all the interested parties were represented and thus whether they did have 'equitable access'.

* *Public participation was informed* as the parties had the same access to information that was available. However, some information was not able to be generated for the group, before it had to conclude.

* That *environmental thinking or management views the 'environment' concept as all encompassing and dynamic. An holistic approach is needed* was a principle given some effect in practice as the parties identified 'objectives' and determined what was of relevance in describing, informing and evaluating the issues. But, as the problem definition and scope were set prior to this ADR process, these constrained aspects of the groups considerations of the problem and potential options.

* *Decision-makers should make their reasoning clear and public, including the reasons why they have rejected the views of any interested party.* The interested parties reasoning was clear to the extent that information was provided when it was available. When there were doubts or a lack of information the group did not take a decision or reject a particular view, it requested more information. As all the information was not available when the process concluded the group made an 'either/or' recommendation over the one area of 'uncertainty' that remained.

* *Sustainable management requires 'sustainable' conflict resolution,* was given effect only in part as the accord was short-lived.

C **The following principles and objectives <u>were given effect</u> in the ADR process**:

* *Consultation is a powerful tool for obtaining genuine input into policy formulation* and is *a barometer for uncovering both the community value and issues.*

* *The place of planing and decision-making is at the community or local level.*

* *The public to assist with choosing the best direction at the outset, by providing fuller information on likely implications of decision options.*

* *A greater expression of 'democracy' or the right of citizens to participate in their civil affairs, and an ability to tolerate minority views. Democratic societies have mechanisms for allowing citizens' opinions to be heard prior to some decisions being made. For decisions to be sustainable and not worsen inequities or resentments, methods need to be found for addressing the concerns of all interested parties.*

Table 21 continues...

Table 21 continued...

These principles and objectives were realised within this process and in the terms of the consensually agreed strategy or determination generated by that process:

* *Promote consensus-building to avoid adversarial relationships and conflict. Balance the wants and needs of diverse perspectives (interests and values) in the relation to resources and the environment.*
* *A full and proper account of community views is taken in determining the values of resources and the environment and hence also all the effects of activities and outcomes of these.*
* *Recognise that costs as well as benefits should be considered and that no one value should be over-riding in the planning process. Inclusivity of externalities. Consider all the effects in the analysis of issues.*
* *Sustainable management applies ideals for the cultural or social environment as well as for the ecological or natural environment. The promoted view is of an holistic environment and of decision making that seeks to cater for a diversity of peoples views, values and interests*, in order to achieve a more equitable and stable society.

* This consultation did aim to *aid the resolution of dispute* when it arose, as it was initiated in response to a public dispute. There was a desire for an agreeable solution which could avoid the necessity for formal and adversarial processes.

* *People were able to express their views in their own way* and by whatever means for *effective communication, so that communication was clear.* The parties questioned each other and consultants directly, to clarify information.

* *The 'public' must be included early and effectively in planning and decision making processes.* Interested parties were involved early, so that planning did include their concerns. A cooperative process to formulate an appropriate response to the issues was used. As a mutually acceptable strategy was designed through this process, the early and direct *involvement of interested parties did allow for a process of regular checking to ensure that the design of the proposal was appropriate.*

* *Consultation involves a statement of a proposal, but it was not presented as the main option.* Proposals were evaluated within the process and then a strategy was designed that could meet the needs of all the interested parties. The process intended to *listen to what interested parties had to say, to consider all and each of their interests, and then decide what would be done* to address the problems while accommodating diverse interests and values.

* *The community (of interested parties) was supportive of the consensual programme as they were involved in developing the strategy and recommendations.* They did not feel the strategy had been imposed without consideration of their concerns. Parties did not feel 'compromised' by the 'decision'.

* *Consultation may not be seen as the quickest and most 'efficient' path to follow. It must be remembered that 'efficiency' involves not only speed, but also direction. It is false economy to rush off in one direction only to have to later reverse the decision, or discover too late that there are unexpected, significant and costly effects.* This process gave effect to these principles as it accepted that time would be needed to reach an agreement that would be acceptable to all the parties. The consensual strategy had the potential to avoid future conflict.

Table 21 continues...

Table 21 continued...

* *Consultation is an important base line monitoring tool. It should be possible for the diversity of perspectives held within the community - reflecting people's culture, values, expectations and aspirations - to be accepted as part of the record, without prejudice to any further assessment of their merits.* The official records of the meetings were brief summaries (minutes), consultants reports to the group and the final outcome document. Other records generated within the process, (e.g. the facilitators notes) were not retained as records of the process.

* *Inclusive methods of decision-making are preferred to address concerns in the design of decisions and preclude the need for appeals.* This was realised in this process. However, *for alternative conflict resolution methods to work there must be an agreement among the parties to cooperate, which some parties may find difficult* was also a feature of this process. Therefore, the following principles also applied to this process, *even where some agreement has been reached there may not be a full consensus. In the final analysis a decision will be required by statutory authorities, and the option of appeal to the courts will need to be retained for aggrieved parties*

* That *community 'ownership' of environmental problems helps ensure sustainable solutions* was a principle realised in this process as the representatives of interested parties had improved access to information, a greater understanding of the causes and effects surrounding the issues, and an improved potential to work within their own constituencies to take some responsibility for addressing the problems.

* *An anticipatory approach is required, which involves integrated planning* was a principle given effect within this process, as the parties were able to conceptually expand the problem definition and scope to include wider and strategic implications of the issues and in evaluating potential alternative responses. The parties described linking issues on the Avenue to other concerns, such as urban design and building a second bridge.

* *Redefine the problem so as to see the solution as much in terms of 'planning mechanisms' as of 'environmental management'* was pivotal to the use of this process. The ADR process recognised the impasse and sought to prevent an escalation in the conflict, as well as to develop a strategy to address the problem.

* *Consultation was a means to promote understanding i.e. winning acceptance.* All parties were supported and won acceptance of some of their ideas.

* *Consultation was a way of sharing decision making power* as the interested parties had an equitable opportunity within the process to help formulate the response.

* *Meet the ends of economic development, social equity and balanced and sustainable resource use; to reflect social, cultural and spiritual values, preserve the qualities of the landscape, and to provide for the needs of future generations.*

* *Intra and intergenerational equity, social equity* was realised in this process as interested parties had an ability to influence the environmental outcomes. By endorsing the strategy, they indicated they were satisfied with it.

Table 21 continues...

Table 21 continued...

* *The precautionary principle* was realised within the design of the consensual strategy which was to be implemented in phases, so monitoring could be evaluated and responses taken once the effectiveness of the strategy was known.

* *Public participation enhances accountability by reminding decision-makers of the potential impacts of decisions, and testing decision processes and the outcomes for appropriateness.* While those involved within the process designed a strategy they believed would be accepted by Council, they were not officially responsible for solving the problem and were not accountable to the public for the outcomes had it been implemented. This process tested potential decisions and outcomes for appropriateness, and then officers and Councillors evaluated the recommendations and made the decisions. As the process had clarified issues, the decision makers were responsible and accountable for the strategy they chose to implement it

* *Formal independent reviews or assessments were prepared and were publicly available to help understand the issues. The procedures enabled these to be included in the decision-making process.* The independent reviews underwent 'professional peer review'. In addition the experts and peer review consultants were able to be questioned by the interested parties and also by each other. It was thus clearer to all parties where experts disagreed and why. Subjectivity within the working party's analysis was transparent.

* *The process itself was a public scoping exercise to ascertain the relevant significant issues.* That phase preceded the evaluation of options, and the formulation of a strategy. The results were publicly available.

* *The reasoning for decisions was clear and public*, although there was no test of how well the public had received and understood this forums 'decision' or its rationale.

D **It was <u>difficult to assess</u> whether the following principles and objectives were given effect in the ADR process, due to contradictory indicators:**

* *The intended purpose of the consultation exercise was clearly stated so that people did have realistic and unambiguous expectations of their role within the process and what it intended to achieve.* However, there were contentious issues (e.g. relating to 'hidden agendas', complimentary purposes, some confusion over the scope of the 'problem' to be addressed), that made it difficult to assess just how well the participants had understood and agreed on the 'purpose' of the process. Also some information providers had ambiguous expectations as to their role in the process.

* Whether *introducing integrated and explicit objectives and procedures had advanced effectiveness and efficiency* was difficult to assess in practice, as, while the scope of the groups considerations and the objectives in using the ADR process were explicit, they were also described as having constrained the process. The agreed strategy was also a short-lived 'resolution'. Furthermore, while the group developed an integrated approach to the problem within the process, the objectives guiding the groups analysis (in formulating a strategy) were identified only very generally. Analytical criteria were not described or defined 'explicitly'.

Table 21 continues...

Table 21 continued...

* Considerable time was needed within the process to clarify these objectives, as well as the appropriate problem definition and scope, and any constraints on 'potential solutions'. These problems within the process meant that it was not clear if the process had 'advanced effectiveness', and both the process and resultant strategy were difficult to evaluate in terms of 'efficiency' as the results of the process were not implemented. It is speculative as to whether conflict would have been laid to rest or whether the 'problems' would have been effectively addressed. This forum was certainly effective in interrupting the spiral of conflict.

* *Identification of the 'public interest' that recognises the intrinsic tension between individual interests and collective interests, with the latter, as the collective welfare of the individuals and groups, establishing the 'public interest'.* This process was unable to identify an over-arching 'public interest'. However, it did recognise and seek to cater for several 'public interests'. Within this process, 'at least cost to ratepayers' was one of many priorities, but was not the top priority.

E **The following principles and objectives were <u>not given effect</u> in the ADR process:**

* *Avoiding complications and difficulties by introducing simplified and streamlined resource allocation procedures and processes*, can not be said to have been achieved in this process, as the consensual strategy was complex and required a flexible approach and responses to future activities in the Avenue. Recommendations to implement the strategy in stages, to monitor and to adapt the strategy had the potential to complicate any resource consents in relation to the trees. As the forum did not make recommendations in relation to the policy or regulatory framework, it was not clear how the group anticipated such issues to be addressed. However, the group indicated an approach to address any future issues as it recommended that a liaison group monitor implementation of the strategy.

* *Consultation requires sufficient information to be provided to the consulted parties* in order that they can make intelligent and informed decisions was integral to the process. However, some information was not able to be generated for the group and it could not reach consensus on all issues in the absence of some information.

* *Consultation requires sufficient time for both the participation of the consulted and the consideration of the advice given.* Within this process, artificially determined time constraints meant there was not enough time for representatives to consult constituencies, to canvass their views, carry them along with the process, or to assess support or mandates for the stances of their representatives.

* *Consultation requires a genuine consideration of the advice, including an open mind and a willingness to change* was thought to have been realised internally to the 'ADR process' as it applied to 'the groups' response. However, some individuals within the group were not thought open-minded or willing to 'change' there minds. The sponsor retained choice as to whether to accept the consensually agreed strategy, in subsequent decision making processes. In the event Council chose not to adopt the consensual strategy and so some participants concluded that the sponsor had not been open to changing its mind from the outset.

14.7 CONCLUDING ASSESSMENT OF THE INFORMAL ADR PROCESS.

The characteristics of informal or voluntary consultation (ADR) processes indicate that many of the principles and objectives of consultation were realised in practice, but some were only given effect in part, or the level of their attainment was difficult to evaluate. Those objectives and principles that were not realised were associated with three limitations of the process: 1) an artificially determined timeframe was established in setting up the process, which acted to constrain the process in a number of ways (including not having all the information needed before concluding and not consulting widely with constituencies); 2) the sponsoring agency (Council) had not ensured its representatives (and some support staff to the process) were 100% committed to a consensual approach and strategy; 3) the 'determination' or result of the process was not binding on any of the parties and had no legal standing.

14.8 PROBLEMS ASSOCIATED WITH MONITORING THE EFFICACY OF CONSULTATION PROCESSES.

Selecting the timeframe in which to monitor and assess the outcomes of an EDR process. If this research had been confined to the period directly following the conclusion of the ADR process, some of the limitations of that process would not have been apparent. As the research continued to monitor outcomes and further planning processes, and then the implementation of a management response, it became apparent that many of the benefits and strengths achieved within the ADR process, and anticipated to be realised in implementing a consensual strategy were short-lived. That was attributed to this process being voluntary and 'non-binding' on participants. As further required processes were still required (as Council chose 4 laning over 3 laning of one part of the Avenue), the interested parties returned to their original positions, to fight their cases in an adversarial forum.

Contrasting indications as to how well each of the principles and objectives of consultation were attained in practice due to subjectivity in the qualitative research approach. Given that no absolute measure, applicable to each of principles and objectives of consultation was available to ascertain whether these had been realised, or to determine to what relative level they had been met, subjectivity is an important consideration in any evaluation of the efficacy of planning and decision making processes in practice. Participants were asked to describe their personal level of satisfaction in the process and about its attendant characteristics. Overall there were less ambiguous descriptions in relation to the formal processes as participants described similar observations in regards to the benefits/strengths, and problems/limitations of required consultation processes. Contradictory descriptions were most evident in relation to the ADR process in this case

study. That was due in part to participants finding difficulty in maintaining a distinction between two phases, the '*actual process and its results*', and then the period following its conclusion as to the consensual strategy's *'reception and response by the sponsor'*. It is significant however, that the ADR process was considered more effective in giving expression to the principles and objectives of consultation than the formal processes were. Furthermore, the problems and limitations in formal processes were described as being difficult to overcome, while those in relation to the informal process were described as relatively straightforward to overcome. Many participants believed the problems and limitations evident within the ADR process were overcome, and pointed to the development of a consensual strategy as evidence of that.

The evaluation was found not to be a 'zero-sum' analysis, in that increasing benefits and strengths did not mean decreasing problems and limitations or vice versa. In practice the opposite was found. It was apparent that while problems were identified, having such characteristics did not automatically cancel or exclude the attainment of benefits and strengths within a particular process. Similarly, achieving certain benefits and strengths did not mean that certain problems and limitations had been eliminated entirely. Monitoring the effectiveness of practice could not, therefore, be based on a balancing equation in which pros could be contrasted with cons to see which came out on top, as the issues important to the analysis were not isolated but were interconnected. As each additional benefit or strength was identified, so were additional problems associated with, or hindering, its full attainment. In addition, participants described problems in being able to say if a particular benefit or strength had been 'realised' or was merely 'given *some* effect'. Subjectivity in these matters is thus problematic in researching participant perspectives. This issue highlights a need to develop objective analytical criteria by which to monitor and assess the efficacy of consultation processes in realising their objectives, as well as to establish an efficient systematic approach to monitoring consultation / EDR processes.

14.9 OBSERVATIONS ABOUT IMPLEMENTATION OF THE RMA.

14.9.1 Monitoring implementation of the RMA

This thesis has explored the uniqueness of a case study, and in so doing has identified issues of more general relevance and interest. Addressing the question, 'can this case study be considered indicative of RMA implementation issues?', led to a search for other commentaries on RMA implementation. It was apparent that many of the emergent themes arising from this case study are not unique to it. There are concerns about the abilities of planning practice and those responsible for implementing the Act to realise all its intentions

(refer to Grant, 1995; PCE, 1996; Upton, 1997; Hutchings, 1997; May, 1997; Frieder, 1997). However, significantly none of these evaluators of RMA implementation have recommended legislative reform, they suggest that "it is not the law that needed fixing... what needed fixing... was implementation" (Hutchings, 1997, ME; also Frieder, 1997; Grant, 1995; Upton 1994), and "let's learn from the experience and build from it" (Upton, 1994). The following observations are drawn from consideration of the findings of this research together with those of other recent commentaries on RMA implementation. While commentators tend to focus on *sustainable* or *integrated* environmental management, rather than the principles and objectives of consultation processes, the concerns arising are very similar to those identified in this research, as such monitoring provides generic observations about planning practice.

May (1997, ME) suggests "It will take a matter of a decade or more before it will be known how well the goals of the [RMA] have been met... it is important to remember that any current assessment of the RMA is at best a preliminary one". Never-the-less, the principles and objectives of consultation processes should be monitored in particular instances so that a definite 'signposting' of implementation issues takes place. This is important because input by the RMA's local constituencies or stakeholders was intended to be influential in formulating local sustainable management frameworks (to guide the next decade of sustainable management decision making). Furthermore, consultation processes are not recorded in such a way that will allow comprehensive historical analysis. Retrospective assessments may fail to pick up what is *not* recorded or participants' concerns.

Another issue for monitoring RMA implementation is that there has been insufficient attention to developing analytical criteria as a means to inform, or to standardise monitoring efforts, to enable better comparative evaluation between monitoring exercises. A variety of 'perceptions' about the RMA, and indicators for monitoring are emerging. A reason is that,

> "*Defining the analytical criteria for such an assessment [of the efficacy of the RMA] is far from an obvious task... the RMA's effectiveness cannot be assessed in purely technocratic or scientific terms. In practice, sustainable management is a protean, and, therefore, ambivalent, notion whose meaning is defined both in partisan terms (neo-liberal/environmentalist) and in the varied socio-political contexts of local government. Thus, the evaluation of the RMA's efficacy in satisfying its stated purpose must be a political task.*'" (Le Heron & Pawson, (edits) 1996, p253).

Two contextual points are introduced first to provide an overview by which to present some of the key themes arising from preliminary 'assessments' of implementation of the RMA. These points are not identified as limitations to RMA implementation, but can be considered informative as to why some of the observed problems are arising.

Resource and environmental planning and decision making is a political undertaking.

The concept of 'sustainable management' is described as wrought with *tension* brought about by *competition between diverse interests and values* (refer, Frieder, 1997; May, 1997; Le Heron & Pawson, 1996; Upton, 1994; Grundy, 1994; Grant, 1995; Hutchings, 1997), thus confirming the view of Lange (1997, MI) that "there is always the potential for conflict, because *environmental issues go right to the heart of what we mean by politics*". It is not a new idea that 'planning' *per se* is a political undertaking, nor can that idea be considered to have arisen out of New Zealand's 'new' planning context (refer Albrechts, 1991; Friedmann, 1973; Friend and Jessop, 1977; Faludi, 1973). However, central government sanctioned both the role and place of planning, and also its 'political character'. The RMA "sets up a regime that will forever be full of [political] tension" (Hutchings, 1997) as 'sustainable management' as described in Section 5 (and environmental issues generally), "comprises a mixed set of values that are conceptually irreconcilable" (Grant, 1995). This is reinforced by the dialectic on the purpose and objectives of the RMA, which led Tremaine (1996, MI) to observe that "the scope and intent of the legislation is closely scrutinised. *Debates about the assumptions and values which under-pin the statute continue*." That debate illustrates that competing interests and values, supported by different power bases, seek to influence both the character and outcomes of planning endeavour. One could adopt Hutchings' (1997, MI) suggestion, "let's put the debate aside, and simply *recognise that the Act operates in a political climate*". The view taken here is that only by focusing on the political climate in which the RMA operates can one hope to provide explanations for the debate about the RMA's intent, and also shed light on some of the problems associated with its implementation. For, as McConnell (1981) observed, "Planning is dependent on the sanctions of those with political power (in the formal sense) at each level of government with a responsibility for planning. Therefore planning theory must be related to political theory." Similarly, Blowers (1991) suggests that "what is required is a theoretical framework with relates the concept of planning to the concept of power for it is this context which provides planning with its role, its motivation, and its justification." The relevance of politics in planning, and of planning in politics, is continually alluded to in commentaries on implementation of the RMA, that will be apparent in the following observations. While it is not possible here to describe an outline of political or power theories,[324] it is evident that the RMA sets up a planning regime which makes the ongoing tension between competing (political) views and power bases, an overt feature of the resource and environmental planning and management endeavour.

[324] Mulgan, 1989 and 1994; Etzioni-Halevy, 1993; and Buhrs and Bartlett, 1993, provide contrasting analyses of 'politics' and 'power' relationships in western (pluralist-capitalist) democracies, which are informative to considerations of the political framework within which planning under the RMA operates.

> "*The environment into which 'sustainable management' has been released, and in which it struggles to survive, subjects it to a range of competing demands, including economic, political, and social pressures with which it must interact...* ***The principles of sustainable management as defined in s5 captures several potentially competing values. The Act does not ascribe priority to any of them***" (Grant, 1995, bold added).

Because "environmental issues are value laden and political in nature" (Hutchings, 1997), tensions between diverse interests and values in society, in respect of how limited resources are to be 'used', are inevitable.[325] Planning, and resource and environmental decision making seeks to reconcile these tensions and conflicts, by managing the effects of human activities so that externalities will be accounted for in decision making. The Act acknowledges competition between interests and values and "provides the machinery for achieving equilibrium between them, but it is not and never can be, a fixed point" (Grant, 1995). "The purpose spelt out in section 5 takes on practical meaning through policies, plans and resource consents" (Upton, 94), which are to be *formulated* via a combination of professional (planning) analysis, political, and consultation processes.

Resource and environmental planning and EDR is managed by local government

> "*A good deal of national policy is entrenched in the Act itself. Having put the Act in place, central government stepped back from active involvement in further policy formulation. That was the task of local authorities... and* ***communities are thereby empowered, within the framework provided nationally****, to decide what they want for their environment.*" (Hutchings, 1997, ME, bold added)

> "*The RMA extends to local and regional agencies the flexibility and autonomy to identify the most suitable and least cost implementation methods*" (Frieder, 1997)

Responsibility and authority for resource and environmental planning and management is located at the place where interests and values compete - at the local level.[326] There are a number of reasons for that, one of which is that "[i]t would be crazy to make decisions

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[325] The participants in reform considered those tensions and wove an umbrella purpose, since described as a principle - 'sustainable management' as described in Section 5. It is an inclusive concept, incorporating components of biophysical, social, and economic sustainability (Grundy, 1993; Stoker and Young 1993, in L Heron R.B. and Pawson E. (edits) 1996). The three strands applicable to sustainable management outlined within Section 5, together with the holistic description of 'environment' and the wide definition of 'effect' provided in Part II and Section 3 respectively, means that sustainable management "includes the natural, the built and the social environment and the way these interact. Sustainable management, therefore, *incorporates economic, social and ecological goals and values*" (MfE, 1992, No. 3, MI). Thus, "the path of sustainable management recognises the *interdependence* of economic, social, and environmental imperatives" (Frieder, 1997, MI).

[326] May (1997) describes a reason for difficulties in implementing the RMA, "One of the appeals of the concept sustainability, when employed at a fairly abstract level, is that it is sufficiently vague so as to permit consensus about it. Conflicts arise when efforts are made to be more precise since there is little agreement about the various economic, environmental, or social dimensions that sustainability potentially invokes. This makes it possible to endorse the notion of sustainable management without engendering substantial conflict over the means of pursuing this goal. Of course, the difficulty for local authorities is to translate this abstract notion into practice."

about the use, development or protection of natural and physical resources without a clear acknowledgement of social and economic matters, that is, the community and people orientated framework, within which that use, development or protection is to take place" (Hutchings, 1995). Another is that, "while the natural and built environment are generally understood, the 'social' environment can seem a more difficult concept" (MfE, 1992, no. 2), that needs to be described in the particular community circumstances. Also, the devolution of responsibility and authority to local government organisations moved decision making closer to those who bear the brunt of policy decisions, "[b]ecause, consistent with public choice theory, the incentive to make the *right* decision is strongest at the local level. Access to information is good, accountability mechanisms are well developed", (Hutchings, 1997, MI). "Decentralization can also be more efficient than centralization by allowing for geographic and demographic variability... Decentralised responsibility for policy development and implementation is also desirable in that *community values may be incorporated into the process from the bottom-up*" (Frieder, 1997, MI, ME). The local government reforms of 1988 and 1989 also established new accountability procedures for 'objectives-led-corporate planning'. The management model, accountability relationships and institutional arrangement of government, described in those reforms are increasingly recognised as influential in some of the problems arising in implementation the RMA, (refer Bührs & Bartlett, 1993; Martin & Scott,1991; Frieder, 1997).

The two contextual points just described ('planning is political' and 'planning is localised'), help explain why certain hurdles to 'sustainable' and 'integrated' management have appeared during the early phase of the RMA's implementation. Each of the following observations describe key emergent themes arising from 'monitoring' exercises.

14.9.2 Emergent Themes

i Level of local committment to the principles and objectives of the RMA.

Grant (1995, MI) notes that "for the sustainability ethic to be sustainable itself, against not only external forces but also the internal threat of bureaucratic engulfment, will require *strong committment to the values captured in the legislation by all those involved in its implementation.*" Frieder (1997, MI, ME) describes that "getting from an old way to a new and improved way requires *commitment* from people to take risks and change. Consider that some laws are 'technology forcing'. In a similar vein, the RMA is a 'behaviour forcing' law. *Its objectives... cannot be met with existing behaviour, attitudes, and norms.* Compliance with the RMA is 'forcing' new behaviour, new ways of doing business." Sustainable management "is a vision for the future which *requires commitment* from businesses, governments, and private citizens" (*ibid*). Upton (1994, MI) confers "[l]ike so

much else in this world, the extent to which we achieve that aim is in the hands of *human beings who have to live not just with the constraints of the physical environment, but the rules they are prepared to impose on themselves.* It is to be hoped that planners, lawyers and judges alike will be able to *marry the ethic of sustainable management with the practice of living.*" Blowers (1991, MI) recognised a potential pitfall to high levels of commitment in stating "The concept of sustainability requires *enduring commitment* to the application of policies in the common interest but policies, priorities and interests can quickly change. Applying the precautionary principle implies present sacrifice for future benefit, *but political reality vouchsafes a powerful preference for immediate rather than deferred gratification.*"

The RMA is described by May (1997) as employing a 'cooperative approach' a 'cooperative regime' and the 'cooperative mandate', the point being that its framework and processes for sustainable management necessitate a high level of 'cooperation'. Furthermore, "the cooperative approach rests heavily on the *willingness* of local officials to engage in the prescribed planning process... In *assuming that local government accept the need for such planning and are willing to develop capabilities* to do so, policy designers avoid the onerous assumptions of more prescriptive and coercive approaches" (*ibid*, MI). Local government and 'implementors' were presumed willing and wanting to achieve the same sustainable management principles and objectives that central policy advisors and legislators set out in the RMA, and would be *able*[327] to undertake integrated environmental planning.

The response by local government to the new RMA 'agenda' has been mixed. Commentators have described that local government may not be as committed to the new legislation, approach and model for planning practice as they might be assumed and expected to be.[328] There are a number of problems associated with low committment. For example, "resistance to change stifles innovation and makes compliance unnecessary

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[327] The root of the word 'power' is the Latin *posse* 'to be able' (The Collins English Dictionary, 1986).

[328] For example Frieder (1997) identified: a resistance to change; the management style is one which de-emphasises change. Where ever possible, the region retained what it could from pre-RMA days; insufficient attention to processes for coordination between management agencies; a failure to embrace the precautionary principle; a citizenry that wants to trust that the government will take care of problems and will inform them when they need to be informed; Council underestimating the interest and capability of citizens to actively shape their future, as opposed to being shaped by the movement of the market; limited involvement of 'the people' who have not yet expressed a vision of their future. Such issues were anticipated for example, Salmon observed in 1985 (p3, MI) that, "the great question at this point is whether the powerful bureaucratic agencies of government, with their well-established attitudes and habits, are really able *and willing* to give effect to this whole range of new policies." While Diack (1992, p9, MI) observed, "while the operational and administrative requirements of the [local government] reforms have been put into effect, *a change in decision making culture which was seen by many as the most desirable outcome of the changes has not been achieved*".

costly and slow" (Frieder, 1997), and "there are differences in the *willingness* of local authorities to *manage growth or to invoke environmental controls*" (May, 1997, MI). May (1997, MI, ME) also provides a suggestion, in stating that *cooperative regimes* like the RMA "suffer from gaps because of reluctance by some local governments to follow the prescribed policy process.... When such commitment or capabilities are lacking, *strong incentives supplied by higher-level governments are essential for inducing participation and building the requisite capabilities*"

Inducing participation and *building* requisite capabilities would need to be tackled on three fronts simultaneously, as Caldwell (1972, in Frieder, 1997) observed, "Individual and institutional change must proceed together if society is to be transformed. Human behaviour is at once individual and social; it is structured and reinforced through institutions. A strategy for action must, therefore, apply to individual, institutional and social behaviour simultaneously" Enhancing commitment - of individuals with a role in RMA implementation, the organisation that they work within as a team, and the wider 'stakeholder' community - means that each, and all, must be encouraged to achieve (or be provided) the motivation, and the means to participate effectively in the implementation of sustainability goals.

The issue of enhancing 'committment to the objectives of the RMA', needs to address three areas: the shear enormity and complicated nature of the task; the lack of understanding about the task, and; the issue of limited resources and competing priorities that see RMA tasks sidelined or underfunded. This last issue is addressed first as it informs the other issues.

ii Economic accountability as a limiting factor in implementing the RMA

Commentators describe that there has been a distortion of objectives in local government, due to a greater emphasis being placed on economic efficiency relative to other objectives. For example, Frieder (1997) reports that a territorial authority "manager was genuinely surprised by the possibility that integrated environmental management [IEM henceforth] was about superior environmental performance (in addition to economic efficiency)" and observes that "integration is discussed by top management as a way to bring together environmental economic and social objectives, but it is operationalised primarily in terms of cost minimizing measures." Le Heron and Pawson (1996) also noted that "policy and consumer priorities favour the economic rather than the environmental good." Such conditions were probably what caused Gould (1997, MI) to implore representatives of local government to consider that democracy and efficiency ought to and can co-exist, when he

stated "conduct your affairs in a businesslike fashion, but that you are not businesses. Local government is a form of government - a statement of the obvious; a truism, you may say but I do not think we should overlook it; it is the essence of what local government is about. It is a form of self-government; it is a form of democratic self government... it is something that is easily placed in figures on a balance sheet; of course that is an important aspect, but *the essence... is that local communities decide what they want, and they do so in the most democratic way that we can devise*." It is useful to consider contrasts in the two models currently applied to the work of local government. Douglas (1996) provides the following comparative descriptions of the 'private sector model' and 'public sector model'.

Private Sector Model	Public Sector Model
Individual choice	Collective Choice
Demand and Price	Need and Resources
Closure for Private action	Openness for public action
Market	Need
Market satisfaction	'Social justice'
Consumer Sovereignty	Citizenship
Competition as the instrument of the market	Collective action

A dichotomy between the two approaches and how they are being employed in local government is becoming increasing apparent as a cause for concern. While managers and officers (advisors) work predominantly to the private sector model, Councillors and the community work predominantly within the public sector model. There is increasing evidence of 'tension' between the two systems as the public observe the role taken by influential officers in the political affairs of local government and question their motives and mandate. Similarly, it appears that some Councillors see themselves as de facto financial managers in local government, as much as political representatives of the community.

> "*The intensive period of reform in New Zealand left* ***a culture that cares more about cost minimization than the quality of environmental outcomes or community participation****. In particular, the state sector reform introduced an ideology and a lexicon that places a premium on economic bottom lines. This is not a bad thing; but while the top rung of officials in resource management agencies are* ***held accountable for financial performance, the system does not provide them with comparable incentives or rewards for delivering environmental results, working with other agencies, engaging the community, or pursuing [IEM]****... Managers see themselves as financial managers more than resource managers. IEM demands attention to both. There is reason for concern in New Zealand, given the rigid system of* ***accountabilities that rank environmental outcomes and community involvement as second tier objectives.*** *Integration cannot result from a system that makes the drive for efficiency its overriding purpose... RMA practitioners do not understand IEM's meaning or applicability enough to derive the benefits of an integrated approach. Local and regional officers* ***and councillors*** *associate IEM with economic efficiency, and in*

particular, effects on ratepayers. 'One stop shopping' for resource consents is the most commonly cited example of integration in action and it is described as a cost saving measure rather than an example of comprehensive environmental protection. This ***overly narrow understanding of IEM is reinforced by a system of accountabilities (put in place by state sector and local government reform) that pays more attention to efficiency and legal compliance than it does about the environmental outcomes***"... The effects of this on mid-level managers, is that "*their principal concern: compliance with the legal requirements under the RMA. They focus on protecting their respective budgets and have become risk averse. Some discourage or prohibit interdepartmental work if it consumes staff time. Their literal and narrow interpretation of the RMA requirements leaves little room for flexibility, innovation or policy entrepreneurship.*" (Frieder, 1997, ME, bold added).

"*The New Zealand version of accountability currently has more to do with purchase than with ownership, more with producing outputs than with the overall capacity of the department, more with whether managers are meeting specific targets than with whether public programmes are effective.* ***Policy outcomes are outside of the managerial accountability framework***" (Schick, 1996, bold added).

Le Heron and Pawson (1996) point to the significance of similar priorities finding expression within processes *specifically intended* to promote 'sustainable management', in writing "There is some evidence the RMA's ability to protect ecological values in resource development may well be compromised by political and economic expediencies... Moreover, there is increasing evidence that developers are using financial recompense and other, non-fiscal, forms of compensation to obtain the written approval of potentially affected neighbours (Collins, 1993; Treadwell, 1994)."

While there is no doubt that the accountability framework and relationships set out in the local government reforms have had serious repercussions for councils, as it has influenced decision making culture, a more straightforward reason for the behaviours described above is simply that local government continually struggles to adequately resource the provision of considerable civil services, and to carry out all its responsibilities. Ratepayers demand 'price' stability and fight increases in local taxes. Council officers and Councillors are keenly aware of the enormity of their task and their limited means to carry out their duties.

iii 'Integrated environmental management' - 'wicked planning problems' - bounded rationality.

The RMLR working papers contained numerous references to a preference and need for an 'integrated-comprehensive' planning and management approach. Recent commentators reiterate that need (e.g. Bührs and Bartlett 1993; Frieder, 1997; May, 1997). The Ministry for the Environment (MfE henceforth) synthesised the following working definition of IEM - "An approach to environmental management which requires recognition of the linkages between different parts of the environment and adopts a range of tools to identify and manage environmental effects across these different parts, and to ensure coordination across institutional barriers such as agency boundaries" (in draft quoted in Frieder, 1997).

While such definitions[329] are another way of saying 'sustainable management', the emphasis is on providing practical methodology for extra clarity. Frieder sought evidence of IEM, as it "serves as an indicator or proxy measure" of sustainable management, and in doing so observed barriers to IEM. She and others have observed that the concept of IEM is not well understood, and it has not been well implemented (refer to Bührs and Bartlett, 1993; Bush-King, 1997; PCE, 1996; Church, 1996). In noting that, there are recognised problems in achieving an integrated approach.[330]

> "*True integration is an elusive ideal that can be very difficult to attain. Converting the gut appeal of integrated resource management to an operational reality is a complex and enormous task... Integrated resource management evolves, sometimes muddles along, and may be squeezed out in the bargaining process. The best is often sacrificed for better resource outcomes, defined in terms of that people will accept (note that good policy is acceptable policy, but the reverse is not always true)... We will never have a Plan that is the total answer no matter how sophisticated our analysis of the issues might be. Circumstances will continue to change over the life of the plan as will people's desires and perspectives.* ***Because of the variety and diversity of interests involved in resource management, I would contend that truly integrated resource management is not politically attainable... I propose that an integrated approach is something we should work towards****. We should not be discouraged by complexity, criticism or apathy.*" (Bush-King, 1997, bold added)

These ideas are also not new to 'sustainable environmental management', Friedman (1987) in describing the work of planners noted that they are asked to solve what he called "wicked problems". Such problems lack clarifying traits, that is, they have no clear mission and it is not clear if the problems have been solved. Friedman (1987) further described public policy issues as "malignant, or vicious, or tricky, or aggressive" and suggested that the nature of 'wicked problems' may not be suited to *rational techniques* designed to solve problems *quickly and clearly*.[331] As such planning problems ought not to be seen as 'deterministic' of solutions. Describing and defining a problem, setting its parameters,

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[329] Frieder (1997) describes that IEM is "a way of thinking about the environment as a whole and managing the environment in a way that recognises the links between elements of the whole", while Bush-King (1997) states IEM "is NOT about fragmented decision making so that only one resource element is considered at a time. IM does NOT focus on short term goals that ignore the interests of future generations." Caldwell (1972, in Frieder, 1997) provided advice on how to achieve integrated-comprehensive planning, "there is need for administrative organisation that (1) is sufficiently comprehensive to encompass the problems under attack; (2) facilitates coordination of all related efforts; (3) is adaptable to the dynamics of environmental change and to progressive stages in the solution of environmental problems; and (4) is capable of obtaining, evaluating, and applying appropriate science and technologies to the problems."

[330] Bührs and Bartlett (1993, pages 135-156) provide a thorough analysis of the practical difficulties of institutionalising greater capability for comprehensive, integrative environmental policy.

[331] His reasoning is based on the characteristics of the wicked problems which are: no definitive formulation; no stopping rules; no immediate and no ultimate test of a solution; they do not have enumerable or exhaustively describable sets of potential solutions, nor is there a well known set of permissible operations that may be incorporated into the plan; every wicked problem can be considered a symptom of another problem; the existence of discrepancy in representing wicked problems, gives rise to concern that the choice of explanation may determine the nature of the problem resolution (*ibid*).

selecting what data or information is 'relevant' to include in analysis, selecting the type of analysis, are activities that contain elements of 'choice' or 'judgement'. Consequently these activities provide scope for negotiation at each phase of planning, towards formulating options for a management response to 'solve' problems and/or to 'resolve' issues. Friedman's observations about planning problems are relevant given the criticisms of current planning practices ability to achieve *integrated* environmental management. Resource and environmental planning problems can be seen as 'wicked problems', and the efforts at 'integration' that are needed to achieve 'sustainable management' require reconsideration of planning processes, beginning with problem framing and objective setting. "In 1996 the Ministry for the Environment conducted the first annual survey of local authorities[332]... [it] concluded... that regional and local authorities are making 'limited use' of the mechanisms for achieving integrated environmental management provided by the RMA... IEM is neither well understood nor systematically practised" (Frieder, 1997, ME).

iv Prescriptive versus 'permissive' approach - reactionary planning versus anticipatory planning - satisfying versus optimising planning activity.

"Local government officials face both a cooperative policy that promotes local innovation and a coercive mandate that prescribes particular actions for a given aspect of environmental management" (May, 1997). Commentators report that there is a focus on procedures and doing what is 'required' to the letter of the RMA, rather than seeing how the objectives or goals of those processes can achieve sustainable outcomes, or looking for other ('unprescribed') means to give effect to the goals and objectives of the RMA.

> "*Some of our current problems are due to the fact that the plan-writing efforts of local authorities are focused on the wrong goal. Instead of developing a local interpretation of sustainable management, Councils are concentrating on getting the plan operative, that is on satisfying the prescriptive provisions of the RMA, not the permissive ones*". (Crawford, 1997).

> "*Overall, [IEM] is happening in bits and pieces, but not systematically. There is a* ***visible pattern where regulatory approaches, such as consents and plans, receive greater attention than longer-term non-regulatory matters, such as environmental education and state of environment monitoring****... items in the 'regulatory basket' have force, while items in the non-regulatory basket generally do not. Items in the 'non-regulatory basket'... currently receive less attention.* ***It is in this second tier that we find most examples of integration****. Non regulatory programmes are unlikely to have numerical performance targets, do not have monitoring provisions and do not carry the force of law. They are not written into plans and may or may not be financed. Bringing* ***attention to this set of issues****, that require attention, and the set of policy instruments available for application,* ***requires leadership and vision on the part of resource managers.... It is my impression that this RMA territory is still seriously***

[332] Frieder (1997, MI) notes that "the [MfE] concentrated on a limited set of regulatory/statutory activities when, in fact *most integrated management happens as part of non-regulatory or voluntary activities*. Also, the survey missed several *key 'mechanisms' provided by the Act for achieving integration such as [AEE] and the development of regional indicators*."

> ***unexplored****.... Statutory timeframes obviate more participatory, albeit time-consuming, multi-stakeholder processes... and pivotal concepts, such as 'cumulative effects' and 'life-supporting capacity', are left totally undefined... Focusing on implementation means orienting the institutions, the people, the economic factors, and information systems toward sustainable New Zealand*" (Frieder 1997, bold added, ME).

Reasons for this pattern include, "compliance will tend to be driven by the [coercive mandate] since the prescription is clear and sanctions can be imposed" (May, 1997); it is tempting, and easier, for councils to concentrate on satisfying the coercive aspect of the mandate (the procedural steps) rather than the permissive part (developing a local interpretation of sustainable management); the lack of 'shared understanding' of sustainable management; the influence of the legal system on practice; (Crawford, 1997; May, 1997); items in the 'non-regulatory' basket are generally 'more complicated'; "In spite of the common-sense appeal of [IEM], it is largely considered 'puffery', or a luxury for planners to entertain after the 'real work' is complete" (Frieder, 1997).

There are a number of problems associated with that approach: "inconsistencies arise when officials face both a cooperative and a coercive mandate" (May, 1997); the focus on required process limits planning's ability to act in an *anticipatory* rather than a reactionary way; it works against integration; it leads to 'satisfying' rather than 'optimising' activity; "the goal, to promote sustainable management, is sidelined" (Frieder, 1997); it stifles innovation and obscures opportunities for cost savings and better environmental outcomes, (*ibid*) and; it limits local initiative and local 'visions' of sustainable management (Crawford, 1997).

Again, such ideas are also not new to planning. Albrechts (1990) suggested that planning "professionalisation has grown within a framework of the bureaucratization of planning. This has had powerful implications for the conduct of planners and their intellectual tasks... Bureaucracy emphasises and demands 'formal', or procedural, rationality. Substantive rationality, or what planning is about, takes second place to procedural efficiency in this environment". Levy (1992) agreed, writing "planning theory often discusses planning as a process, but much less frequently discuss where this process is to lead". However, resource and environmental management has been shown to be a political undertaking.[333] Levy (1992) suggests that "because planning actions are clear proof that they are not only instrumental, the implicit responsibility of planners can no longer simply be to 'be efficient', to function smoothly as neutral means to given, and presumably well-defined, ends." "Planners are more than navigators who keep their ship on course. They are necessarily

[333] To be useful and effective within bureaucracy, the planning profession was promoted as being founded in neutral rationality, technical and procedural competence, having a toolkit of useful techniques and skills which enabled them to lay claim to being expert information analysts and neutral policy advisors. Planners became more concerned with how to plan than with the outcome of planning.

involved with formulating that course" (Forester, 1989). However, Levy suggests (1992, MI) "for planning, this is an age when *tactics are dominant and grand strategies and grand visions are less prominent.*" Commentators have noted a problem is a lack of 'shared environmental vision' and 'grand strategies'. The implication is that planners must "rededicate themselves to the substantive ideas and consequently become more heavily involved in the development process" (Albrechts, 1990), or at least in formulating strategies and visions. "There is a need to reconsider critically the role of planning and planners, taking into account their traditional strengths and weaknesses but also taking into account the changing circumstances" (*ibid*).

v *Legal formalism - 'rule-bound' decision making, strict protocols for giving 'evidence' and in decision making - reliance on the Environmental Court for guidance.*

Related to concerns about the focus on prescriptive features of planning, is the role of legal culture in shaping policy implementation. An issue is the extent to which 'legal formalism' in the form of rule-bound decision-making, presentation of formal evidence, and legal procedure enter into decision processes. May, (1997, MI) suggests that "cooperative intergovernmental policies are hindered by legal formalism because it undermines the *spirit of partnership*". While policymakers have sought to encourage local innovation in sustainable management, legal formalism has acted as a restraint. "The reliance of local governments on the decisions of the Environmental Court to provide guidance about acceptable planing practice has also fostered legal formalism in the planning process" (*ibid*). However, in defence of taking guidance from the Environmental Court, Hutchings, (1997) notes that "most resource management practitioners have welcomed the learned logic to emerge from the Environmental Court. Clarity has been provided where none appeared to be forthcoming from the Act itself." While clarity and guidance from the Court is important then, there are other venues in, and from, which to seek 'guidance' and achieve 'clarity'. The findings of the Environmental Court are not considered, strictly speaking, 'precedents'.[334] Yet, councils are relying more heavily on the legal profession and

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[334] To further complicate the matter of relying on the Court for 'guidance', or indeed the standards applied in any other 'particular circumstances', or decision making forum, Judge Treadwell (1994, quoted in Upton, 1994) said, "Any judge, commissioner or councillor if faced with a case of magnitude, could by careful wording of a decision set to one side the principles of the RMA which did not suit the desired conclusion. The ensuing decision could not be challenged if based on any particular element of Part II which happened to suit the views of the decision-maker. The decision-maker can thus reach a decision based on community values presently existing, and then find a section of the Act or a part of a regional or district plan which supports that subjective judgement". This reinforces that these decisions are frequently highly political and laden with value judgements. The values and priorities, so determined, ought to be made explicit in decision making processes as the circumstances describe them. Justice Greig (in *NZ Rail Limited v. Marlborough District Council*, quoted in Upton, 1994) said of Section 5 "This part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjugated to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There

Court than they may need too, which is stifling local initiative, innovation and local vision. May (1997) suggested "[t]he lesson here is that breaking away from legal formalism is difficult where there are well-established legal institutions and traditions", while Frieder (1997, MI) suggested that "[m]oving to the new approach envisioned by the RMA requires (among other things) *a cultural transition* from legal formalism to approaches that use informal negotiation and consensus building techniques."

vi Inadequate data - lack of integrated outcome-based indicators for monitoring. Limited use of state of the environment monitoring to feed into planning processes.

Related to concerns about IEM, is that commentators have described a problem of not having a strong basis for measuring outcomes in terms of consistent and rigorous indicators of environmental quality. When there is data, it may not be in a form that gives comprehensive and comparable information, as there has been a lack attention to developing integrated, outcome-based indicators. There is also not adequate coordination between and within levels of government to consolidate information sources. (Church, 1996; OECD, 1996; Frieder, 1997). Frieder (1997) observes that "Even if there were good data being collected and good monitoring systems were in place, there is no evidence that adequate feedback mechanisms exist to ensure continuous improvements to overall practice." A result is that "[l]ocal authorities cannot fully implement the effects-based regulation called for by the RMA. This is in part due to a lack of data about and understanding of the ambient environment by both local officials and the private sector" (OECD, 1996). Frieder (1997) suggests a reason for this condition is that "state of environment monitoring has not been a management priority because it consumes ratepayers' money without delivering an immediate quantifiable return and it has a longer time horizon than election cycles." Also, councils do not have adequate resources or capacity to pursue IEM, "they don't have the data or the tools to look comprehensively at environmental impacts... and they do not have the resources to become environmental educators (*ibid*, ME). Church (1996) notes such issues are "key priorities for investment - by government, research agencies, central government, and other stakeholders."

"Until such time as there are better data and methodologies for quantifying, identifying and monitoring sustainable management, IEM serves as an indicator or a proxy measure" (Frieder, 1997). Evidence of integration, is probable evidence that progress is being made towards the goal of sustainable management. "The ultimate test of integrated monitoring

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is a deliberate openness about the language, its meaning and its connotations which I think is intended to allow the application of policy in a general and broad way.' I think it is very important, in construing the purpose of the Act, that this broad approach is followed." The openness of the wording enables flexibility and adaptability as appropriate to the situation or circumstances.

is whether monitoring data is used to create understanding and wisdom that results in long-term attitude and behaviour change; in other words, *whether findings and lessons are communicated meaningfully to the public*" (Brosnahan, in Frieder, 1997, MI). Similarly, Hutchings (1997, MI) describes the development and application of state of the environmental monitoring programmes in terms of capability building, "they will assist to re-emphasise the importance of strategically addressing outcomes. However, the achievement of an integrated approach to monitoring presents an ongoing challenge. State of the environment reporting is unquestionably an important and cost effective *management, communication, confidence building and education tool.*"

Information uncertainty plays a part in conflict and in designing appropriate management responses to risk. The rational planning response to uncertainty is to seek more and better quality data, and analysis, to enlighten planning and decision making processes, to reduce 'surprise' (provide greater certainty), as causal relationships are better described and understood, and the ability to accurately forecast the future outcomes of today's activities is improved. However, planners have long accepted they can not expect to be 'all knowing' as such a quest is problematic.[335] Policy analysis is the predominant model and method for planning employed in New Zealand (Bührs and Bartlett, 1993). Given an increased awareness of the political characteristics of resource and environmental planning and management, the planners' role (in defining planning problems, setting objectives and goals and in describing or defining 'the public interest') has become increasingly important. Public participatory planning at early stages of policy formulation, suggests analysis must be tempered by considerations of diverse interests and values, as expertise is no longer an adequate measure of 'correctness' of perspective. A new 'endogenous' approach has

[335] Herbert Simon, through his work on 'Administrative Behaviour' and 'policy analysis', suggested that rationality is "bounded" as "*one never has total knowledge*". Therefore, one had to make decisions the best one could, select a course of action that would somehow manage to *satisfy* major organisational values. "The pragmatic decision problem was rarely how to optimise one's values; to *satisfice* them was all one could reasonably expect" (Simon, 1945, MI in Friedman, 1987). Furthermore "problems are never solved, they are merely displaced by other problems. The act of implementing a decision changes the problem so that there is only ever a continuing development of policy in which *one does what one can*" (Quade 1966, in Friedman, 1987, MI). May (1997) reintroduced this observation about planning when he stated, a "way to think about policies over longer periods of time [is] to consider policies as endogenous processes that foster new circumstances. These in turn, create new demands for policy change." As planners can only consider the information at hand, "*the major effect of research on policy may be the gradual sedimentation of insights, theories, concepts and ways of looking at the world*" (Friedmann, 1987, MI). Similarly, Quade and Boucher, (1968, in Friedman, 1987) suggested "*analysis is an, interactive process* in which the complexity of the full problem frequently far outruns analytic competence". The suggestion was therefore that "analysis must be tempered with and used alongside experience, judgement and intuition". An emphasis on the expertise of planners in policy analysis, underpinned confidence in that approach. However, that confidence must also be based on the precept that planners adhere to their professional ethical code and their public mandate. That is, there is an assumption that such expertise is working in the 'public interest', that planners are professional, have integrity, and political autonomy (are not prone to 'capture').

emerged to the development of policy, as May (1997, MI) suggests "Three types of demands seem relevant to this [endogenous] way of thinking about policy over time: *legitimisation of* regional governments as important entities in intergovernmental system; *mobilisation of constituency demands that results from participatory processes*; *empowerment of planners and other professionals.*"

As planning, must cope with 'bounded rationality' the implication was that planning, *at best*, is a 'satisfying activity'. The concept of sustainable and integrated environmental management has brought 'satisfying' activity into the open. As the holistic environment is considered, a wide range of objectives are to be taken into account and if only some objectives are consistently met, then the questions must be 'satisfying what, for whom, and why?'. The concept of 'sustainable management' and thus also 'integrated' management, by definition, seek to be 'optimising' activities. An acceptance of 'satisfying' only some part of the range of objectives would undermine the credibility, integrity and efficacy of the approach to resource and environmental management described in the RMA. Commentators on RMA implementation describe the importance of problem definition and objective setting, as crucial preparatory activities in the planning endeavour if '*integrated* environmental management' is to be achieved (for example, Bührs and Bartlett, 1993; Frieder, 1997). In addressing the issues of 'bounded rationality', 'satisfying' planning activity and the 'politics of expertise', therefore, attention must be paid to methods and techniques for defining and describing planning problems, setting objectives or goals. Further-to-that the RMA requires wide consideration and evaluation of planning proposals.[336]

> "*If Section 5 provides the heart of sustainable management, Section 32 is its mind... Ministers and local authorities are required to satisfy themselves that any instrument they propose to use (an objective, policy, rule or other method): is necessary in achieving the Act; is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means. In order to address these issues, decision makers are given a list if issues to consider (including other ways of proceeding, such as incentives and charges), and are required to conduct an evaluation of the likely benefits and costs of the principal alternative means, including likely implementation and compliance costs. The Act itself does not promote any bias between individualism and communitarians (an argument developed in Mr Grundy's paper) although the duties under Section 32 to consider and assess alternatives and to assess costs and benefits prior to employing any instrument under the Act implies a strong bias against crude regulation.*)" (Grant, 1996, ME).

[336] In the case study in this research, a s32 report was prepared by consultant planners and was criticised by public participants. Commissioner Bornholdt (1995) observed, "The s32 record is not intended to be a comprehensive record of the detailed analysis of the issues and options... Rather, the record is a summary of the findings of many years of investigations, analysis and Council decision-making processes... the s32 process is an ongoing one and does not cease upon notification... The policy development and evaluation process must take into account the matters raised by submissions after notifications, as well as any new information and technology which may arise as the result of further work and investigations."

To address the issue of values in defining problems, setting objectives and establishing performance standards, the MfE makes a number of important observations:

> "*Human values underlie our identification of standards as well as our response as individuals and as a community to development proposals... environmental assessment should reflect the values inherent in the principles of the Treaty of Waitangi and have regard for the values of those affected by a project. It should be remembered that* ***the values of all people are important, irrespective of ethnicity, income, wealth, education, occupation, age, gender or culture. Experts should avoid using their own values on the assumption that they are a good indicator of what the average values are or ought to be. Technical experts have no claim to superior values****. Hence, for example, assessors should consult members of the community or their elected representatives in the selection of impact categories to be investigated. In this respect the special obligations on central and local governments to recognise the principles of the Treaty of Waitangi should be borne in mind. In many cases there will be winners and losers associated with the implementation of any proposed policy or project.*" (MfE, 1992, No.3, bold added)

vii The quality of consultation efforts.

Observations about the quality of consultation processes (for example in PCE, 1996) have led some to question whether democratic principles are threatened. For example, "The publics' right to participate in planning resource exploitation and local body decisions appears to be seriously undermined, and at times, nullified by ignorance, cost and the intimidating nature of proceedings... The serious imbalance in resources between parties is most dramatic in major hearings, where counsel and experts can be paid massive fees by proposers, with which people and watchdog groups simply cannot compete." (Advisory Committee on Legal Services *Te Whainga o Te Tika - In Search of Justice* Report to the Minister of Justice, 1986, in Gill, 1996). The problems and limitations of public participatory/consultation and EDR processes have been outlined in Section III of this thesis. While, it is not intended to reiterate these findings, other commentators highlight certain issues.

The PCE identified barriers to participation including: *a lack of awareness* of RMA procedures and the significance of the policy and plan formulation process; council management of decision-making processes; statutory procedures such as time limits; and resources (people, time, skills, funding) for the public to participate. "Submittors need to understand the application and what its likely effects will be. They will have to put their own time into considering such information as is available, which may not be in a form easily comprehensible to non-experts. They may have to take time off work to attend hearings; and they may feel the need to employ their own experts to assess the technical information and advise them. This last cost is one that arises partly due to the lack of trust many people have towards developers and councils" (Gill, 1996). Frieder (1997) describes *inexperience* with the essentials of *fair process* in describing problems.

"*Meaningful and effective stakeholder participation is not occurring in implementation, apart from a few exemplary cases.* ***The capacity, the conditions and the willingness to explore new participatory approaches are missing****. Furthermore, there are not principles for deciding who is a legitimately interested party nor is there assistance available to bring community groups equally into the debate... While RMA planning, implementation and monitoring are to be outcome-based,* ***the process has an enormous influence on the quality and efficiency of the result. The process influences which values are to be reconciled and who buys into a policy, programme or plan.*** *Especially in cases where new issues are identified... it is not uncommon to see resistance to new controls or programmes. In these instances, it is extremely important to pay attention to process... stakeholders and businesses seem to be neglecting their responsibility. They tend to react on an ad hoc basis when their particular interests are threatened rather than acting constructively with attention or respect for the public good*" (Frieder, 1997, bold added, ME).

viii The role of central government agencies - lack of support services and resources.

There is some criticism of the RMA for example, Frieder (1997) suggests that "Several of the impediments to integration are found within the RMA itself. The RMA poorly defines the roles and responsibilities of regional and territorial authorities. It poorly develops the role of central government. The law makes many of the integrating mechanisms overly bureaucratic." While, May (1997) observes "ambiguities in the provisions of the [RMA] with respect to assignment of policy and planning tasks."

However, a more frequently expressed concern is that central government agencies have not provided the guidance and support necessary to appropriately and effectively facilitate the transition, or to monitor the efforts of local government in order to evaluate the RMA's effectiveness (Frieder, 1997; Le Heron & Pawson, 1996; May, 1997; Crawford, 1997). For example, May (1997) describes that local authorities rely on cental agencies for guidance about compliance in carrying out policy setting and planning under the RMA, but "the ability of cental government agencies to respond, however, is constrained by staffing limitations and the sheer magnitude of issues involved in implementing the [RMA]... the reduced role of central government agencies looms as a potential factor in limiting this type of (cooperative-facilitative) leadership." A reason for difficulties is that "[c]odifying sustainable management is, in fact, a very difficult thing to do. If local authorities are to do it well, then considerable resources are needed to undertake the technical work and consultation necessary. Not every council has these. And, in my opinion, *central government. has not carried out its role, to facilitate capability building, in a timely and constructive fashion...* As a result of all this uncertainty, sustainable management is being defined rhetorically, without adequate research or the benefit of 'shared' understanding" (Crawford, 1997, MI, ME).

The PCE's Office "fulfils the role that implementation theorists call a 'fixer' by drawing attention to implementation problems and making recommendations for reform. This is an important buffer in disarming potential challenges to the RMA and in identifying potential

adjustments" (May, 1997). Neither that office nor most commentators have 'challenged' the RMA or called for reform[337], instead they call for help for local government, in increasing awareness and capabilities, coordinating efforts between government agencies and providing advice on how to enhance their effectiveness in seeking to implement the RMA.

"As the environmental policy advisor, [MfE] should be articulating the national policy direction. Lack of resources stifles this important leadership role" (Frieder, 1997). Similarly, Hutchings (1997, MI, ME) does not think local implementors should carry all responsibility for why the challenges posed by the Act have not been met. He asserts "it is not the players themselves who are entirely at fault... [contributing factors include]: Firstly, the *institutional arrangements* in which these players are required to work; the *prescription of the tasks* they are required to undertake; the *level of support provided* to them to allow them to complete those tasks. Secondly, *consent seekers, with varying degrees of skill and commitment* must share responsibility. And thirdly, the *over expectations of the community* at large may also have had an influence."

14.9.3 Addressing the issues described as 'emergent themes': inducing and/or facilitating the transition - enhancing 'capabilities and capacities'

Rather than identifying fundamental issues in implementing the RMA, such as those noted above, it is common for commentators to provide lengthy lists of criticisms on the work of government agencies. While these concerns are important, such lists do not explain why these characteristics arise, or what its source might be. For example,

> "*Too many local authorities are directing their effort towards the achievement of social and economic planning, not the sustainable management of natural and physical resources. Regulation and control tools are being selected without sufficient assessment of the suitability of incentives and other non-regulatory methods. Too much focus is being placed on activities and not enough on effects. The level of control over activities with minor effects is excessive. Too many decisions are going through cumbersome enquiry processes. Excessive information demands are being made. Not enough upfront information is provided by local authorities to allow resource users to know what values a community is trying to protect. No consistency is evident between the plans of adjacent local authorities. The achievement of integrated management is more rhetoric than reality. An excessive number of resource consents for a single activity. Compliance costs are too high. Resource users are carrying too many of these costs, in comparison to the community at large. In effect, what the participants at that meeting were saying is simply that, the fundamental building blocks for good resource management practice must first be in place before we can achieve the sustainable management of natural and physical resources*" (Hutchings, 1997, citing concerns expressed at a meeting convened by

[337] Although some critiques have, for example Luxton, 1997 as Minister for Commerce and Nixon, 1997 in "*Working with the RMA*" a paper to the Fifth Annual Resource Management Summit, AIC, Auckland. There is currently also speculation as to whether a group of three advisors, set up in March 1998, by Upton as Minister for the Environment, will recommend amending Section 5, or the definition of environment to remove references to social and cultural aspects of the environment, so that management would only intervene on behalf of the 'natural and physical parts of the environment'.

the Minister for the Environment that was attended by members of the 'Resource Management Law Association' and of 'New Zealand Local Government').

The analysis in Section III of this thesis also provides such a list. While these are valid criticisms, each can be categorised as arising from one of the other problem areas identified as emergent themes above, as they are symptoms of more fundamental issues for RMA implementation. Rather than focusing on such criticisms, it is pertinent to consider means for addressing some of the 'fundamental' issues, and some recent commentators on RMA implementation have provided suggestions for addressing these. Comparison between their suggestions and those of participants in this research (in Table 19, Chapter 13, p351-355) reveal they share similarities, which illustrates, as the RMLR process did, that grass-root ideas and those of professional advisors do, at times, converge.

i Describe the assumptions about what it takes to achieve the objectives of RMA

"All policies contain assumptions about what it takes to achieve their objectives. Policies sometimes fall short because their assumptions are incorrect or cannot be met. The [RMA] rests on a variety of assumptions about the nature of the problems posed for environmental management, the commitment and relationships among different government authorities, the means for bringing about more effective planning, and the role of planning in fostering appropriate choices" (May, 1997). There is a need for identification of all the assumptions applicable to effective implementation of the RMA. These need to be tested in reality and efforts made to address any limitations arising from incorrect assumptions, or to more widely disseminate their relevance. It is not the purpose here to identify all such assumptions, but some recent indicators (described above and in this research) do point to areas which could be considered.[338]

Another area includes analysis of the debate as to whether the concept of 'sustainable management' is itself an ethic, or is underpinned by ethical values. If ethics are manifest in the Act, but there is evidence that some of those who are obliged to implement that law do not share its ethical view, then perhaps a fuller explanation for these ethical stances could be more widely promoted to implementors and citizens alike. The role of judges and other decision makers is particularly important,[339] as Grant (1995) observes,

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[338] Frieder (1997) noted some assumptions, including: the environment is a dynamic system comprised of interconnected elements... and should be treated as whole; those governing bodies closest to resources are the most appropriate to govern the use of resources; therefore, responsibility for implementing the RMA is decentralised to local and regional authorities; efficiency comes from shifting attention and regulation away from 'activities' and onto the 'effects' of activities; the RMA recognises the Treaty of Waitangi and the partnership that exists between the Crown and the Maori.

[339] Refer to Judge Treadwell"s comments (1994, footnote 334, p386).

> *"Contrary to the strict notions of positivism, judges do often apply moral and political judgements in their interpretation of the law. In what the courts actually do, law and ethics are intertwined... judges have to make choices between vying interpretations on the basis of which approach better reflects people's moral rights and obligations. Section 5 releases them from the shackles of legal positivism, yet it does so at a strategic level... The Act does not give judges the power to balance the values to be pursued: this it entrusts to communities - or at least, political institutions of local and central government working through a process.... for the resolution of conflict between those values it must turn to process. The flesh is to be put on the bare bones of the section by the methods provided for in the Act... It is through the adoption of plans, within a policy framework determined by regulations and national policy statements, and mediated by the [Environmental Court] under Schedule 1, that local communities are to assert their current needs. Those opposed to growth or to a particular development need now to position that opposition in a sustainable management framework, but that framework, as we have seen, is not flexible"* (Grant, 1995)

ii ***Advocacy for a strong environmental vision, kaupapa and direction - Shared policy objectives and goals.***

The OECD, urged New Zealand to "*adopt more concrete goals and quantified targets with deadlines for environmental policy at all levels of government, taking into account pertinent data on the state of the environment*" (quoted in Hutchings, 1997 p9). May (1997, MI) also suggested that, "The primary condition for a workable cooperative policy is a *shared set of policy objectives*. Officials at local, regional, and central government levels must have sufficient desire to take on environmental problems and to engage in a process for addressing them around cooperative principles"

However, a significant barrier to efficacy, that arises in part from the dispersed nature of RMA implementation, is indicated by Frieder, (1997) who noted that there "is a lack of advocacy for a strong environmental vision, kaupapa and direction... It was believed that clarity and meaning [of 'sustainable management'] would be divined through locally driven implementation. This has not happened because implementation is skewed - local leaders pay attention to efficiency and customer service delivery but not [to] the quality of environmental outcomes." She observed "an unusual cultural relationship with change that permits macro changes while it resists micro changes". That observation describes that parochial interests frequently override altruistic or higher principles, in that while people may agree with 'sustainable management', when that principle competes with other objectives and priorities, (which it does at local level), higher principles are sacrificed, thus illustrating that the political reality is that is too easy to fall into the pit described by Blowers (1991), that of "immediate rather than deferred gratification."[340]

[340] **Addressing this issue was described earlier as requiring committment. Committment, in turn, requires providing the motivation and the means (on three fronts concurrently) to implement the concept of sustainable management.**

> *"There is a visible lack of strategic environmental direction among local authorities. In some cases,* ***cost minimization has trumped sustainable management as the goal.*** *In other cases, local authorities refuse to undertake 'visioning' exercises because some pressure groups erroneously equate community visioning with central planning.* ***Environmental vision should come from all sectors of society****. The business community in NZ is not yet embracing a leadership role or a vision for sustainable NZ... Achieving sustainable management cannot happen without the business community. Many NZ businesses appear to be caught in a reactionary mode of fighting for deregulation and privacy rather than being active partners in shaping smart environmental policies and management to secure NZ's clean and green championship in a competitive world economy."* (Frieder, 1997, p54, bold added, ME)

Frieder (1997) suggests that the implementation conditions that are present when IEM occurs includes: creative people; enlightened leadership; pre-existing programmes or conditions that favour integration; resources and capacity; clarity of purpose; good communication. She describes that "enlightened leaders... see people as valuable assets and manage their organisations to maximise communication, cooperation, flexibility and resiliency. They allow tall poppies to grow; in fact, they have been known to water them... articulate a vision, provide direction to their team and reward innovation. They look to make outputs produce the desired outcomes." One means to promote and encourage 'enlightened leadership' would be through the LGNZ organisation, as Hutchings (1997) observed, in regards to making better policy "local government's own collective organisation is... focused on providing leadership." LGNZ's goals include "the promotion of autonomy, accountability, effectiveness and efficiency in local government, and the enhancement of sector performance through collective development." The MfE, has recognised the need to work with LGNZ to *promote stronger leadership and collaboration* between resource management implementors. "A detailed programme is now underway to improve the quality of resource management practice. Major projects are proposed under the headings: information and communication; compliance costs; public participation; plan quality; iwi consultation; and Hazno/RMA interface" (Hutchings, 1997).

iii *Government agencies are advised to employ a cooperative-facilitative approach, to provide leadership and vision, and to be innovative. Government authorities need to establish means and ways to collaborate their efforts.*

Commentators describe that the RMA employs a cooperative-facilitative approach, (May, 1997; Frieder, 1997; Crawford, 1997) and provide advise on what that means and how to improve practice of the approach at different levels of government, and also between government agencies. While many suggestions apply to central government agencies, most apply to local government agencies as 'on the ground implementors' of the RMA. A reason for that is indicated by Frieder, (1997, ME) who noted that "The RMA serves as a *framework*, not a *blueprint*. Accordingly, it gives local authorities enormous responsibilities and flexibility to identify the most efficient means of achieving the goals of the Act and

meeting the needs of communities... improvements to RMA implementation will come... from people through leadership, vision, cooperation and kaupapa." Such comments describe that 'leadership' under the RMA is not authoritarian, as Upton (1994 MI) noted "Ours is a statutory code with *socially mediated* resource allocation mechanisms."

> *"At the heart of the RMA is a 'cooperative-facilitative' intergovernmental approach that emphasises: Sharing of decision making; dialogue among governmental, citizen and business stakeholders in crafting plans and development assessment; planning and management based on environmental effects; enforcement of regulations based on flexible interpretation of rules... A cooperative, intergovernmental approach "empowers regional and local governments to act as trustees for managing resources and the environment. Local authorities are told to think seriously about the problems and their solutions, and to follow a prescribed planning process. However, the specific actions for managing development and land use are left to the local authorities to determine... The advantage of the integrated, comprehensive approach is one of reducing conflicts in approach and objectives. The potential disadvantages come from added complexity and more limited ability to single out particular issues for attention*" (May, 1997)

Cooperative regimes foster local governmental *ownership* of environmental management programs, which is important because it provides the *constituency base* for fashioning acceptable land use and development actions. However cooperative regimes "open the door to potential capture of local decisions by development interests. The flexibility provided under the [RMA] has the potential to result in different directions" (May, 1997). These comments underline the requirement for appropriate and effective consultative forums, and dialogue between not only relevant government agencies but with the public, because as the PEFWP (1985, ME, MI) suggested "*all groups in the nation share these responsibilities, and it is the role of each... to help the nation to meet them*", and that "the proposed system is aimed at encouraging positive concern about the environment to guide the decisions and actions of *all individuals* in the community" (*ibid*, p8, MI). Among the suggestions for local agencies are: sharing decision making; dialogue with other government agencies and constituencies;[341] enhancing the capacity and capabilities of local government agencies; develop new approaches to planning; foster local and community 'ownership' of problems and their solutions; encouraging innovation; using outreach and advocacy. This list of suggestions is not exhaustive but indicates that there are many opportunities for government agencies to improve their cooperative-facilitative role in implementing the RMA. As Frieder (1997) observed, "The Act was boldly conceived. It must be boldly implemented

[341] Again the idea of 'dialogue' is not new to planning, for example, in presenting the "strategic choice" theory of planning, Friend & Jessop (1977, MI) described the nature of planning as having a basic framework of a "*continuing dialogue between the government system and a community system*." They suggested that the kinds of capabilities that public authorities must develop if they are to cope *effectively yet democratically* with the challenges (of strategic choice, given the characteristics of planning problems) hinge on their responses to uncertainty, and making appropriate value judgements which they suggest "requires expansion of the decision field". In recent commentaries this expansion is described as practising 'integrated management', while in the language of the reform period it was described as a need for 'comprehensive' and 'inclusive' planning.

as it was envisioned", in a cooperative-facilitative-integrated fashion, by focusing on outcomes and by employing a full range of policy instruments to respond to issues, priorities and values of varied communities.

May (1997) suggests that innovation can be facilitated by cooperative regimes like the RMA "but it will not occur without substantial follow-through with technical assistance and attention to concerns by local government officials about the legal standing of the new approaches." While, Church (1996) suggests, "more of the solutions lie in improved practice and the full and creative use of existing tools... One approach which is not widely used is the national policy statements... Likewise, there are arguments for looking more closely at both standards and guidelines." Frieder (1997) saw the best examples of integrated management in non-regulatory planning processes. These comments illustrate that collaboration between community groups and government agencies to provide some guidance or advice to implementors, and perhaps also some 'standards', would improve RMA implementation, as there are uncertainties surrounding the use of non-regulatory (permissive or alternative) planning approaches. "A lot also depends on the facilitating features built into planning mandates and the actions of relevant central governmental agencies in providing funds, maps, and other information" (May, 1997).

> "*Cooperation cannot be simply mandated... [NZ's] central government agencies have adopted an informal, facilitative style in their dealings with local authorities. The approach of central government agencies to local authorities is also important. Under a cooperative-intergovernmental mandate,* ***the challenge for higher-level government agencies is to provide leadership that is facilitative and non-interventionist****. The amount and nature of assistance provided by higher-level governments is important for achieving successful outcomes... the commitment and capacity of relevant central government agencies need to be strong to foster an informal, facilitative approach by government agencies. This puts a premium on having, well-funded and committed central government agencies in addition to having requisite resources for assisting lower-level governments*" (May, 1997, p5, ME, bold added).

iv ***The cooperative regime or mandate involves cooperation - partnerships - collaboration - coordination - flexibility - adaptability - inclusivity and integration - sharing power - forming allegiances - networking - building strong relationships and trust - creating constituencies - enhancing community (stakeholder) 'ownership' of issues - innovation in exploring the 'permissive' mandate of the RMA.***

Ideas for cooperation and collaboration are in two streams, both intend to raise capacity and commitment towards implementing the RMA. One stream relates to greater sharing of information, skills, resources across and between levels of government. For example,

> "*Some of government's environmental expectations are defined in the RMA, others for the coastal environment in a National Policy Statement and still others more explicitly in Environment 2010. The achievement of these expectations does not lie in a single government department or local authority. Achievement lies with all individuals, a range of agencies, and within a variety of statutes. What we need is a clear implementation strategy for each of these priorities, clear linkages between all*

the agencies responsible for each priority, and a clear stock-take on the adequacy of the regime currently being applied to the achievement of those priorities." [local government authorities could be making use of economies of scale, as] "*...the possibility exists that resource management services would be delivered through jointly-owned special purpose organisations". Another option [is to] make greater use of s33 of the Act to transfer or delegate responsibilities between local authorities, particularly for the control of land use." An advantage of "the transfer option is that it puts to rest accusations of conflicting objectives which district councils sometimes experience when making resource management decisions. District councils would be able to focus on the provision of local public good services and the promotion of healthy, growing communities*" (Hutchings, 1997, ME).

The other stream relates to a need for local government authorities to form networks and to collaborate with their community. Commentators advise that early efforts to establish 'networks', build relationships and trust, and to engage the community in planning endeavour is crucial for better implementation of the RMA. The reasons are numerous. Participatory planning processes can have positive effects in mobilising the demands of community groups for addressing particular problems.

"*Mobilisation is important because constituency demands are critical factors in influencing the commitment of local elected officials to higher-level goals. Yet, how this plays out over time depends on the constituencies that are mobilised for which the potential for capture of local government decision-making by development interests cannot be ignored. In N.Z. the participatory planning processes of the RMA have fostered involvement of a number of groups and resulted for some localities in strong grass-roots demands to address environmental problems. This is helpful in focusing attention by elected officials and moving the relevant problem onto the local agenda, but it can also lead to conflict within communities about appropriate solutions. The recent report of the [PCE] highlights the need to consider various ways of mediating conflict as part of planning processes and resource consent*" (May 1997).

Community objectives and goals must be uncovered early, in order that differences can be reconciled, and so balance between competing interests can be sought, while formulating the local framework for sustainable management. Informal communication is important. "It happens not because of what the law says but rather because of organisational culture and individual motivation" (Frieder, 97, p52).

"*Ultimately, legislation makes integration possible: but practice determines whether it occurs... The RMA did not encompass all resources and activities... Legislation may form an underpinning framework, but it is only ever going to be one of the means through which environmental objectives will be pursued.*" (Church 1996)

"*An acceptance by those involved in the planning process that integration is a goal to aim for, will mean that the various* ***planning institutions and interests ought to work together. Strategic alliances with community groups and sector interest groups*** *mean that even if specific proposals emerge that do not have full acceptance, behaviour and attitudes may be altered for the better, but at least differences will be identified and the agenda for conflict resolution set.*" (Bush-King, 1997, bold added)

Mitchell and Hardy, (1996) suggest, that in addition to targeted, issue specific consultation, it is also important to utilise opportunities to build relationships and trust in day to day activities that are outside the RMA process as, "It is preferable to enter into a consultation

of a specific issue with a strong relationship based on mutual trust, already in place", therefore, at all times utilise opportunities outside the RMA processes to: "[b]uild new relationships and maintain existing ones; further develop and demonstrate trust; provide information on business activities, the attitude of the company to environmental management and their public accountability."

In establishing networks and partnerships, May (1997) suggests there is an important role of NGO's (for example, the NZPI) in promoting good practices and in sharing of planning practices among local authorities. While, from a different focus, Mitchell (1994, ME) advises that successful resource consent acquisition under the RMA depends on the "successful implementation of the Three Ts: Timing, Technical competence, Talking... The third T, talking (or consultation) is the ultimate recipe for success... It is apparent that entrenched views often become so when neither party has a full understanding of views and aspirations of others." Each of these views highlight that dialogue, building relationships, sharing information and ideas, are means to achieve the purpose of the RMA, and that establishing networks prior to specific conflicts arising is conducive to successful resolution when direct competition and conflict does arise.[342]

> "*The benefits of meaningful consultation are much greater than satisfying a minimum statutory requirement... The desirability of creating strong relationships has strategic benefits for resource users, councils, and communities. However, strong relationships are based on two separate, but related, criteria: A willingness to negotiate. Having the trust of the other party(ies). These are the two 'magic' ingredients for successful consultation. Add them to the recipe and you get success every time. Fail, and consultation will not be successful. You may well have satisfied the statutory requirements, but you won't have the added bonus of having reached a mutually agreed outcome*" (Mitchell & Hardy, 1996, ME)

> "*There is an equally important but longer-run basis for compelling good planning that involves creating constituencies. Indeed, our research on planning mandate shows that demand among neighbourhood, environmental, and development interests are especially important in bringing about commitment to plan and higher-quality plans. It may seem odd at first to ask the basic question of who are the constituents for good planning because the presumption is that it is everyone. But, if it is everyone then it is no one. If one subscribes to the view that planners work to shape the political environment as well as respond to it, then it is appropriate to consider ways to build local constituencies for planning. From this perspective, an important aspect of the agenda for the [NZPI] and for local planning agencies is to help build constituencies for planning. Building constituencies is a key aspect of the participatory planning provisions of the [RMA] and of the empowerment of citizens (or other groups) to register comments on notified plans and policy statements. Yet, there are two drawbacks that strike me as limiting these aspects of the [RMA]. First, these processes are only relevant once a council has engaged in planning and thus they do not address the more fundamental problem of motivating commitment to planning.*

[342] Again these ideas are not 'new' to planning, Forester (1989) suggested planners must network/search and satisfice, bargain/increment, adjust/check, and anticipate/counteract, organize/democratize. Interactive dialogue between planning experts and others, including the interested parties in the community, is essential for the gradual 'enlightenment' sought through policy analysis.

Second, as commented at length in a recent review by the Parliamentary Commissioner for the Environment, public participation under the RMA is uneven and leaves open the possibility of capture of the process by particular interests. My sense is that it is appropriate to think about the constituency aspects for environmental planning as a separate issue from the specifics of participation in plan making for any given district or regional plan. The former is a broader agenda for raising overall capacity (and willingness to commit resources) for planning, while the latter relates to particular plans." (May, 1997, p10)

A recent citizen initiative in Palmerston North, has been the creation of a group called 'Building Bridges'. This group was established as a result of some public participants disappointment at not having effective venues for dialogue with others in the community and with Council about citizens concerns. The group was set up with the intention of making a more proactive contribution to the City, by anticipating future needs and ambitions and taking community concerns and ideas to Council. This is an example of a constituency group willing and able to have an input into community affairs. How local government receives the input of such groups is, as yet, untested, but can be anticipated to require some flexibility and some innovative approaches within Council.[343]

v *Practise integrated resource and environmental management.*

The *integrated* resource and environmental management approach to planning considers the environment as a whole and recognises linkages within it. IEM is to find expression through policy and plan preparation and implementation[344] (Bührs and Bartlett, 1993; Hutchings, 1994; Church, 1996; Bush King, 1997; May, 1997; Frieder, 1997). "IEM is a fitting ethic in the post-reform New Zealand public sector because of its versatility and ability to deliver multiple policy objectives: environmental protection, economic efficiency

[343] As an example of possibilities in a flexible approach, consider May's (1997) comments about certain prescriptions within the RMA, stating, "Recognition of the variation in local circumstances may also require rethinking deadlines for producing plans or meeting other procedural requirements under the [RMA]. These are best established as negotiated deadlines that provide reasonable opportunities for local authorities to come to terms with policy objectives and provide time for cental government (or other) officials to provide the necessary technical assistance. Failure to meet the negotiated deadlines then becomes grounds for imposition of effective sanctions. This builds on the strengths of cooperative regimes by giving local governments the opportunity to develop more than off-the-shelf plans or policies." Negotiating 'deadlines' and other 'requirements' of public participants seeking to comment on proposed plans (within 40 working days of notification) or on proposed plan changes, (within 20 working days of notification), depending on their 'circumstances', could then also be plausible.

[344] "Caldwell suggested that addressing the question of environmental quality as a matter of public policy would necessarily be integrative and comprehensive. In 1972 he wrote: *To cope with major environmental problems there is need for administrative organisation that (1) is sufficiently comprehensive to encompass the problems under attack; (2) facilitates coordination of all related efforts; (3) is adaptable to the dynamics of environ. change and to progressive stages in the solution of environ. problems; and (4) is capable of obtaining, evaluating, and applying appropriate science and technologies to the problems.*" (in Frieder, 1997, MI)

and public accountability" (Frieder, 1997, p43).[345]

> "*The ideal is that we achieve environmental outcomes that recognise the interconnectedness of our actions and inactions when it comes to managing resources and the effects of their use... IEM requires an understanding of how the environment functions, including an ability to identify and understand the effects of human activity... provided we look beyond a narrow focus, the chances are that resource management decisions will be broadly based, and although reflecting a compromise position, will be based on an awareness of how the various issues interconnect.*" (Bush King, 1997, ME).

> "*IEM is an aproach that can deliver both better environmental outcomes and greater economic efficiency... The concept of IEM provided reformers with a response to the demands for both greater efficiency and better environmental protection... IEM provides a framework for identifying and resolving complex resource problems... IEM helps management agencies with limited resources perform their functions efficiently and effectively. Just as the concept of sustainable management provided a basis for rationalising resource policy development, the concept of integrated management can and should provide the basis for rationalising resource policy implementation. Integrated management does this by coordinating the actions of multiple management agencies, removing redundancies, consolidating information, improving communication, and promoting a holistic understanding of the environment... IEM can reduce the time and cost associated with RMA implementation. It can offer benefits to resource users and interested parties by enabling 'one stop shopping' and convenient customer service delivery for consents, inquiries, and assistance.*" (Frieder 1997, p6)."

A key to achieving IEM is to focus less on providing the right answers and more on asking the right questions. Frieder (1997) has observed, "[t]he benefits of IEM does not depend on answers, models or proof. Simply asking questions and making connections will engender new ways of thinking about resource management, which is a necessary precursor to achieving sustainable management".[346] IEM requires an holistic perception of the environment so that planning problems are defined in an 'inclusive' way, and necessitates describing multi purpose programmes in the setting of objectives and goals. For example, the MfE found that to achieve integration, "agencies must begin with an objective-setting process: As integrated management requires attention across agencies, environmental media, and legislation, *the objective setting exercise requires interagency co-operation and an acknowledgement of both environmental and human values*" (MfE, 1997, in "*IEM: From Theory to Practice*"). While, Frieder (1997, MI, ME) observed "IEM is easier when outcomes are clearly articulated because 'what' and 'who' needs to be

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[345] Frieder, (1997, p19) identifies a number of economic and environmental benefits of IEM including: "cost savings from one-stop shopping; government streamlining and greater administrative efficiency; greater environmental protection; better quality information and science from economies of scale and coordination; better community participation and thus enhanced accountability; better attention to Maori values; recognition that economic, environmental and social dimensions deserve attention in decision making; better ecosystem protection; time savings and cost savings from multi-media monitoring and synchronizing reporting cycles; improved customer service delivery; better understanding of resource systems promoting greater protection over a longer time period."

[346] Raymond Fanikkar described that Western science is very good at coming up with the *right answers*, but suggests it is asking the *wrong questions*, in espousing new ways considering issues (in "*The Rhythm of Being*" Undated and unpublished 'Manuscript of Gifford Lectures').

integrated is situation-dependent... When *community-defined outcomes provide a starting point, integrating resource management is more easily grasped as a means or an approach. But without well-defined outcomes, the notion of IEM is daunting, even threatening, to the resource manager* who is unaccustomed to looking across borders, sectors, or disciplines... *IEM should be perceived as promising means for achieving well defined policy outcomes.*"

The MfE's definition of IEM (refer to 382), implies certain qualities including: comprehensive, inclusive, anticipatory, systems-based, intergenerational, unified, dynamic, interdisciplinary and proactive so competing values are reconciled early in the policy process. "IEM conveys a sense that the environment is enormously complex; that it is alive and always changing" (*ibid*). The integrated approach is, then, multi dimensional. It includes integration: of policy; of process, of product, and; of outcomes (Bush-King, 1997).[347] It also includes, as noted by Frieder (1997): a dimension of time where the impacts of today's decisions are considered on future generations; a dimension of justice where the distribution of risks and benefits (environmental, social and economic) are considered; a biophysical dimension; a values dimension where common goals are established and competing values are balanced; a legal dimension where multiple codes of practice are reconciled; an institutional dimension to coordinate roles and responsibilities and improve communication-flow between various management authorities. RMA implementors thus need to develop an openness to inclusivity and a distaste for exclusivity.

"Evidence of integration includes such things as: a *shared objective-setting process; information collection and processing which improves the understanding* of the biophysical environment; *flow of information* to other agencies and to the public; *processes that balance competing values and uses* of resources; *processes to engage third parties, stakeholders, iwi, community groups*; development and use of *feedback mechanisms* to incorporate monitoring data into policy process" (*ibid*, MI). Greater evidence of IEM will then, will include an effective extension of 'networks', 'partnerships', 'constituencies', and greater use of collaborative, multi-disciplinary processes.

vi Integration requires recognition of the multiple functions of plans - building locally based knowledge - developing consensus on policy goals - setting local objectives for sustainable management - consideration of new ways of solving problems.

> "*Plans (when coupled with policy statements) in principle serve multiple functions. First, plans build locally-based knowledge of current and prospective problems. By documenting various environmental conditions, the patterns of development and their*

[347] Bush-King also notes 'institutional integration' (between departments, plans etc) but does not dwell on it as he distinguishes this as organisational management.

impacts, and potential problems, ***plans serve a 'frame setting' function that helps decision makers better understand the situation. Second, planning processes seek to develop a consensus on policy goals. In the case of the [RMA] this involves consensus around relevant local objectives for sustainable management and with respect to more specific national objectives... To the extent that the identification of goals emerge from participatory-planning processes, like those required under the [RMA], they serve a function of 'communicative rationality' in helping to resolve conflicts and build consensus. The presumption as well is that articulation of clear goals helps to ease implementation since the relevant parties have the requisite understanding of what is intended****. Third, planning processes and resultant plans entail consideration of alternative ways of solving problems and reaching desired goals. This is the 'instrumental rationality', of plans that is a key feature of the Section 32 requirements of the [RMA]. In contrast to uniform national requirements, the action-component of plans can be tailored to local circumstances..." "The compelling rationale for requiring plans is that they serve the multiple functions noted in the preceding paragraph*" (May, 1997, p10, bold added).

High quality plans have a strong fact basis, clear and agreed upon goals, and recommended actions that are consistent with goals and that can be implemented. As integrated planning is a 'wicked problem', advisors highlight a need for multi-disciplinary (collaborative) approach. For example, Frieder (1997) states, "No matter how resource issues are sliced, they will always be bigger than their organisational boundaries. The structure of institutions must proceed with people in mind. Organisations should be designed to deploy multi-disciplinary teams on specific tasks." Similarly, Bush-King (1997) suggests that involving a "multi-disciplinary Council staff is a positive as they can contribute to the plan from a broad, strategic planning aspect... rather than from a narrowly focused perspective." However, "there is a danger that people fall back to their specialities and defend their patch, *but if there is a common unifying goal, then integration of process is more achievable...* The procedural dimension [of IEM] requires that Council take a *total management approach to problem definition, issue description and analysis, consultation, implementation, monitoring and evaluation.* The theory is that integrated processes brings about an effective exchange of resources within the Council's organisation and between Council and external bodies" (*ibid*, MI). Crawford (1997) confers with Hutchings in suggesting it is "now high time for a shift in focus towards developing local interpretations of sustainable management". Commentators also highlight a need for a common local vision and facilitative leadership.[348]

"In moving towards more integrated process, emphasis needs to be placed on building alliances and cooperative partnerships with stakeholders. By building more

[348] Crawford's (1997) advice on how to improve plan quality and capabilities includes: "be more honest and do less". She suggests that regions should "have the courage to direct the districts more", and that districts should "have the courage to be innovative." In addition she proposes government agencies, "Mind your P's and Q's" meaning "QUALITY = *Place*, the policy statement or plan should convey a sense of place. *Purpose*, clearly define the desired environmental outcomes for your area. *Prioritise*, choose the important issues and act on those first; don't try to do everything. *Process*, a good process is not enough; technical work is important too. *Price*, be strategic when spending your money. *Partnerships*, collaborate with other agencies and groups to build capability."

effective sector and community linkages, information and views can be shared more effectively and resources used to the optimum level. A more coherent and cohesive approach towards viewing priority issues and concerns at the community level increases the chances of disagreement or dissatisfaction while enhancing understanding and appreciation of the interconnectedness of environmental issues. Thinking about the issue of consultation in decision making is important. Many councils perceive themselves to be highly consultative in their approach, but in practice adopt very traditional and ritualistic [legal formalism] approach to the consultation procedure... the traditional approach sees the same types of individuals involved; however, they do not necessarily represent wider interests and views of the community.... There is debate about whether we should have released a draft plan as opposed to going straight to public notification. ... many of the public are only interested in the product, not the process in getting to that point." (Bush-King, 1997)

vii Building or raising capabilities - educate and empower both implementors and communities or constituencies.

"*Adjusting to the disciplines of the RMA has been, and continues to be, a learning curve for all those involved in its implementation and practice...* " (LGNZ, 1996)

Commentators descriptions of what is required or desirable in a cooperative-facilitative regime, and in IEM, are underpinned by a necessity to enhance *capabilities* (Bührs and Bartlett, 1993; Gill, 1996; May, 1997; Frieder, 1997). May (1997) suggests that it is also "a matter of managing anticipation in setting realistic expectations as to what any given plan is to accomplish and the resources that are necessary to undertake the planning activity." Both enhancing capabilities and setting realistic expectations suggest that better 'education' of implementors and citizens is needed. In addition, as Church (1996) notes, "...information and education initiatives are likely to be the most effective way to tackle many of the problems we now see... ."

The PCE's Office identified a key issue is *access to information and the timing of that access*. "The sort of information that submittors need includes: Information about the RMA and its processes, i.e. procedural information; how to use the system and what can be achieved through the system. *The public generally is not aware of the importance of their involvement in the policy and plan formulation stage of the process and that if they do not have their say at that stage, there may not be an opportunity to do so at the consent application stage*" (Gill, 1996, MI). This is also symptomatic of a need for 'education', as are Hutchings (1997) observations in identifying 'causative factors' in poor RMA implementation. Each of his suggestions point to areas in which efforts could be made to enhance capabilities, and indicate a requirement for better attention to education, (of officers, councillors, managers, citizens and stakeholder groups, central government agencies), not just about 'sustainable management', but also about what is needed to more effectively implement the RMA.

"*[I]f the quality of the analysis of the resource management issues varies, and with*

it the quality of the advice given to elected members, and thereby, the quality of the decisions made by those members... then we must have a serious look at ourselves. First, we must question whether our universities and our continuing educational programmes are sufficient to generate quality resource management policy analysts. Second, we must ask whether our elected members clearly recognise the responsibilities they carry, the values of the community that they are to reflect and the framework within which they are to operate (Upton, 1997(b)). Third, we must ask whether chief executives of local authorities, have clearly acknowledged the importance of the RMA by defining staff structures and remuneration policy that recruits, supports and retains the best people. Fourth, we must ask whether the nature and quantum of support offered by the MfE has been appropriate. Fifth, we must ask have we done enough to assist our communities and iwi to understand the Act, and sixth, we must ask ourselves whether our local authority policy analysts have sufficiently recognised, championed and collaborated with those they admire." (Hutchings, 1997, ME)

However, formulating and delivering an 'education strategy' or programme will also require commitment by, and collaboration between, government agencies, as currently,

"*[t]here is a gap in functional responsibility for environmental education. Those at the [MfE] perceive and present themselves as a 'policy advisors'... which leaves no room for advocacy, outreach and education. It is assumed that local government authorities are closer to communities and therefore will do the educating. Ministry personal could be valuable education resources. They are well informed, have access to state of the art ideas and methods and understand the RMA. Their value is under-realised because they cannot 'tell the local authorities what to do.' While local authorities, in a similar vein, do not want 'to be told what to do by [MfE]', they could benefit from [MfE] assistance. [MfE] and local authorities must come to terms and develop a mutually beneficial partnership that closes the gap on environmental education and taps the strong points of their respective organisations*" (Frieder, 1997, ME).

The ETG (1984, p21) anticipated that "[a] repercussion in implementing change is the need to educate, train and appoint skilled people and provide other resources as appropriate to the new aims and tasks" as did the PEFWP (1985, p18) in indicating "The education of resource managers and users is necessary to ensure that all resource values are considered. Such education needs to be backed up by appropriate legal sanctions and controls." Recent commentaries clearly indicate that this advice was not effectively addressed by central government in passing the RMA. Central government therefore still "needs to be able to provide the necessary environmental management skills to assist planning bodies in the preparation of regional planning schemes and with the identification of and responses to, the environmental aspects of development issues. It must also provide the analytical and evaluative skills to give substance to these efforts" (ETG, 1984, p21). The benefits of better informed and involved constituencies are many, in addition to the achievement of IEM, for example, Conservation Minister Nick Smith (in Frieder, 1997) noted that persuasion and education are more likely to make a people more conservation-minded than rules and regulations. Awards programmes use positive examples to demonstrate good practice rather than prohibit or punish bad practice. Therefore councils also have a part to play as educators for change.

viii ***Empowering local government, planners and their communities - participatory planning - interactive planning - anticipatory planning - innovative planning - making use of the non-regulatory basket of opportunities - enhancing capabilities and committment - open forums to discuss/debate issues, to increase community and political awareness - network - create community-government relationships - address issues of 'values'.***

Commentators refer to the empowering of communities and planners (May, 1997; Frieder, 1997; Crawford, 1997). Crawford (1997, MI) stated "[Planners] can improve what [they] do in two critical areas - plan quality and capability - and, in so doing, *reclaim a powerful position* as promoters of sustainable management." May (1997, MI) observed,

> "*The devolution of responsibilities... has breathed new life into the reconstituted regional tier of government... [An] impact that can take on a life of its own is the empowerment of planners...* ***the RMA puts planning at centre stage****... Because different professions have distinctive ways of solving problems, one potential set of* ***longer run outcomes of the empowering of planners under the RMA is a shifting of the grounds of debate about local development and sustainability****... when planners become influential, greater emphasis can be expected on land use and development - management solutions to environmental problems... How this plays out over time will depend on the skills of planners and their ability to develop as a profession in addressing environmental and resource management challenges. The challenges... are the detailed ones of policy implementation in putting policy into practice. This requires shared understanding of policy intent, commitment to carrying out planning processes, and willingness to engage in the 'new thinking' that is contained in the RMA. Getting this right is not simple, nor is it straight-forward. Finding an acceptable approach may prove to be elusive, but part of the search is a willingness to try to do better and to learn from the experience of others*" (May,1997, p11, bold added, ME).

The RMA together with local government legislation "gives councils the scope, on behalf of their communities to make choices among different kinds of local public facilities and services. It also enables councils to recognise the identities and values of their communities and define and enforce appropriate rights within them. Councils have discretion to decide, *together with their communities* through the annual plan and strategic planning process, what types and levels of goods and services they will provide.... Councils are advocates by virtue of their elected authority and by being close to local issues" (LGNZ, 1996, ME, MI).

May (1997, MI) observes strengths in empowering planners, but notes that "these benefits rest on *assumptions* that the planning *process is taken seriously, that conflicts that arise during that process can be resolved, that high-quality plans are produced, and that there are adequate resources and commitment to following-through* with day-to-day decisions that are consistent with the decision-rules and other elements of the plans. Much of this, in turn, rests on the *commitment and capacity* of local authorities to undertake planning and follow-through." These observations highlight the importance of the organisational culture in which the RMA is operating, and a need for implementors to be aware of the political currents and 'structural constraints' to more successfully implementing the RMA.

Attitudes towards public participation in planning and decision making processes are a way in which organisational 'culture' influences the RMA implementation. "The RMA provides for extensive participation by divergent interests such as iwi or community groups. This 'multi-stakeholder' model of participation moves the process of reconciling competing resource values *to the front end of the policy process*." (Frieder, 1997, p12, MI). However, commentators describe numerous problems in consultation processes, many of which can be attributed to these occurring at the 'back end of the planning and decision making process'. France (1997, ME) succinctly describes the philosophy behind bringing consultation to the front of planning processes "We have less to fear from well-informed decisions than from ill-informed decisions... If you empower people you finish up with their best work... Knowledge is power... It is those who don't take part that are the problem, not those who do... The philosophy is that the people who can really make the best decisions are those closest to and most familiar with the issues. Too often in decision making processes these people are not involved." Other frequently cited benefits of *bone fide* consultation are that it: improves relationships and encourages trust; reduces fear of the unknown as it dispels misconceptions; it helps the parties identify the issues on which they agree and those where they differ, so that the issues in dispute have been narrowed and focused. These benefits are important for enhancing ownership and committment to higher quality goals described in local planning frameworks for sustainable management. Getting the community on side and supportive of a vision and a plan are beneficial if that community is to be motivated and enabled to participate in the attainment of sustainable management and environmental outcomes. While costs are implicit in consultation process, benefits arise regardless of the whether consensus is achieved. Talking to other parties and shared information is likely to benefit relationships and focus any opposition that may remain (Gill, 1996). Also, "Debate on specific environmental concerns and resource use issues increases community and political awareness. Resource management is more than simply a technical procedure. Exchange of information... even under stress, *creates a more viable atmosphere for more effective planning... planning with the opportunity for debate among all interested groups and individuals can ensure that we make the connections between concerns, needs and priorities*." (Bush-King, 1997, ME, MI).[349]

Commentators identify common themes for effective consultation based on observations and experience of 'good' processes (for example, PCE, 1996; Mitchell and Hardy, 1996; Callaghan, 1997). Such themes have been described in the course of this research and are

[349] **Other potential paybacks include, "More certainty that the project can proceed. Non-notification in some cases. Support for the project, and a positive attitude towards the applicant. Reduced potential for submissions, appeals and further time delays. Ownership of the process and a commitment to and support for the outcomes" (Mitchell and Hardy, 1996).**

not reiterated here.[350] These themes can act as guidelines for undertaking successful consultation processes when these are targeted to specific needs (addressing a particular planning problem, or resolving a particular dispute). Other commentators have adopted guidelines for consultation processes from consideration of the findings of the Environmental Court.[351]

ix Section 32 reports and AEE - the 'mind' of sustainable management - a need to address criticisms on the quality of Section 32 reports and of AEE (including subjectivity or value judgements within analyses - the 'politics of expertise') necessitates better data, analysis, technical assistance, and consultation mechanisms which aim to reach agreements about information.

"'Effects-based' management is a cornerstone of the New Zealand approach. Successful implementation of this approach necessitates a means for assessing environmental effects and a capability to devise solutions that have discernible impacts in reducing environmental harms or in protecting valued resources. These place a premium of creation of databases and provision of technical assistance." (May, 1997) However, as the MfE observed, an AEE also place a premium on thoroughly canvassing community interests, values and concerns.

> "*The [AEE] is a process by which the consequences for the environment of a proposal or policy are identified early in the decision-making process, so that these can be* ***taken into account in the design, approval and management of the proposal.*** *The objective of the [AEE] process is to find ways to enhance the beneficial environmental effects of a proposal and to avoid, remedy, or mitigate any adverse environmental effects. The assessment process involves the prediction, evaluation and public discussion of the direct and indirect effects that proposed policies, plans, programmes and development projects might have on the environment... When estimating and reporting effects, it is important to bear in mind* ***the distribution of effects as they are felt by different people or interest groups. Equity is an important consideration. The assessment should give explicit mention to the implications of the proposed action(s) on different groups, particularly the disadvantaged and members of minority groups***" (Ministry for the Environment, 1992, No.3, bold added).

An AEE is also underpinned by "the precautionary principle that... will certainly shift the debate into the realm of public participation, by forcing discussion of what is and what is not acceptable. It will also have the effect of reversing the onus of proof" (Boer, 1994, p22,

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[350] Refer to Chapter 3 of this thesis for a thorough consideration of 'effective' consultation.

[351] For example, Callaghan (1997) cites the following cases to describe elements of 'good consultative processes': (a) reflect the well known elements outlined in *Wellington International Airport v Air NZ* [1991] 1 NZLR 671, including the need for sufficient time; (b) take into consideration the principle in *Paul v Whakatane District Council* - A72/95, that the consultation should correspond with the scale and significance of the effects that the proposal will have on the environment; and; (c) have due regard for Justice Cartwright's comments in *Worldwide Leisure Limited v Symphony Group Limited 22/11/94 M1128/94 BRM Gazette 133*, that "*consultation implies negotiation.* In addition to providing guides, commentators continually describe a need for ongoing contact, discourse, networking and relationships between government -constituencies-interest-stakeholder groups - a more seamless form of consultation to enhance awareness, capabilities, understanding, relationships, commitment, motivation (etc) would encourage more successful implementation of the RMA.

ME). AEE's share similarities with the activity of 'action research', as AEE are the means to provide information about a proposal, but are also intended to inform the analysis necessary in developing a proposal.[352] AEE as a vehicle for public participation or consultation was described in Chapter 4 and so that is not discussed in here. However, an implication of commentators observations about deficiencies in AEEs, is that consultation needs to be incorporated more fully into developing an AEE, and not occur only subsequently, through the required process when a proposal is all but finalised.[353]

> *"If the public had a better appreciation that an AEE was to help them design proposals so that adverse effects were avoided or mitigated, thus making approval of resource applications much easier, there might not be the need for so many council requests for further information to be provided before decisions can be taken on consent applications... Basic good practice criteria for [AEE] means that the applicant: Gives early attention to adverse effects, risk assessment and identification of affected parties, and; prepares an AEE in consultation with affected parties before plans are finalised; while the consent authority: Gives clear guidance to applicants on the Council's AEE requirements; checks the accuracy of the AEE and the adequacy of the consultation; explains fully the reasons for decisions; uses pre-hearing meetings to clarify issues and resolve conflict, and; applies monitoring programmes to ensure adverse effects are avoided or mitigated."* (PCE, 1996, MI).

Commentators reiterate that good data and analysis is essential to Section 32 analysis and to an AEE. Raising RMA awareness, developing constituencies, and encouraging community 'ownership' of 'issues' could serve to help local government agencies in their task of 'monitoring' the state of the environment, and in scoping the effects of activities. Furthermore, as commentators highlight that AEE do contain subjective or value judgements which must be open to review by the wider public (and not just Councillors), "[t]he best outcomes are based upon good science, good consultation and good presentation... Good science must be used, the assumptions and uncertainties described, and scientific consensus obtained wherever possible before going public" (Jones, 1996, ME). It is pertinent therefore, in the 'sustainable management' context to try to reach

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[352] AEE are the means that applicants, or proponents of change, are to scope for effects, canvass the interests and values of the community and determine what is significant in designing their proposal. The AEE both informs and is informed by dialogue between the interested parties. A problem with that duality of purposes, is that the public need information about the proposed activity and its likely consequences in order to comment on how it may effect them/the/their environment. "In theory, information which is adequate to inform the consent authority of the likely effects of a proposal should be provided to the consent authority as an AEE (s88)... Submittors should have access to all this information, however they may not have the necessary expertise to interpret and understand the information which has been provided. This is especially a problem with technical information. What constitutes 'access' is also an issue.

[353] "The process of environmental assessment: - requires an holistic approach to the environment, [and]... should be viewed as a creative process to generate solutions and assist in conflict resolution; is more than an input into decision making. It is an integral part of the process of promoting sustainable resource management; is an essential tool in the promotion of sustainable management of natural and physical resources at all levels of decision making" (MfE, 1992, No. 3, ME).

consensus on information, rather than to assert definitive 'correctness' of a position, particularly where competition between interests, or where values and expert 'judgement' are features of the analysis, and where forecasting is a basis for uncertainties, and where these features are controversial. The same observations apply to Section 32 reports.

> "*[The] intellectual rigour [of Section 32] needs to accommodate decision making at the highest and lowest levels: at a level of high abstraction when assessing national, regional and local requirements for balancing present and future generations' needs; and at a level of site specific detail when assessing applications for resource management consent...* ***Only through such means can the broad objective of sustainable development be converted into operational canons, and only through the involvement of non-governmental stakeholders can sustainability policies be expected to last****, as they must, beyond the next change in government. Neither governments nor markets are attuned to the long-term goals that sustainable management requires. Without these, sustainable management is a motherhood concept: to become operationally useful it needs to be more than just an expression of social values and political preferences*" (Grant, 1995, ME, bold added).

14.10 SPECIFIC SUGGESTIONS FOR IMPROVING RMA IMPLEMENTATION AS PROVIDED BY COMMENTATORS, FOR COMPARISON WITH THOSE OF RESEARCH PARTICIPANTS IN THIS RESEARCH (refer to Table 19, p351)

i Legal Aid Issues

Issues of a disparity in resources between parties in environmental disputes, have led commentators to provide views on the appropriateness of extending the current legal aid provisions for taking an environmental dispute to Court (Mitchell and Hardy, 1996; Gill, 1996; Frieder, 1997). While it is not the intention here to discuss the contrasting views or describe the merits or otherwise of the legal aid system and how it could be extended to redress current disparities, it is clear that attention needs to be paid to redressing the inequity inherent in the current approach to EDR in adversarial forums. The reason for not dwelling on funding 'cases' here, is that these issues apply mainly to formal or required consultation processes, when an opposition to a proposal has arisen. Given the observations of this and other research, there is a strong preference to make use of other mechanisms for achieving dispute resolution, a greater expression of democracy, and sustainable management so that 'required' processes could become less 'adversarial' and also play a less significant role in the formulation of local resource and environment management programs and in responding to specific issues. This view coincides with that of Gill (1996).

> "*While it is inevitable that some cases will come to be decided by the Environmental Court, the problem of costs for both private and public interest cases needs to be tackled earlier in the process... Although broader criteria for legal aid at the Environment Court could be beneficial, it makes sense to provide resources at the policy and plan formulation and consent application level to redress imbalances of power between the parties and encourage information sharing at the earliest stage*

possible. This could better ensure that before passing the burden of costs to the taxpayer, the costs themselves could be reduced. Greater use of conflict management earlier in the process could assist" (Gill, 1996, p5, ME).

ii ***A pool of resource management professionals to provide a neutral advisory and mediation service. The same agency could appoint mediators as facilitators to assist commissioners in local hearings as appropriate.***

Commentators suggest there could be a place for an independent central agency to provide technical professional support for EDR. The use of such an agency could be within the current s99 provisions of the RMA, (with successful and appropriate EDR outcomes able to utilise s100). Possible funding arrangements for such an agency are numerous and so are not discussed here. However, regardless of its sources of funding the agency would operate with autonomy. Its advisory and support services (including the possibility of representation in hearings or Court) would be available to public or 'private' interested parties (given they are eligible for support, according to established criteria). However the agency could also act as advisors to, managers and/or overseers of EDR processes and forums, and retain professionals in EDR that could be available to councils and other corporate bodies requiring assistance with consultation/public participatory and EDR processes. The agency could be linked to an 'environmental defenders office' in taking cases to the Environmental Court (again given that certain criteria were met). There are also suggestions that some agency could be responsible for providing (or appointing) an independent mediator/arbiter or panel of experts as commissioners when requested by any party to a dispute. Whether it would be appropriate to attach this service to the just described 'agency' is obviously a matter for wide debate.

"*...It would include access to representation by a pool of resource management professionals and would not be limited to purely legal advice... The advice and level of expertise required would vary according to the case and issues to be addressed... Environmental legal aid could extend beyond purely financial assistance. One of the key objectives could be to provide the resources necessary to ensure access to expertise and advice is available, but in a way that is efficient and accountable... a separate evaluation and allocation process could be set up and involve the Environmental Court itself, the PCE and/or the [MfE]*" (Mitchell and Hardy, 1996, ME).

"*Intervener funding in Canada and legal aid in Australia is used to enable public interest proceedings to be brought in the interests of the environment. In Australia, legal aid for the public interest environmental actions exists alongside the Environmental Defenders Office which advises and represents public interest litigants in environmental cases. It is legal aid for groups or bodies corporate (with some exceptions) that is not available in New Zealand... In some cases, federal or local government funds NGO participation to guarantee a fair and balanced process is achieved. Collaboration of this short is a new paradigm of participation in [NZ]. It inverts the conventional consultation method of formal notification and eleventh hour submissions followed by possible courtroom battles*" (Frieder, 1997, ME).

"*All parties could benefit from a neutral advisory and mediation service funded by the appropriate level of government. Central government already funds the additional dispute resolution procedures which take place under the auspices of the Environmental Court. Government and local government funding at an earlier stage is likely to be even more*

beneficial." (Gill, 1996)

On a lesser scale, councils could be establishing similar services in their communities. Again there are various potentials for funding and also for models to apply to such a service. Gill (1996) observes, that some councils run small business advisory units, could they also establish an independent resource management advice service? Or, could citizens advice bureaux take on that role? Should central and local government establish Environmental Defenders Officers on a national, regional, or local level? Could community law centres be funded to provide advice on RMA matters, as is found at the Christchurch Community Law Centre which provides resource management advice. Is legal aid the best way of delivering assistance to the public? There are other models that could be adopted by local councils, such as appointing a community advocate.

iii A community advocate - advisor - intermediary - networker.

It may be appropriate for councils to set up an independent liaison person. The role would include providing advisory services to the community. It could also entail community networking and an education role, and independently represent community groups interests to Council - implying that the role would be autonomous from both the political and managerial branches of Council. The model most frequently referred to by commentators, is that of the 'community advocate' funded by the Queenstown Lakes District Council that was set up in 1994. That model saw "the service as an opportunity for impartial advice and assistance to both the community and the Council in giving effect to the recent transparency and consultation requirements of the RMA and the amended Local Government Act." (Nagle, community advocate, quoted in Dahm, 1997). The community advocates role was to assist people in their dealings with the RMA and encourages ADR through community planning workshops. This service has been recommended by the PCE's office as a model that other authorities could adopt (*ibid*). Advantages for Council of the scheme included that it: "results in a better informed community who are able to participate effectively in the various democratic processes of local government; saves staff time by drawing on the service's knowledge of community groups and issues of concern, and the service deals with issues that staff otherwise have to attend to; submissions prepared and presented through the community advocate are succinct, well researched and factual, and staff time is not spent trying to separate emotional issues from substantive and legislative issues; ensures better dissemination of information; better organised and presented submissions and appeals and consequently, better decision-making under the Act" (*ibid*). The disadvantages were the reliance on Council for funding, which limits its (political) independence and long term viability. These could be overcome by spreading the service to a number of agencies (*ibid*). This service did lose its funding in 1997 and is now run on

a voluntary basis. This is only one of many potential models that could be applied to enhancing community and council capabilities - and the relationships between Council and others in the community for the purposes of more effectively implementing the RMA.

iv Technical panels to work alongside political authorities

An integrated approach whereby independently appointed commissioners assist the elected representatives could prove beneficial (Mitchell, 1994). "In this way the technical specialisation and experience afforded by the commissioner can be integrated with the politically and socially driven agendas of the elected representatives." Mitchell (1994) explains, that it is important that Councillors take an active role in the decision making process, "because after all they are elected by the community specifically to fulfil that function. I do not think it is desirable for this accountability to be delegated to others." The role of technical mediators would involve "a procedure whereby parties who disagree over technical matters establish a forum where these can be worked through in an effective non-confrontational setting. I think it is unfair in many circumstances to ask elected representatives to have to adjudicate the merits of complex technical arguments being provided by different experts" (Mitchell, 1994). Hutchings (1997) also suggests an option is to "remove resource management decision making from the purview of elected members by placing it in the hands of a small band of regional commissioners. The difficulty with this approach... is that environmental issues are value laden and political in nature. It would be completely incomprehensible to expect appointed commissioners to adequately reflect voice and choice." Incidentally, similar reasoning could be provided in relation to expecting solicitors (as legal experts) to determine technical issues and/or political issues (for example, to prioritise diverse interests and values held in a community), as commissioners to council hearings. It is apparent there may be a place for multi-disciplinary panels to collaborate in EDR processes.

14.10 CONCLUDING COMMENT

The conclusions of this research and the wider analysis of RMA implementation issues discussed above, have all described consistent themes that indicate more needs to be done to effectively achieve the objectives of the RMA. It is up to the RMA's implementors to ensure that steps are taken as necessary to ensure its goals are given effect in resource and environmental management practice. If progress is to be made, however, it will probably be necessary to repeat the energy, the debates, and the government-led processes, that gave rise to the RMA. Whether we have the right combination of (top-down) political leadership and (bottom-up) citizen concern remains to be seen.

BIBLIOGRAPHY

BIBLIOGRAPHY

Acland, A.F. 1990: *A Sudden Outbreak of Common Sense; Managing Conflict Through Mediation*. Hutchinson Business Books, England.

Agyeman, J. & Evans, B. (Undated) "From Rio to the Doorstep: A Beginner's Guide to Campaigning on Local Agenda 21", *New Ground*, pp14-15.

Albrecht, L. 1991: *Changing Role and Positions of Planners.*

Allen, R.E. (Editor) 1987: "*The Oxford Dictionary of Current English*", Oxford University Press.

Allen, S. 1988: "Consent Integration" in RMLR Working Paper No. 19, *Decision Making Processes and Structures: Two Contributions to Resource Management Law Reform*, Ministry for the Environment, Dec. 1988, Wellington, N.Z.

Alternatives (Editorial), 1991: "How Shall Power Be Shared?", *Alternatives* Vol.18 No.2 1991.

Amy, D.J. 1987: *The Politics of Environmental Mediation*, Columbia Press, New York, U.S.A.

Axelrod, R. 1984: *The Evolution of Cooperation.* Penguin Books, London, U.K.

Bacow, L.S. & Wheeler, M. 1984: *Environmental Dispute Resolution.* Plenum Press, N.Y.

Beitz, C. 1989: *Political Equality: Democratic Theory*. Princeton University Press, New Jersey.

Bevan, A. 1992: *Alternative Dispute Resolution*. Sweet & Maxwell. London, U.K.

Bingham, G. 1986: *Resolving Environmental Disputes: A Decade of Experience*. The Conservation Foundation, Washington, D.C., U.S.A.

Blackford, C.J. 1986: *Political Behaviour and Decision Making in Large-Scale Energy Development.* A thesis presented to Canterbury University. New Zealand.

Blackford, C. & Hayward, B. 1988: *Proportionate Equality and Public Participation : Who Should Have a Say in Impact Assessment?* Presentation to the VII Annual Meeting of the International Association for Impact Assessment, Brisbane 5-8 July 1988.

Blackford, C. & Matunga, H. 1991: *Maori Participation in Environmental Mediation*. Centre for Resource Management, Lincoln University, Canterbury, N.Z.

Blackford, C. 1992(a): *A Review of Environmental Mediation: Theory and Practice*. Information Paper No. 34, Centre for Resource Management, Lincoln University, Canterbury, N.Z.

Blackford, C. 1992(b): *Guidelines for Monitoring Addional Dispute Resolution Processes Within the Resource Management Act*, Information Paper No. 39, Centre for Resource Management, Lincoln University, N.Z.

Blair, A.S 1993: *An Investigation of Alternative Dispute Resolution in Resource Use Conflict, and options for the Improvement of its Use in Resource Management.* A thesis presented to Massey University. N.Z.

Blowers, A. 1991: "Short Lived Hopes For the Environment", *Town & Country Planning*, 03/91

Boer, B. 1994(A): "Environmental Law After Rio: Part 1" *Environmental Law Reporter*, Vol.1, No1, March 1994, The Environmental Law Centre, Auckland, N.Z.

Boer, B. 1994: "Environmental Law After Rio: Part 2" *Environmental Law Reporter*, Vol.1, No.2, July 1994, The Environmental Law Centre, Auckland, N.Z.

Bornholdt, B. Sept 1996: "*Decision of Hearings Commissioner of PNCC on Proposed Plan Change 11 to the Palmerston North District Plan AND Submissions on the Palmerston North Proposed District Plan relating to the Fitzherbert Avenue Plane Trees.*"

Boshier, J. & McClymont, 1994: "Achieving Effective Environmental Impact Assessment Processes, The Role of Independent Review Panals in New Zealand", *EIA New Challenges, New Practices*, Seventh Environmental Assessment TRIPARTITE WORKSHOP, Office of the Parliamentary Commissioner for the Environment, N.Z.

Brown, A. 1995: *The Effectiveness of the Public Consultation Process*. Unpublished paper to the Department of Conservation 1995, Wellington, N.Z.

Brown, H. & Marriott, A. 1993: *ADR Principles and Practice*. London, Sweet & Maxwell, Australia.

Bryman, A. 1988: *Quantity and Quality in Social Research.* Unwin Hyman Ltd. London.

Bryman, A. & Burgess, R. G. 1994: *Analysing Qualitative Data*. Routledge Publishers.

Buckle, L & Thomas-Buckle, S. 1986: "Placing Environmental Mediation is Context: Lessons from 'failed' Mediations", *Environment Impact Assessment Review* 6: 55-70.

Bührs, T. 1991: *Working Within Limits: the role of the Commission for the Environment in environmental policy development in New Zealand.* A thesis submitted in partial fulfillment of the requirements for a PhD. in Political Studies, University of Auckland.

Bührs, T. & Bartlett, R. V. 1993: *Environmental Policy in New Zealand: The Politics of Clean and Green?* Oxford University Press, Auckland, N.Z.

Burke, E. M. 1968: "Citizen Participation Strategies", *AIP Journal*, Sept. 1968, American Institute of Planners.

Bush, G. 1992(a): "Responsible and Responsive Local Government", *New Zealand Local Government*, Feb. 1992, pp12-13.

Bush, G. 1992(b): "Election, To What Do Its Many Parts Amount?" *New Zealand Local Government*, Nov. 1992

Bush-King, D. 1997: "Integrated *Resource Management" Paper to the* NZPI Annual Conference, April, 1997, Palmerston North.

Caldwell, J. 1994: Enforcement and Public Participation under the Resource Management Act 1991, in *Environmental Law Reporter,* Vol.1 No.2 July 1994, published by the Environmental Law Centre Inc. Auckland

Caldwell, L.K., 1972: "*In Defence of Earth: International Protection of the Biosphere*", Indiana University Press.

Callaghan, A.E.A. 1997: "*From Controvesy to Consensus - The Manapouri Power Station Resource Consents Project - The Role of the Lawyer*" Paper presented to the RMLA Annual Conference, 'Towards 2000 Conference Papers'.

Carpenter, S. & Kennedy, W. 1988: *Managing Public Disputes.* Jossey- Bass Publishers, San Francisco, U.S.A.

Cassell, C & Symon, G. (eds) 1994: *Qualitative Methods in Organizational Research, A Practical Guide*. Sage Publications Ltd.

Chapman, J. 1994: "Compliments Due For Accountability", *New Zealand Local Government*, Feb. 1994.

Chapple, K. 1992: "Effective Environmental Advocacy", *Handbook of Environmental Law*, Edited by Milne, C., Royal Forest and Bird Protection Society of New Zealand, Wellington, N.Z.

Chart, J. 1988: "Mediation" in *RMLR Working Paper No. 22, Resource Management Disputes*, Ministry for the Environment, Wellington, N.Z.

Christensen M. 1996: "*Comment on Tremaine's Paper*" to RMLA 4th Annual Conference.

Cole, R. E. 1991: Participant Observer Research: An Activist Role. In Whyte, W.F. (Editor) 1991: *Participatory Action Research* Sage Publications, Inc.

Crawford, J. 1997: "Response to Dr May - The Mandate for Planning" prepared for the NZPI Annual Conference, April 1997, Palmerston North, N.Z.

Cronin, K. 1989: "The Conceptual Meaning of Sustainability", "Practical Implementation of the Sustainability Objective", "The Relationship Between Sustainability and Other Objectives for Resource Management", "The Intrinsic Values of Ecosystems", in RMLR Working Paper No.24, *Sustainability, Intrinsic Values and the Needs of Future Generations*, Ministry for the Environment, Jan. 1989, Wellington, N.Z.

Crowfoot, J. & Wondolleck, J. 1990: *Environmental Disputes: Community Involvement in Conflict Resolution.* Islands Press, Washington D.C. U.S.A.

Dahn, K. 1997: "*Public Participation under the Resource Management Act. How effectively is the philosophy of public participation being applied to the resource consent process?*" A project presented in partial fulfillment of the requirements of the degree of Resource and Environmental Planning, Massey University, Nov. 1997.

Diack, G. 1992: "Reform Process Hindered By Management Style", *New Zealand Local Government*, Vol 28, No1, Jan. 1992.

Dickson, G. 1996: *Palmerston North River Crossings Traffic Assessment*. Statement at Hearing of Submissions to Planning Hearing heard by Planning Commissioner Bornholdt, June 1996.

Donaldson, C. 1994: *Working in Multistakeholder Processes*. Paper prepared under contract for Guidelines Division, Evaluation and Interpretation Branch, Environment Canada.

Dorcey, A., Handmer, J., & Smith, D. 1991: Reaching Agreement and Resolving Conflicts in Water Management. In Handmer, J.W., Dorcey A.H.J. & Smith D.I. (Eds) 1991: *Negotiating Conflict Resolution in Australian Water Manage*ment. Centre for Resource and Environmental Studies, Australian National University.

Douglas, M. 1996: "Public Interest and Service Delivery" in "*An Agenda for Local Government: Proceedings from the New Local Government Conference"* 1995: Edited by McDermott, P. Forgie, V. & Howell, R., Department of Resource and Environmental Planning and Department of Managment Systems, Massey University, Palmerston North, N.Z.

Edmonds, K. 1993: "Team Explores RMA's Chant", *Planning Quarterly*, Sept. 1994, N.Z.P.I. Auckland, N.Z.

Egan, G. 1973: *Face to Face: The Small-Group Experience and Interpersonal Growth*, Brooks/Cole Publishing Company, California, U.S.A.

Ellis, D.G. & Fisher, B. A. 1994: *Small Group Decision Making: Communcation and the Group Process* (fourth edition), McGraw-Hill Inc. U.S.A.

Environmental Administration Task Group, 1984: *Environmental Administration in New Zealand, A Discussion Paper.* Released by the Minister for the Environment. State Services Commission, Wellington, New Zealand.

Environment Task Group, 1984: "Proposed Ministry for the Environment" in *Environmental Administration in New Zealand: A Discussion Paper.* Released by the Minister for the Environment, 1984, State Services Commission, Wellington.

Environmental Administration Task Group, 1985: *Environmental Administration in New Zealand : An Alternative Discussion Paper.* Prepared on behalf of Royal Forest & Bird Protection Society *et al*, Released by State Services Commission, Nelson, N.Z.

Environmental Council, 1987: *A Citizens Voice for the Environ ment: Is There a Need For an Environmental Quango?* Environmental Council Discussion Paper. State services Commission Wellington, New Zealand.

Etzioni-Halevy, E. 1993: *The Elite Connection : Problems and Potential of Western Democracy.* Polity Press in association with Blackwell Publishers, Cambridge, U.K.

Eyles, J. (edt) 1986: *Qualitative Approaches in Social and Geographical Research.* Occassional Paper No 26, Department of Geography and Earth Sciences. Queen Mary College, University of London.

Fagence, M. 1977: *Citizen Participation in Planning*, Pergammon Press, Oxford, England.

Faludi, A. 1973: *Planning Theory* Pergamon Press, Oxford, England,

Fisher, R. 1983: "Negotiating Power", *American Behavioural Scientist*, Vol. 27 No.2 Nov./Dec. 1983, pp143-166. Sage Publications Inc.

Fisher, R. & Brown S. 1988: *Getting Together: Building a Relationship That Gets to Yes.* Houghten Mifflin Company, Boston.

Fisher, R. & Ury, W. 1987: *Getting to Yes: Negotiating Agreement Without Giving In.* Arrow Books Limited, London, U.K.

Fody, W. 1993: *Constructing Questions for Interviews and Questionnaires: Theory and Practice in Social Research*, Cambridge University Press, Cambridge, U.K.

Fookes, T. 1988: "Public Participation: Options for Legislation", *RMLR Working Paper No. 17*, Ministry for the Environment, Wellington N.Z.

Foschi, M. & Lawler, J. (Editors) 1994: *Group Processes: Sociological Analyses*, Nelson-Hall Publishers, Chicago, U.S.A.

Forester, J. 1987: "Planning in the Face of Conflict: Negotiation and Mediation Strategies in Local Land Use Regulation." in Coblentz, H.S. (Editor), *Environments*, University of Waterloo, Canada.

France, M. 1991: Consultation and Negotiation ; Case study: Electricorp's water right applications for the Waitaki Power Development. *Planning Quarterly*, September 1991

France, M. 1997: *"From Controvesy to Consensus - The Manapouri Power Station Resource Consents Project"*, Paper presented to PMLA Annual Conference, in "Towards 2000 Conference Papers".

Frawley, P. 1996: "*Report to the Hearing Commissioner of PNCC in the Matter of the Proposed Plan Change Number 11 and Submissions to the Proposed PNC District Plan: Fitzherbert Avenue Trees*" (PNCC, Records File, 4500 series)

Frieder, J. 1997: "*Approaching Sustainability: Integrated Environmental Management and New Zealand's Resource Management Act.*" The Ian Axford New Zealand Fellowhip in Public Policy, Wellington N.Z.

Friedmann, J. 1973: "The Public Interest and Community Participation: Towards a New Construction of Public Philosophy", *AIP Journal*, Jan. 1973, Americal Institute of Planners.

Friend & Jessop 1977: *Local Government and Strategic Choices* (2nd Edition), Pergamon Press Ltd.

Gammon, J. K. 1994: *Overcoming Obstacles in Environmental Policymaking*, State University of New York Press, U.S.A.

Gammon, J.K. & McCreary, S.T. (Editors), 1989: *Principled Negotiation and Environmental Dispute Resolution With an Emphasis on Strategic Use of Facilitators and Mediators.* Course Reader and Workbook for the Professional Training Workshop, Sponsored by the Ministry for the Environment, Wellington, N.Z.

Gardner, J. & Roseland, M. 1989: "Acting Locally, Community Strategies for Equitable Sustainable Development", *Alternatives*, Vol. 16 No. 3, 1989.

Gill, J. 1996: "*Commentary to Mitchell and Hardy's 'Public Participation - Who Pays the Piper*", Paper presented to RMLA Annual Conference, 1996.

Gould, B. 1997: "*Evolve or Devole*", speech before the 8th Annual Conference of New Zealand Local Government Association, quoted in Frieder, J. 1997.

Grant, M: 1995: "Sustainable Management: A Sustainable Ethic", Keynote Address at the RMLA Annual Conference, 1995, in *Resource Managment News*, Nov/Dec 1995.

Gray, A. 1988: "Synopsis of Submissions received in Response to *Directions For Change*" RMLR Working Paper No. 21, Ministry for the Environment, Wellington, N.Z.

Gray, A. *et al*, 1989: "Public Submissions on "People, Environment and Decision Making" RMLR Working Paper No. 32, Ministry for the Environment, April, 1989, N.Z.

Grey Matter Research Ltd, 1988: "Public Participation in Policy Formation and Development Consents", *RMLR Working Paper No. 18*, Ministry for the Environment, Nov. 1988, Wellington.

Grundy, K. 1994: "Section 5 - In Search of Logic", *Planning Quarterly*, Dec. 1994, N.Z.P.I. Auckland, N.Z.

Grundy, K. 1995: "Rural Land Use and the RMA", *Planning Quarterly*, Dec. 1995, N.Z.P.I., NZ.

Gunn, A.S. 1988: "Intrinsic Value", in Dixon, J.E., Ericksen, N.J. & Gunn, A.S. (Editors) 1988: Proceedings of Ecopolitics III Conference, Environmental Studies Unit, University of Waikato, N.Z.

Hall, P. 1992: "Agenda For a New Government", *The Planner*, TCPSS Proceedings 27/09/92.

Hallet, A. 1988: "Effective Campaigning: The Need for a Political Approach", in Dixon, J.E., *et al* (Editors) 1988: *Proceedings of Ecopolitics III Conference*, Environmental Studies Unit, University of Waikato, N.Z.

Harris, R. 1995: The Demands and Principles of Consultation. *Planning Quarterly*, March 1995, N.Z.P.I., Auckland, N.Z.

Hart, H.L.A. 1963, *Law, Liberty and Morality*, Oxford University Press, London, U.K.

Hartley, J.F. 1994: Case Studies in Organisational Research. In Cassell & Symon (eds) *Qualitative Methods in Organizational Research, A Practical Guide*. Sage Publications Ltd, London.

Hay, P.R. 1988: "The Triumph of Market Liberalism: A Threat To The Environmentalist Agenda", in Dixon, J.E., *et al* (Edtrs) 1988: *Proceedings of Ecopolitics III Conference*, Environ-mental Studies Unit, Waikato University, N.Z.

Healy, P. 1988: "Planning Tools & Redistributive Ends: Introduction" *Planning Outlook*, 31.2

Healy, P. 1992: Planning Through Debate ; The communicative turn in planning theory. *Town Planning Review*, 63 (2) 1992

Held, D. & Pollitt, C. (eds) 1986: *New Forms of Democracy*. Sage Publications Ltd, London.

Henderson, E. 1994: "Planners at the Coalface", *Planning Quarterly*, N.Z.P.I., Auckland, N.Z.

Hines, D. 1993-1995: "*Wastewater 2000: A Newsletter from the Facilitated Workshop*", Prepared for the facilitator, Mr David Hollands (Monthly from Sept 93 - May 95).

Hirst, P. 1994: *Associative Democracy : New Forms of Economic and Social Governance*. Polity Press in association with Blackwell Publishers.

Hodges, J. 1992: Open Approach Gets Results. *Planning Quarterly*, September 1992, N.Z.P.I., Auckland, N.Z.

Hollands, D. 1994: *Integrating Public Participation and Local Body Decision Making*, unpublished paper. Hollands is a professional Mediator/Facilitator registered with the Arbitration and Mediation Institute of N.Z., Auckland, N.Z.

Hollands, D. 1995: Report of the Facilitator of the Cross River Transportation Working Party to Palmerston North City Council. Attachment to the "*Final Report*" of that Working Party, dated 22/04/95, in Palmerston North City Council Records.

Hunter, D., Bailey, A. & Taylor, B. 1992: *The Zen of Groups: A Handbook for People Meeting With a Purpose*, Tandem Press, Auckland, New Zealand.

Hunter, D., Bailey, A. & Taylor, B. 1994: *The Art of Facilitation*, Tandem Press, Auckland, New Zealand.

Hutchings, J. 1994, "Inter-au*thority Integration of Approaches and Issues, Regional Perspective*" Paper presented to the NZPI Annual Conference, April, 1994, Nelson.

Hutchings, J. 1997: "*Collaborating for Quality*" Paper presented to the Resource Management Law Association, Fifth Annual Conference, in "*Australasian Environmental Issues Towards 2000 Conference Papers*" RMLAssoc. of N.Z. Inc, 1997, Auckland. N.Z.

Ippolito, D. & Walker, T. 1980: *Political Parties, Interest Groups, and Public Policy.* Prentice Hall Inc. New Jersey.

James, G. 1996: "*Commentary to 'Public Participation - Who Pays the Piper'* (by Mitchell, P. & Hardy, K.) Presented to Resource Management Law Association, Fourth Annual Conference October 1996, Conference Papers. Auckland N.Z.

Javison, E.L. 1994: *Public Participation in New Zealand Regional Councils.* A thesis presented to Massey University.

Jeffrey, M.I. 1986: "The appropriateness of Dealing With Scientific Evidence in the Adversarial Arena." *Environmental and Planning Law Journal* 3: 313-319.

Jeffrey, M.I. 1988: "Accommodating Negotiation in Environmental Impact Assessment and Project Approval Processes." *Environmental and Planning Law Journal* 4: 244-252.

Johnson, P. 1993: "How I Turned a Critical Public into Useful Consultants." *Harvard Business Review*, Jan-Feb. 1993.

Jones, M. 1996" "*Commentary to Ormerod, R. 'Air Quality Monitoring, Modelling and Assessment - Science or Black Magic*?'" Paper to RMLA 4th Conference 1996.

Kammler, P. 1996: "*Power for Our Future*" paper to RMLA 4th Conference

Kawharu, I. H. (Editor) 1989: "*Waitangi: Maori & Pakeha Perspectives fo the Treaty of Waitangi*", Oxford University Press, Auckland, New Zealand.

King, N. 1994: The Qualitative Research Interview. In Cassell & Symon, (eds) *Qualitative Methods in Organizational Research, A Practical Guide*. Sage Publications Ltd, London.

Kolb, D.M. 1983: *The Mediators*, The MIT Press, Cambridge, Massachusetts, U.S.A.

Kressel, K., Pruitt, D.G. & Associates, 1989: *Mediation Research*, Jossey Bass Publishers, San Francisco, California, U.S.A.

Krumholz, N. & Forester, J. 1990: *The Politics of Expertise*. Temple University Press, Philadelphia, U.S.A.

Lange, D. 1997: "The politics of the Environment", a keynote address to the NELA Conference, reprinted in "*Resource Management News*", August 1997.

Lax, D.A. & Sebenius, J.K. 1986: *The Manager as Negotiator.* The Free Press, A division of Macmillan, Inc. New York.

Lax, D.A. & Sebenius, J.K. 1991: "Negotiating Through An Agent", *Journal of Conflict Resolution*, Vol.35 No.3, Sept. 1991, pp474-493. Sage Publications Inc.

Le Heron, R.B. and Pawson, E (Edits) 1996: "*Changing Places in New Zealand in the Nineties*" NZ Geographical Society, Longman Paul, Auckland.

Local Government New Zealand, 1996, "*Local Government Says: Briefing Papers 1996*", Local Government New Zealand, Wellington, N.Z.

Lofland, J. & Lofland, L. 1995: *Analysing Social Settings: A Guide to Qualitative Observation and Analysis*, Wadsworth Publishing Company, California, U.S.A.

Lucus, A.R. 1992: Natural Resource Use Conflicts : Hard vs Soft Rights. In Ross, & Saunders, (Eds) *Growing Demands on a Shrinking Heritage : Managing Resource Use Conflicts.* Essays from the Fifth Institute Conference on Natural Resource Law. Canadian Institute of Resources Law, Calgarry, Canada.

Luft, J. 1984: *Group Processes : An Introduction to Group Dynamics.* Mayfield Publishing Company, California, U.S.A.

Marshall, H. 1994: Discourse Analysis in Occupational Context, in *Qualitative Methods in Organisational Research*. Sage Publication Ltd.

Martin, J. & Scott, C. 1991: "Accountability and Local Government Reform", Planning Quarterly Sept. 1991, N.Z.P.I.

May, P. J. 1997, "*The Mandate for Planning: An Outsider's Perspective Concerning the RMA*" Paper prepared for the Annual Conference of the NZPI, April, Palmerston North, N.Z.

McCreary, S. & Gamman, J. 1991: Finding Solutions to Disputes - it can be done well. Planning Quarterly, June, 1991. N.Z.P.I.

McDuff, I. 1988: "Mediation" in *RMLR Working Paper No. 22, Resource Management Disputes*, Ministry for the Environment, Wellington, N.Z.

McKenzie, I. 1992: "The Power and Purpose of a Vision" in New Zealand Local Government, Jan. 1992, p12.

Memon, P. Ali. 1993: *Keeping New Zealand Green*, University of Otago Press, Dunedin.

Messer, J. 1992: "Public Participation in Decision-Making: Participatory Democracy or Political Greenwash?", Harding, R. (Editor), *Ecopolitics V Proceedings*, Centre for Liberal & General Studies, University of New South Wales, Australia.

Miller, R (edit) 1997: *New Zealand Politics in Transition*, Oxford University Press, Auckland.

Milne, C.D.A. (Edr)1992: *Handbook of Environmental Law*. Royal Forest and Bird Protection Society of New Zealand Inc. Wellington, N.Z.

Minister for the Environment, 1985: *Environment 1986 : Report of the Post-Environment Forum Working Party.* State Services Commission, Wellington, N.Z.

Ministry for the Environment, (Undated) *Scoping of Environmental Effects : A guide to scoping and public review methods in environmental assessment.* Wellington, New Zealand.

Ministry for the Environment, (Various Contributors), 1988: Implementing the Sustainability Objective in Resource Management Law, *RMLR Working Paper No. 25*, Nov. 1988.

Ministry for the Environment, 1988(a): "Objectives For Resource Management: Why, What and How", *RMLR Working Paper, No. 13*, Ministry for the Environment, Dec. 1988.

Ministry for the Environment, 1988(b): *People, Environment, and Decision Making: the Government's Proposals for Resource Management Law Reform.* Wellington.

Ministry for the Environment, 1992: "A Guide for *Applicants: To Assess the Effects of Proposals Under the Resource Management Act*" Information Sheet No. 2

Ministry for the Environment, 1992: "*Principles and Issues Concerning the Assessment of Environmental Effects*" Information Sheet No. 3

Ministry for the Environment, 1994: *Case Law on Consultation : Case law under the Resource Management Act 1991, regarding the issue of consultation with tangata whenua, to 30th November 1994.* Ministry for the Environment, Wlgtn, N.Z.

Ministry for the Environment, 1995: "*Guide to the Resource Management Act*", 1995, reprint.

Mitchell, P. 1994: "*Successful Resource Consent Acquisition - a critique*" Paper presented to the RMLA Annual Conference, October 1994.

Mitchell, P. & Hardy, K. 1996: "*Public Participation - Who Pays the Piper*" Resource Management Law Association of NZ Inc Annual Conference Oct. 1996. Auckland.

Moore, C.W. 1986: *The Mediation Process: Practical Strategies for Resolving Conflict.* Jossey-Bass Publishers, San Francisco.

Morris, G. 1996, "*Trees Lining Fitzherbert Avenue as a Cultural Resource with Outstanding Heritage Values*", Attachment to evidence of Morris G & R, PNCC Hearing of Proposed Plan Change No. 11 to the District Plan (Transitional).

Moscovici, S. & Doise, W. 1994: *Conflict and Consensus: A General Theory of Collective Decisions.* SAGE Publications, London.

Mulgan, R. 1989: *Democracy and Power in New Zealand*, Oxford University Press, England.

Mulgan, R. 1994: *Politics in New Zealand,* Auckland University Press, New Zealand.

Napier, R. & Gershenfeld, M. (eds) 1993: *Groups : Theory and Experience.* Houghton Mifflin Company, U.S.A.

New Zealand Local Government Association, 1995: The Resource Management Act 1991, Four Years Down the Track, Wellington.

New Zealand Statutes, 1986: Environment Act 1986.

New Zealand Statutes, 1991: Resource Managment Act 1991.

Organisation for Economic Co-Operation and Development, (OECD), 1996, "*New Zealand Environmental Performance Reviews*", Paris.

Palmer, K. A. 1988: "The Role of Courts and Tribunals" in *RMLR Working Paper No. 22*, Ministry for the Environment, Nov. 1988, Wellington, N.Z.

Palmer, K.A. 1993: "Case-Law Clarrifies RMA's Intent", *Planning Quarterly*, Dec. 1993, N.Z.P.I., Auckland, N.Z.

Palmer, K.A. 1994: "Opportunities for Public Participation Under the Resource Management Act", *New Zealand Environmental Law Reporter*, March 1994, Environmental Law Centre, Auckland.

Palmerston North City Council, (author unknown), 1995: "*Cross River Transportation Historical Background Paper*" Report to the Cross River Transportation Working Party, 23/02/1995.

Palmerston North City Council, 1994 to 1997: File No. 2690-11, 2695-8-11, 2695-9-11, File Series, 4500, 4220, SF 1737 and F10-General, Records Office, PNCC.

Parliamentary Commissioner for the Environment (Office of) 1996: *Public Participation Under the Resource Management Act 1991: The Management of Conflict*. Office of the Parliamentary Commissioner for the Environment December 1996, Wellington.

Panikkar, R. 1989 "*The Rhythm of Being*" Unpublished Transcript of the 1989 Gifford Lectures.

Parrish, M. 1996: "*Commentary to Ormerod, R".* 'Air Quality Monitoring, Modelling and Assessment - Science or Black Magic?" Paper to RMLA 4th Conference 1996.

Pawson, E *et al*: 1996 "Environmental Sustainability" (Chapter 8) in "*Changing Places in the Nineties*" Le Heron R.B. and Pawson, E (Edits) NZ Geographical Society, Longman Paul, Auckland.

Penny, E. 1992: "Dispute Resolution, Power Sharing, and Credibility", *Integrated Environmental Management Proceedings*, New Zealand Water Supply and Disposal Association, 1992, Annual Conference.

Penny, E. 1994: "Public Participation - The Reality", *New Zealand Environmental Law Reporter*, The Environmental Law Centre Inc, Auckland, N.Z.

Post Environmental Forum Working Party, 1985: *Environment 1986: Report of the Post Environmental Forum Working Party*, June 1985, State Services Commission, Wellington, N.Z.

Potter, J. & Wetherell, M. 1994; Analyzing Discourse, in *Analyzing Qualitative Data,* Bryman, A. & Burgess, R. 1994, Routledge Publications.

Proctor, R. 1985: *The Purpose and Style of District Planning, An Economist's View.* Paper presented to the Ministry of Works and Development District Planning Forum, Wairaki.

Raiffa, H. 1982: *The Art and Science of Negotiation.* Harvard University Press, Cambridge, Masachusetts, U.S.A.

Robinson, J. *et al* 1990: "Defining a Sustainable Society, Values, Principles and Definitions", *Alternatives*, Vol. 17, No. 2 1990.

Ross, M. 1992(a): "Pruning That Legislative Jungle", *New Zealand Local Government*, July 1992, p19.

Ross, M. 1992(b): "The Real Political Revolution: Accountability and Transparancy in Local Government. Part 1", in *New Zealand Government*, December, 1992.

Ross, M. 1993: "How Responsive is Your Council" Part 2 of Accountability and Transparancy in Local Government, in New *Zealand Government*, January, 1993.

Roweiss, S.T. 1993, "Knowledge Power and Professional Practice", in *The Design Professions and the Built Environment*, 1993 editored by Knox, P.L.

Sadler, B. & Ward, M. 1995: "Environmental Impact Assessment in N.Z. and Overseas", *Planning Quarterly*, March 1995.

Salmon, G. 1985, in Environmental Administration Task Group, 1985: *Environmental Administration in New Zealand : An Alternative Discussion Paper.* Prepared on behalf of Royal Forest & Bird Protection Society *et al*, Released by State Services Commission, Nelson, New Zealand.

Sands, F.E. 1993(a): *Environmental Dispute Resolution and the Resource Management Act 1991: Should Planners be Mediators?* A thesis presented to Waikato University.

Sands, F.E. (1993(b): "Planners As Mediators", *Planning Quarterly*, Sept 1993, NZPI, Auckland, New Zealand.

Schelling, T.C. 1960: *The Strategy of Conflict.* Harvard University Press, Cambridge, Massachusetts, U.S.A.

Schick, A. 1996: "*The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change*", State Services Commission and the Treasury, Wellington, 1996

Scott, D. 1992: "Participation Through Consultation", Harding, R. (Editor), *Ecopolitics V Proceedings*, Centre for Liberal & General Studies, University of New South Wales.

Sheppard, D.F.G. 1988: *The Appropriateness of Judicial and Non-Judicial Determination of Environmental Issues.* Paper presented to the Bar Association Conference, Environmental Law Seminar, 13-18 October, Auckland. (NEED TO FIND THIS)

Silverman, D. 1993: *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction*, SAGE Publications, London, U.K.

Simpkin, W.E. & Fidandis, N.A. 1986: *Mediation and the Dynamics of Collective Bargaining* The Bureau of National Affairs Inc, Washington, D.C., U.S.A.

Stewart, I. & Symes, C. 1990: "The Place of Property Rights in a Planned Economy", *Planning Quarterly*, 1990, pp22-29.

Susskind, L. & Cruikhank, J. 1987: *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes.* Basic Books Inc, U.S.A.

Susskind, L. & Weinstein, A. 1992: "How to Resolve Environmental Disputes Out of Court." *Technology Review*, Jan. 1992.

Symes, C. & Stewart, I. 1989: "The Market in a Planned Economy" *Planning Quarterly*, 1989. N.Z.P.I. Auckland, N.Z.

Tanner, G. 1991 : Planning Disputes : A Mediator's View. *Planning Quarterly*, June 1991, N.Z.P.I. Auckland, N.Z.

Tizard, J.W. February 1994: "Decision of the Commissioner - IN THE MATTER of the RMA 1991 AND IN THE MATTER of an application for Resource Consent by Palmerston City Council to remove trees."

Treadwell, Judge. 1994: "Address to the NZPI annual conference" *Planning Quarterly* June 1994, N.Z.P.I. Auckland N.Z.

Tremaine, K. 1994: *The Resource Management Act Consultation Requirements*. Presentation to the IIR Conference on Community Consultation for Effective Local Government Performance.

Tremaine, K. 1996, "*Resource Management Contentious Issues: The [RMA] - Is it Still a one stop shop*?" Keynote address, to the Resource Management Law Association, 4th Annual Conference, RMLA N.Z. Inc., Auckland. N.Z.

Tuchman, B. 1994: *The March of Folly : The Resource Management Act Consultation Requirements.* Presentation by Ken Tremaine Environmental Consulting Unit to the IIR Conference on Community Consultation for Effective Local Government Performance.

Upton, S. 1994: "Keynote Speech to the Second RMLA Annual Conference Wellington", *Resource Management News*, Nov/Dec, 1994.

Upton, S. 1995: "Minister Responds to Criticism", *Planning Quarterly*, March 1995, N.Z.P.I.

Upton, S. 1996: "In Search of the Truth", *Planning Quarterly*, March, 1996, N.Z.P.I. Auckland.

Upton, S. 1997 "*Monitoring the Resource Management Act*", A speech to the 10th Annual Conference of Local Government New Zealand.

Upton, S. 1997 "*Understanding the Role of Policy Under the RMA*" A speech to the Annual Conference of the NZPI, Palmerston North, N.Z.

Ury, W.L. 1993: *Getting Past No: Negotiating Your Way From Confrontation to Cooperation.* Bantam Books, U.S.A and Canada

Ury, W.L., Brett, J.M. & Goldberg, S.B. 1988: *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict.* Jossey-Bass Publishers, San Francisco, U.S.A.

Von Dadelszen, J. & Fookes, T. 1988: "A Synthesis of Decision Making Conclusions", in RMLR Working Paper No. 19 *Decision Making Processes and Structures: Two Contributions to Resource Management Law Reform*, 1988, MfE, 12/1988, N.Z.

Vossler, G. 1991: "RMA Extends Horizons", *Planning Quarterly*, Dec. 1991, Published by the NZPI, Auckland, N.Z.

Vossler, G. 1993: "Integrated Environmental Policy: Attainable, or Illusory Grail?" *New Zealand Local Government*, Jan. 1994.

"*Wastewater 2000: A Newsletter from the Facilitated Workshop*". Prepared for the facilitator, Mr David Hollands by Mr David Hines (Monthly from Sept 93 - May 95)

Weir, P., Burgess, H. & Burgess, G. 1994: *Justice Without Violence*. Lynne Reinner Publishers, Inc. Colorado, U.S.A.

Wells, C. & Fookes, T. 1988: "Impact Assessment in Resource Management", *RMLR Working Paper No. 20*, Ministry for the Environment, Nov. 1988, Wellington, N.Z.

Wheeler, P.B. 1987: *Changing the Ground Rules of the Planning System*, City Planning Department, Palmerston North City Council.

Whyte, W. F. (editor) 1991: *Participatory Action Research.* Sage Publications, Inc.

Wilson, J. 1989: "Treasury Paper on Sustainability" in RMLR Working Paper No.24, *Sustainability, Intrinsic Values and the Needs of Future Generations*, Ministry for the Environment, Jan. 1989, Wellington, N.Z.

Windeyer, W.J.V. 1974: *Lectures in Legal History.* The Law Book Company Ltd, Sydney, Australia.

Wright, J. 1989: "Future Generations as an Objective in Resource Management Law", in RMLR Working Paper No.24, *Sustainability, Intrinsic Values and the Needs of Future Generations*, Ministry for the Environment, Jan. 1989, Wellington, N.Z.

APPENDICES

APPENDIX I CORRESPONDENCE WITH RESEARCH PARTICIPANTS

A *Introductory letter with request to participate in this research.*

(Potential Participants)

I am a postgraduate student at Massey University undertaking research into participant perspectives of environmental dispute resolution (EDR) processes within the context of the Resource Management Act, 1991 (RMA). The findings of this research will be presented in a thesis entitled "Perspectives on Environmental Dispute Resolution within the Context of the RMA, 1991." This research uses a case study strategy and has selected the processes employed by Palmerston North City Council to resolve the Fitzherbert Avenue and Cross River Transportation dispute. I have enclosed a *'Research Information Sheet'* for your consideration.

I understand from Council records that you participated in this dispute and processes for its resolution in the capacity of (*participant's role*). Therefore, your perspectives and experience of the processes you have been involved in are very important to this research. I would appreciate an opportunity to interview you in this regard. You will read on the *'Research Information Sheet'* that research participants comments will be confidential. I will report participants' comments in the thesis anonymously, unless you have specifically agreed to be quoted. If you agree to participate in this research and to be interviewed, could you please sign the enclosed "Participant Consent Form" and return it to me in the envelope provided or if you would like to discuss this research further please contact me on (*phone number*). I will contact you to arrange a meeting time at your convenience.

Thank you for your consideration of this request. I hope you do agree to participate in this research as it is integral to it that the diverse roles as well as perspectives and experiences of participants are canvassed fully.

Yours sincerely,
(*Researcher*)

B *Research Participant Consent Form*

I have read the Information Sheet for this study and have had the details of the study explained to me. My questions about the study have been answered to my satisfaction, and I understand that I have the right to ask further questions at any time.

I also understand that I have the right to withdraw from the study at any time, and to decline to answer any particular questions in the study.

I agree/do not agree to the interview being taped. I also understand that I have the right to ask for the tape to be turned off at any time during the interview.

I wish to participate in this study under the conditions set out on the information sheet.

Signed: _____

Name: _____

Date: _____

C *Research Information Sheet*

PROJECT TITLE Participant Perspectives of EDR processes within the Context of the RMA: A case study - The Fitzherbert Avenue and cross river transportation issue.

RESEARCHER Jane Johnston

CONTACT ADDRESS

TELEPHONE

PROBLEM How do environmental disputes evolve and are there reasons for continuing conflict despite EDR efforts?

AIM To describe and analyze EDR processes within the context of the RMA and identify the benefits and problems experienced by participants in these processes.

OBJECTIVES This research aims to achieve the following objectives

1 Identify the philosophical underpinnings informing public participation in EDR and the principles and objectives of consultation as elucidated within the RMA.
2 Identify theory informing the sources and causes of environmental disputes.
3 Identify theory informing EDR processes and forums.
4 Describe the use of different process/es for EDR undertaken by Palmerston North City Council and identify relationships with the RMA framework.
5 Determine the benefits and strengths, and problems and limitations of the EDR processes as indicated by the participants in the EDR processes.
6 Analyze the experiences of participants in practice and provide some explanation for participants experiences.
7 Draw conclusions about the evolution of this conflict and its resolution efforts, together with an evaluation of the outcomes that resulted.
8 Draw conclusions about the characteristics of current practice in giving effect to the philosophies, principles and objectives elucidated within the RMA.

What will the participant(s) in this research be asked to do?

Key participants in this environmental dispute and in the process/es employed to resolve the issues and develop a preferred solution to the problem include: Relevant staff and Councillors of Palmerston North City Council, interest group spokes-people, independent consultants and/or advisors and facilitators of public participatory and EDR processes, members of the public and of the media. All key participants will be invited to participate in this research by undertaking an in-depth 'semi-structured interview'.

An interview schedule will be sent to participants prior to the interview so that each can prepare for the interview. Notes can be made prior to the meeting. The meeting time and place will be arranged at the convenience of the participant.

How much time will be involved?

The interviews will take approximately an hour. It is possible to conduct the interview over a number of sessions if the participants schedule will not permit one session.

What can the participant expect from the researcher?

If you take part in the study, you have the right to:

* refuse to answer any particular question, and to withdraw from the study at any time.ask any further questions about the study that occur to you during your participation.

* Ask any questions of clarification on any topic or question raised with you and confer with others if appropriate before responding.

* provide additional information than that requested in order to clarify your views and/or position.

* provide information on the understanding that it is completely confidential to the researcher. All information used will be presented anonymously, and it will not be possible to identify you in the thesis being prepared from this research (unless you specifically request that you be quoted).

* be given access to a summary of the findings of this study when it is concluded.

D ***Confirmation of research interview and covering letter to 'semi structured interview' schedule***

(*participant*),

Thank you for agreeing to participate in this research into participant perspectives of environmental dispute resolution processes under the RMA, 1991. I have enclosed a question schedule for the interview for your consideration, so that you can prepare in advance.

While I have prepared this schedule, it is intended as a guide only. I will refer to it to ensure key topics are covered during the meeting. However, my approach in the interview will be to encourage you to recount your experiences and observations in your own way. If you have any questions about the interview schedule, a particular question, or the research, don't hesitate to contact me prior to our meeting.

I look forward to meeting you on _____

at _____, Venue _____

Yours sincerely,

researcher

E SEMI-STRUCTURED INTERVIEW SCHEDULE

The Palmerston North City Council has employed a variety of planning mechanisms and processes to develop a solution to the Fitzherbert Avenue and cross-river transportation problem. It has employed a number of public participation processes to clarify issues and to resolve this dispute. Therefore, when answering these questions it is important to identify which process/es you were personally involved in and to state when you are commenting generally on the entire process or in relation to a specific process.

a ***Background to the Dispute***:

1 Who identified the problem and who had responsibility for developing a solution?

2 How was the problem described?

3 What planning processes were used to generate a preferred solution/s to this problem/s?

4 What criteria were established to evaluate options?

5 What were the resource and environmental management issue/s arising from this problem?

6 What information was identified as necessary to inform the issue/problem in order to develop the preferred solution?

7 Who undertook the research and analysis of the problem and developed options and identified a preferred option/solution?

8 Why do you think a public dispute emerged in relation to the LTDP.

9 Do you think the community was appropriately or adequately informed about the issues and the LTDP when the dispute surfaced?

b ***Your perspectives on problem framing, planning processes and outcomes of each of the public participatory processes undertaken.***

1 What were the objectives or aims of the process?

2 What was the forums approach to resolving the issues and dispute?

3 Can you describe how the problem was defined within each of the processes you were involved in?

4 What issues were relevant to solving the problem/s and resolving the dispute?

5 Do you consider that the forum was able to address all the issues and resolve the dispute?

6 Can you describe what you thought of the outcome of the process?

c ***Public Participation in Environmental Dispute Resolution processes.***

1 What do you think the responsibilities of resource and environmental planners and managers are in relation to this problem?

2 What do you think the responsibilities of Councillors and the Mayor are in relation to this problem?

3 What do you think the responsibilities of the public are in relation to this problem?

4 What rights do you think each of these actors in the environmental dispute have in relation to developing solutions and selecting a preferred solution?

- a Council officers (planners and managers).
- b Expert advisors or consultants.
- c Councillors.
- d Public interest group spokespeople.
- e Other members of the public.

5 Public participation in planning and particularly environmental dispute resolution (EDR) is recognition of certain rights of citizens. Do you agree with this statement? What do you think these might be?

6 Public participation in planning and in EDR is expected to give effect to certain ideals or philosophical principles. Do you agree with this statement? What you think these might be?

7 What values do you think need to be taken into account in resource and environmental planning and decision making?

8 How do you see planning processes and decision-making taking account of these values? (ie How do these get incorporated into the process and in determining preferred options?)

9 Do you consider the process/es were able to take into account diverse views and/or attempt to cater for these?

d Your Participation in Planning, EDR and Decision Making

1 Would you consider your own approach adversarial or collaborative?

2 Why do you think each of the processes used to resolve this dispute was used?

3 Please indicate which of the following processes you participated in.

a Developing or approval of a project (the LTDP for the Avenue)
b Annual Plan process
c Resource consent application process
d The Proposed District Plan process
e The change to the Transitional District Plan process
f Pre-hearing meetings
g Cross River Transportation Working Party
h Public meetings (held by Council or public interest groups)
i Local body elections
j Member of a public interest group
k Lobby Councillors and/or officers of Council
l Communicating through the media
m Preparing reports and making recommendations to Council
n Appeals or applications to the Environmental Court
o Any other process you have been involved in?

(Sources: These means by which people and/or the 'public' provide input into planning and decision-making processes were identified in Tremaine, K. 1994 and in "*The Environmental Handbook*", Royal Forest and Bird Protection Society, 1992. That each has been used during the evolution of this conflict was confirmed in a review of Council archives).

5 Why did you participate in these processes and not others?

6 What was your role within each of the process, what did you do within the process or forum?

7 How were your views/values/interests canvassed during the development and/or evaluation of alternative options and in determining a preferred option?

8 Can you describe what you consider to be the beneficial features (pros or positives) of each of the processes you were involved in? Please explain.

9 Can you describe what you consider to be the problems (cons or negatives) of each of the processes you were involved in? Please explain.

10 Can you describe the strengths and/or limitations of each of the processes?

11 Can you describe how your participation influenced the process, the product of the process, or the outcome of the process?

12 What are the issues that caused the public dispute to continue at the conclusion of each of the processes?

13 How do you think processes for EDR could be improved?

APPENDIX II SUMMARY OF PRINCIPLES AND OBJECTIVES OF CONSULTATION and EDR PROCESSES.

Principles ***Consultation is informed and underpinned by the following ideas***

- Sustainable management applies ideals for the *cultural* or social environment as well as for the ecological or natural environment. The promoted view is of an holistic environment and of decision making that seeks to cater for a diversity of peoples views, values and interests, in order to achieve a more equitable and thus harmonious and stable society.
- Democratic societies have mechanisms for allowing citizens' opinions to be heard prior to some decisions being made. For decisions to be sustainable and not worsen inequities or resentments, methods need to be found for addressing the concerns of all interested parties.
- Inclusive methods of decision-making are preferred to address concerns in the design of decisions and preclude the need for appeals. However, for alternative conflict resolution methods to work there must be an agreement among the parties to cooperate, which some parties may find difficult. Even where some agreement has been reached there may not be a full consensus. In the final analysis a decision will be required by statutory authorities, and the option of appeal to the courts will need to be retained for aggrieved parties.
- Community 'ownership' of environmental problems also helps ensure sustainable solutions.
- Consultation may not be seen as the quickest and most 'efficient' path to follow, but it must be remembered that *'efficiency' involves not only speed, but also direction*. It is false economy to rush off in one direction only to have to later reverse the decision, or discover too late that there are unexpected, significant and costly effects.
- An anticipatory approach is required, which involves integrated planning.
- Environmental thinking or management views the 'environment' concept as all encompassing and dynamic. An holistic approach is needed.
- The notion of sustainability incorporates: inclusivity (eg of local and indigenous knowledge, intrinsic values, and externalities), 'wise' use, diversity and balance.
- Redefine the problem so as to see the solution as much in terms of 'planning mechanisms' as of 'environmental management'.
- The place of planing and decision-making is at the community or local level.
- The 'public' must be included early and effectively in planning and decision making processes.
- Consultation also aims to *aid the resolution of disputes* when these do arise.

- Consultation undertaken during the policy formulation stage of planning, is an effort to *avoid policy issues being debated* when a consent is being applied for.
- The intended outcome of the consultation exercise should be clearly stated so that people can have realistic and unambiguous expectations.
- Involve interested parties early so that planning can include their concerns, and cooperative management can be designed.
- Early involvement of interested parties allows for a process of regular checking to ensure that the design of the proposal is appropriate and that communication is clear.
- Decision-making affecting the environment usually involves resources held in common, and concerns many interested parties. The risk of conflict is high where these decisions relate to resources valued in different ways by different parties. Generally communities are more supportive of programmes and decisions that they have been involved in developing than those they feel have been imposed without consideration of their concerns.
- Consultation should be open to *any* interested person (legal standing to all).
- Consultation is an essential component in giving effect to the principles of the Treaty [of Waitangi] rather than an accepted principle of the Treaty itself.
- Consultation involves a statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done.
- Consultation requires sufficient information be provided to the consulted party in order that they can make intelligent and informed decisions.
- For public participation to be most effective, it must be informed. Interested parties need access to key documents and data in enough time to prepare submissions.
- Consultation requires sufficient time for both the participation of the consulted and the consideration of the advice given.
- Consultation can be a powerful tool for obtaining genuine input into policy formulation
- Consultation can be a barometer for uncovering both community values and issues.
- Consultation can be a means of promoting understanding of what you are trying to achieve i.e. winning acceptance.
- Consultation can be a way of sharing power in decision making.
- Consultation can be an important base line monitoring tool.
- Public participation enhances accountability by reminding decision-makers of the potential impacts of decisions, and testing decision processes and the outcomes for appropriateness.
- The 'user pays principle' and public access to information and government are at odds... careful consideration of responsibility for cost burdens is needed.

- Consultation requires a genuine consideration of the advice, including an open mind and a willingness to change.
- It should be possible for the diversity of perspectives held within the community - reflecting people's culture, values, expectations and aspirations - to be accepted as part of the record, without prejudice to any further assessment of their merits.
- Decision-makers should make their reasoning clear and public, including the reasons why they have rejected the views of any interested party.

Objectives of Consultation **Aim to achieve the following goals....**

- A bi-cultural approach.
- Meet the ends of economic development, social equity and balanced and sustainable resource use; to reflect social, cultural and spiritual values, preserve the qualities of the landscape, and to provide for the needs of future generations.
- Procedures for informal as well as formal or statutory ways and means to resolve conflict.
- Citizens to have access to information so that there is informed participation.
- Early involvement of the public so that planning can include citizens concerns, and cooperative management can be designed.
- Early involvement to allow for a process of regular checking to ensure that the design of the proposal is appropriate and that communication is clear.
- An identification of the 'public interest' that recognises the intrinsic tension between individual interests and collective interests, with the latter, as the collective welfare of the individuals and groups, establishing the 'public interest'.
- Intra and intergenerational equity, social equity.
- The public to assist with choosing the best direction at the outset, by providing fuller information on likely implications of decision options.
- A balance of the wants and needs of diverse perspectives (interests and values) in the relation to resources and the environment.
- A greater expression of 'democracy' or, the right of citizens to participate in their civil affairs, and an ability to tolerate minority views.
- Inclusivity of local and indigenous knowledge; a multi-cultural approach.
- Identification and recognition of the values of/in the community.
- A full and proper account community views taken in determining the values of resources and the environment and hence also all the effects of activities and outcomes of these.

- Inclusivity of externalities; all the effects considered in the analysis of issues. The 'polluter pays principle' is applied as necessary for 'sustainable management'.
- Enhanced accountability as the potential impacts of decisions are tested in the decision processes and the outcomes are tested for appropriateness.
- Formal independent review or assessment prepared and publicly available to help understand an issue. Procedures enable these to be included in the decision-making process.
- Independent review or assessment preceded by a public scoping exercise to ascertain the relevant significant issues, with the results publicly available.
- Consider all the impacts (or effects) of proposals on the environment.
- Promote public participation and improve local decision making.
- Promote consensus-building (through *early* public participatory planning) to avoid adversarial relationships and conflict
- Achieve balance by taking full account of all environmental values.
- Give greater effect to democratic principles.
- Advance effectiveness and efficiency by introducing integrated and explicit objectives and procedures.
- Avoid complications and difficulties by introducing simplified and streamlined resource allocation procedures and processes.
- Recognise that costs as well as benefits should be considered and that no one value should be over-riding in the planning process.
- The general purpose and objectives should cover matters and values such as: balancing individual rights and public welfare; eliminating or minimizing conflicts between uses; environmental quality; ecosystem values; needs of future generations; economic and social factors, and that; these matters or values should include reference to 'sustainable management'.
- A 'sustainable' future which includes 'sustainable' conflict resolution.
- Community 'ownership' of environmental problems to help ensure sustainable solutions.
- The reasoning for decisions is clear and public.
- Equitable access to appeal and redress.
- Implementation/monitoring and enforcement. A check that decisions do have the desired effect/s.

APPENDIX III RMA SECTIONS INFORMING CONCEPTS OF PUBLIC PARTICIPATION in EDR.

In **Part I, Section 2, INTERPRETATION AND APPLICATION** the term "Environment" is defined: "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."

In **Part I, Section 3** the "**Meaning of 'effect'**" is described as being - "In this Act, unless the context otherwise requires, the term 'effect' ... includes -

(a) Any positive of adverse effect; and

(b) Any temporary or permanent effect; and

(c) Any past, present, or future effect; and

(d) Any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect, and also includes -

(e) Any potential effect of high probability; and

(f) Any potential effect of low probability which has a high potential impact.

Part II PURPOSE AND PRINCIPLES

Section 5 Purpose -

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, 'sustainable management' means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and,

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 7 Other Matters - In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to - (a) Kaitiakitanga: (b) The efficient use and development of natural and physical resources: (c) The maintenance and enhancement of amenity values: (d) Intrinsic values of ecosystems: (e) Recognition and protection of heritage values of sites, buildings, places, or areas: (f) Maintenance and enhancement of the quality of the environment: (g) Any finite characteristics of natural and physical resources: (h) The protection of the habitat of trout and salmon.

In addition to these Sections Ken Tremaine (1994) provides an extensive list of **RMA Consultation Sections**. Those sections aplicable to the processes employed during attempts to resolve the case study dispute are listed here.

PART II *PURPOSES AND PRINICIPLES*

Section 5 Purpose
Section 7 Other matters
Section 8 Treaty of Waitangi

PART IV *FUNCTIONS, POWERS AND DUTIES OF CENTRAL AND LOCAL GOVERNMENT.*

Section 32 Benefits and costs
Section 34 Delegation of functions
Section 35 Duty to gather information, monitor and keep records
Section 36 Administrative charges
Section 37 Power of waiver etc
Section 39 Hearings to be public and without unnecessary formality
Section 40 Persons who may be heard at a hearing
Section 42 Protection of sensitive information

PART V *STANDARDS, POLICY STATEMENTS AND PLANS.*

Section 73 Preparation and change of district plans
Section 74 Matters to be considered by the territorial authority
Section 75 Contents of district plans
Section 76 District rules
Section 79 Review of policy statements and plans
Section 83 Procedural requirements deemed to be observed
Section 84 Local authorities to observe their own policy statements and plans

PART VI *RESOURCE CONSENTS*

Section 88 Making an application
Section 92 Further information
Section 96 Making of submissions
Section 99 Pre-hearing meetings

PART XI *PLANNING TRIBUNAL (RENAMED ENVIRONMENTAL COURT)*

Section 267 Application for a declaration
Section 316 Application for an enforcement order

SCHEDULES

First Schedule: Preparation, change and review of policy statements and plans, Part I &II.
Second Schedule: Matters that may be provided for in policy statements and plans.
Fourth Schedule: Assessment of Effects on the Environment.

APPENDIX IV SCHEDULE IV ASSESSMENT OF ENVIRONMENTAL EFFECTS, RMA 1991 [Also refer to Section 88, RMA 1991].

Section 88(6)(b)

1. Matters that should be included in an assessment of effects on the environment -

Subject to the provisions of any policy statement or plan, an assessment of effects on the environment for the purposes of section 88(6)(b) should include

(a) A description of the proposal:

(b) Where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:

(d) An assessment of the actual or potential effect on the environment of the proposed activity:

(e) Where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use:

(f) Where the activity includes the discharge of any contaminant, a description of

(i) The nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and

(ii) Any possible alternative methods of discharge, including discharge into any other receiving environment:

(g) A description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:

(h) An identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted.

(i) Where the scale or significance of the activity's effect are such that monitoring is required, a description of how, once the proposal is approved, effects will be monitored and by whom.

2. Matters that should be considered when preparing an assessment of effects on the environment -

Subject to the provisions of any policy statement or plan, any person preparing an assessment of the effects on the environment should consider the following matters:

(a) Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:

(b) Any physical effect on the locality, including any landscape and visual effects:

(c) Any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:

(d) Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations:

(e) Any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants:

(f) Any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.

APPENDIX V SECTIONS of the RMA APPLICABLE to EDR HEARINGS.

[Also refer to Appendices II, III and IV]

Section 96 Making of submissions [to a resource consent application]

(1) Any person may make a submission to a consent authority about an application for a resource consent that is notified in accordance with S93.

(2) Every submission shall be in writing, shall be served on the consent authority, and shall state - (a) The reasons for making the submission and the decision that the person wishes the consent authority to make, if known by the person making the submission, and the general nature of any conditions sought; and (b) Whether or not the person making the submission wishes to be heard in respect of the submission; and (c) Any other matter prescribed in regulations made under this Act.

(3) A submission may state whether it is in support of, or in opposition to, the application.

(4) A person who makes a submission shall serve a copy of it on the applicant as soon as reasonably practicable after serving the submission on the consent authority.

The **First Schedule clause 6 Making submissions** states "Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5."

The **First Schedule clause 8 Further submissions** states "Any person, including the local authority in its own area, may, in the prescribed form, make a further submission to the relevant local authority, but only in support of or in opposition to those submissions made under clause 6 on a proposed policy statement or plan.

Section 99 Pre-hearing meetings

(1) For the purpose of clarifying, mediating, or facilitating resolution of any matter or issue, a consent authority may, upon request or of its own motion, invite anyone who has made an application for a resource consent or a submission on an application to meet with each other or such other persons as the authority thinks fit.

(2) A member, delegate, or officer of the consent authority who attends a meeting under subsection (1) and who is empowered to make the decision on the application which is subject of the meeting, shall not be disqualified from participating in the meeting if - (a) The parties attending the meeting so agree; and (b) The consent authority is satisfied that the person should not be so disqualified.

(3) The outcome of the meeting may be reported to the consent authority, and that report - (a) Shall be circulated to all parties before the hearing; and (b) Shall be part of the information which the consent authority shall have regard to in its consideration of the application.

Section 100 Obligation to hold a hearing

A hearing need not be held in accordance with this Act in respect of an application for a resource consent (whether or not it is required to be notified in accordance with section 93) unless -

(a) The consent authority considers that a hearing is necessary; or

(b) Either the applicant or a person who made a submission in respect of that application has requested to be heard and has not subsequently advised that he or she does not wish to be heard.

Section 104 Matters to be considered

(1) Subject to Part II, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to - (a) Any actual and potential effects on the environment of allowing the activity; and (b) Any relevant regulations; and (c) Any relevant national policy statement, New Zealand coastal policy statement, regional policy statement, and any proposed regional policy statement; and (d) Any relevant objectives, policies, rules, or other provisions of a plan or proposed plan; and (e) Any relevant district plan or proposed district plan, where the application is made in accordance with a district plan; and (f) Any relevant regional plan or proposed regional plan, where the application is made in accordance with a district plan; and (g) any relevant water conservation order or draft water conservation order; and (h) Any relevant designations or heritage orders or relevant requirements for designations or heritage orders; and (i) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.

Section 268 Additional Dispute Resolution.

(1) At any time after lodgement of any proceedings, for the purpose of encouraging settlement, the [Environmental Court], with the consent of the parties and of its own motion or upon request, may ask one of its members or another person to conduct mediation, conciliation, or other procedures designed to facilitate the resolution of any matter before or at any time during the course of a hearing.

1929 A significant removal of a section of the original trees took place from The Square to Ferguson Street. Public protests occurred, including a deputation led by Mr Park, a former Mayor and Chairman of the Parks and Reserves Committee who was present at the Arbour Day planting in 1892 who stated, "Surely it is possible to preserve these trees? What of the boulevards of Paris? I happened to help in planting these trees thirty years ago" (Manawatu Evening Standard, 2nd November, 1929, quoted in Morris, 1995, p12). Public comments, recorded at the time, reveal a dissatisfaction that the public was not forewarned of Council's intention to fell trees and had not been consulted.

1968-1978 Debate concerning the 1964 Transportation Plan, which initially proposed a 6 lane distributor, and then to 4 lane the Avenue led to protracted campaigns to save the trees. Resultant delay caused by controversy meant the plan was not implemented and no second bridge was built. Structural repairs where made to the then existing bridge and with no further works in progress, the issue subsided.

1978 In the Second Review of the District Scheme, protection was to be given to notable trees in the section on urban amenities. The Director of Reserves had to be satisfied that the tree was worthy of preservation and could come within historic or notable tree categories.[1] No street trees were included on the Tree Register of the Scheme. The practice of pollarding street trees came to an end as a result of strong protests from residents which began in 1976.

1986 Twelve trees were removed during development of the replacement bridge approaches. Some replacements were planted closer to the kerb.

1987 The Third Review of the District Scheme began. It proposed inserting a new set of policies and rules regarding the establishment of a "Fitzherbert Avenue Amenity Area", the intention of which was to "preserve the unique character and streetscape of Fitzherbert Avenue". These rules made all land uses, including those in a proposed 8 metre set-back from the Avenue boundary, discretionary and dependent on the consent of Council. Submissions opposing the control of design and appearance of buildings and trees on private property were received.

1988 In May the City Planner reported to the Planning and Development Committee, clarifying certain matters relating to objections to the proposed 8 metre set-back. He expressed reservations about the proposed 'amenity area' as the future form of the Avenue was now recognised to be indefinite (as the LTDP was to be considered by Council in June) and as the road reserve was controlled by the NRB. Allowing the objections led this Committee to delete the controls on private property. However as no submissions opposed the controls of the street trees, the relevant provisions were retained, in what became Policy 2.25, Ordinance 2.25.1 and Figure 2.2 of the Palmerston North Transitional District Plan, which effectively controlled activities relating to the established trees along the Avenue between Park Rd and the Bridge.

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[1] "Historic trees were those planted to commemorate important events in Maori and European history and notable trees included the following categories: species rare in the locality, being the earliest known planting; trees of large dimension, height or canopy , and trees of aesthetic quality." (Undated 1978 memorandum from Planning Officer, Bayliss to the Mayor in PNCC Archive, File 83/2, in Morris, G. 1975)

Subsequently, in August Council adopted the Long Term Development Plan for Fitzherbert Avenue. An adverse response to this plan by members of the community appear in letters to the Editor and a petition to Council. Again these called for a second bridge instead of alterations to the Avenue. It appears that Council endorsement of the LTDP led to an amendment of the protection provisions in the proposed District Scheme, (to accommodate the tree replacement programme outlined in the LTDP for the Avenue) as, when a protected tree died or was removed it would be replaced, the words "in the same or adjacent position" appear. These were not included in the original version. This wording was to intended to allow planting next to the kerb, in the proposed new alignment, parallel to the original line of trees (Forde, B. personal comment 1997; Morris, G. 1995).

1990 In January 5 trees (straddling the road), were removed outside PNGHS, creating a short 4 lane section and the establishment of a bus bay outside the school The reason for this was given by the Council's Director of Works as being that "the trees had been blamed for reducing the safety on the pedestrian crossing outside the school". His office was inundated with calls from an opposed public. Replacement trees were planted in the new alignment.

1991 The Palmerston North District Scheme came into effect on 30th August 1991, and in accordance with the RMA, 1991 became the Transitional District Plan. Thus Policy 2.25, Ordinance 2.25.1 and Figure 2.2 of the PNTDP came into effect. Refer to Appendix VII.

1993 Council announced its intention to proceed with removal of mature trees from the Avenue in order to 4 lane it. In March, Save the Avenue formed as a public interest group opposed to the removal of the trees. In May, Council decided to fell the trees between Te Awe Street and the bridge. However, Save the Avenue identified rule 2.25.1 in the Transitional District Plan, as an impediment to Council's plans to fell trees in the Avenue. It issued an ultimatum to Council, threatening to seek an injunction in the Planning Tribunal to prevent Council removing the established trees along the Avenue, if Council did not undertake to preserve them. In May, after a public meeting before the Committee of Council it was agreed to defer any further removal of trees until the debate as to the trees' future had been resolved.

Sources: PNCC records files; *Manawatu Evening Standard*, and; Morris, G. 1995

APPENDIX VII HISTORICAL RESPONSES TO THE CROSS RIVER TRANSPORTATION ISSUE 1960's to the early 1990's

(adapted from PNCC, Feb. 1995, "*Cross-River Transportation Historical Background Paper*" to the CRTWP; Archival records of PNCC and the "*Evening Standard*" and; Morris, G. 1995)

1958 Fitzherbert Avenue declared a State Highway (SH57). Approval for any new construction or modification had to be given by the NRB, as well as Council through its 'Transportation Plan'.

1964 A 6 lane motorway with 4 lane flyovers at each intersection dubbed the "Eastern Distributer" was proposed by the City Engineer. This plan noted that duplication of the then existing bridge to provide a total of 4 lanes across the river was the "ultimate choice", however it did not include site recommendations for a second bridge. The Ministry of Works and Development (MoW&D) considered this plan and alterations were made. There was also strong public opposition to a 6 lane motorway requiring demolition of residential areas and the dissection of the city. Faced with this, Council agreed further study was required. The MoW&D recommended a second bridge 400 meters upstream from the site of the then existing bridge.

1966 A further report found that all 5 alternative distributer routes studied were unacceptable and concluded that the need for such an elaborate roading system was premature.

1967 An evaluation of the Transportation Plan (undertaken by Professor Blunden) noted that there was a tendency to underexploit the potential of the existing system, in particular Fitzherbert Avenue. Blunden recommended that the Avenue should become the major arterial route for the city. To complement this, a duplicate bridge should be built off the end of the Avenue, so as to provide for 4 traffic lanes across the river. These recommendations were adopted by Council on November 20th. Trees lining Cook Street were removed, amid some public opposition and the road was 4 laned with a central medium strip of trees planted. Morris, G. (1995) states, "There was some confusion at the time as to why Cook Street was 4 laned. The best guess seems to be that it was intended to lead to a second bridge."

1969 Following further reports to Council, a duplicate bridge at the end of the Avenue was favoured. Consequently, the NRB approved the new transportation plan and the MoW&D timetabled the completion of the duplicate Fitzherbert Bridge for late 1975. In line with the revised Transportation Plan, the carriageway of the Avenue was to be widened to accommodate 6 lanes (4 for regular traffic flow and the other two for parking). At intersections, road width was to be 8 lanes. This plan immediately ran into opposition. Because of public concern over the loss of the trees, a report from the Director of Reserves was requested and a number of replanting proposals were generated.

1970 Strong public opposition to the widening of the Ave began to emerge. On October 14th, a public pressure group, called 'Citizens Initiative', formed. It opposed a duplicate bridge as well as the widening of the Avenue and proposed a second bridge be built of Botanical Road.

1971 A joint City Engineers and MoW&D report submitted to the Traffic Committee of PNCC recommended a second duplicate bridge be sited downstream from the then existing bridge. Adopted by Committee, this report was opposed by other Councillors on several basis; that any decision should be made after impending triennial elections; that it would divide the city geographically; it would result in the deterioration of one corner of the Esplanade (the cities major parkland and open space running alongside the river). The matter became an election issue, with the incumbent Mayor promising a re-examination of the issue if returned to Office. Also, the apparent lack of community consultation over issues such as the siting of a second bridge was increasingly a cause for concern.

On re-election the Mayor, with a determination to encourage community participation, immediately undertook the review as promised. Again the Traffic Committee made recommendations to full Council, but as other Councillors were uncertain, it was agreed to delay construction until all other sites had been investigated fully. The Technical Committee, studying alternative bridge sites as a possible alternative to widening the Avenue decided it could not recommend a possible site for a second bridge. It recommended instead that: all possible sites be protected from development until a final site was agreed on; the Avenue carry no more than 27,000 vehicles per day; Aokautere be restricted to no more than 12,000 people (effectively achieved in 1973 by zoning almost all Aokautere, land recently brought into city boundaries - originally for urban expansion reasons, 'rural'). In July Council announced plans to 4 lane (rather than 6) the Avenue and to replace the 105 trees along its length. To progress the second bridge issue, the City Engineer was to undertake feasibility studies of all alternative sites, while the Mayor consulted the MoW&D. The Minister of Works agreed that the duplication of the Bridge was not of such importance that the NRB needed to freeze funding for the whole Transportation Plan. Studies were then initiated to find the best site for another bridge.

1973 A bridge at Bulls collapsed. This raised concerns over the safety of the Fitzherbert Bridge and Council decided not to duplicate the bridge but to replace it with a new 4 lane bridge, reinforcing the plan to 4 lane the Avenue and extinguishing hopes for a second bridge in the immediate future. Public criticism was quick to follow, as the prevalent feeling among residents that 'two bridges were better than one' remained. Two reports released in July 1973 from the Environment Committee and a Special Traffic Sub-committee both recommended that a Botanical Road site be adopted. However, it was decided in a full meeting of Council that having a bridge off the end of Botanical Rd, a residential street, was not appropriate and again the proposal to concentrate on the Avenue was confirmed.

1974 Citizens Initiative attempted to change Council's mind. On June 30, 1974, Citizen's Initiative came under "a devastating attack by Council members, who shattered the group's credibility. Citizens Initiative was accused of wasting Council time and money, and of basing its arguments on information that was neither accurate or relevant" (PNCC, Feb. 1995, "*Cross-River Transportation Historical Background Paper*") Council endeavoured to implement it's long delayed plans. However, it was now too late as, in December, the NRB shelved any plans for another bridge due to budget cuts nationally. However, engineering tests showing significant structural deterioration of the existing bridge led the NRB to agree to allow strengthening work to be carried out. Despite this remedial work concerns continued to be raised by the public.

1981 A joint report prepared by the MoW&D and the City Engineers said that a new 4 lane bridge with cycle lanes and footpaths was needed in the very near future. Taking into account a two year lead in time, costs were estimated at $7.5 million for a 4 lane bridge and $5.1 for a 2 lane bridge. However the MoW&D said it was unlikely a new bridge could be built before 1986, due to funding constraints. Continued lobbying saw the NRB agree to a replacement 2 lane bridge, slightly upstream from the then bridge, for completion by late 1985. The City Engineer and Council criticised the decision to provide only 2 lanes as short sighted, though Council conceded that a new bridge was better than an old unstable bridge or none at all.

1982 The structure for the new bridge was selected. A curved bridge, requiring no property purchases, was designed so that although it would be 2 laned, it could be upgraded to 3 lanes.

1987 The new bridge was opened. Suggestions that the old bridge be retained were considered unwise as there was a risk it could tip onto its side, creating a dam that could flood the city. While the new bridge was structurally sound, it was soon realised it had done little to alleviate peak-time traffic congestion. A report generated by the City Engineer recommended that the NRB take immediate steps to increase the capacity of SH57 along the Avenue to Massey.

1988 Subsequent studies showed that 3 laning of the Bridge was feasible and that the Avenue should be 4 laned. The Engineers Committee approved the recommendations of these reports in principle in June. An announcement was made to the media as to the Council's intentions to 4 lane the Avenue and that this would involve the removal of the mature trees along the Avenue. Replacement trees would be sited closer to the curb. Within days of the announcement, 'letters to the editor' condemning the action began to appear in the Manawatu Evening Standard. The City Engineer responded by saying that efforts to maintain the character of the Avenue were being made through replacement plantings.

1972 Investigations undertaken by Council's Technical Committee were to come under intense pressure from a number of interest groups. These included the Citizens Initiative group and MoW&D, which dropped heavy hints that if a bridge was not built at the site it chose, the Council would be forced to pay for it. It also threatened to freeze funding for the whole of the Transportation Plan if an alternative site was chosen. A petition requesting Council leave the trees untouched was presented to the Engineers Committee in July. While this was noted by Council, the City Engineers Department's, "Long Term Development Plan for Fitzherbert Avenue", (LTDP henceforth) which outlined the 4 laning and replacement tree planting programme, was adopted by Council in August. The realisation that more than upgrading of the Avenue was required to relieve congestion saw the LTDP expanded to include a flyover at Summerhill Drive intersection (on the east side of the river) and a number of other modifications (including revised cycleways and the 4 laning of Batchelar Corner to Massey), in what was later to be called the "Massey Jam Buster Project". Council also adopted that project.

1989 New Local Government Boundaries expanded Palmerston North to include Ashhurst and Linton. In recognition of this, and the fact that the proposed roading modifications were thought to be only useful in the short-term, the Engineers Committee instructed the City Engineer and the City Planner to investigate the possibility of securing two river crossings (one upstream and one downstream of the existing bridge) with a view to providing access for future urban development. In July replacement trees started to be planted, along the new alignment of the intended 4 laned Avenue.

1992 In July the State Highway Status for the Avenue was revoked. Previously the total cost of works was to paid for by the NRB and its successor Transit New Zealand. After that date, the funding ratio's between Transit NZ and the Council was subject to annual adjustments. Initially however the Council obtained a commitment by Transit that it would 100% fund the bridge and road widening project. Following delays this was reduced to Transit funding 51% of costs, subject to Council's projects meeting its cost-benefit criteria, with the Council to pay the remainder. The Council increasingly saw some urgency in implementing the project as it appeared it could risk loosing all Transit funding.

1993 The Summerhill Flyover was completed. A media release reinforming the public of Council's intention to begin 4 laning the Avenue was circulated to households. The City Planner sought legal advice as to what action the Council could take concerning the trees considering rule 2.25.1 in the Transitional District Plan.

APPENDIX VIII THE POLICY AND ORDINANCE ABOUT THE FITZHERBERT AVENUE TREES, WITHIN THE P.N.C.C. TRANSITIONAL PLAN.

2.25 POLICY : STREET TREE PROTECTION

To protect the existing trees planted on the edge of the Fitzherbert Avenue carriageway.

O2.25.1 ORDINANCE

(1) **No tree or part of the trees planted on the edge of the Fitzherbert Avenue carriageway and identified in Figure 2.2 shall be removed topped or pruned without the express permission of Council.**

(2) **In considering applications to remove, top or prune all or part of these trees Council shall by guided by:**

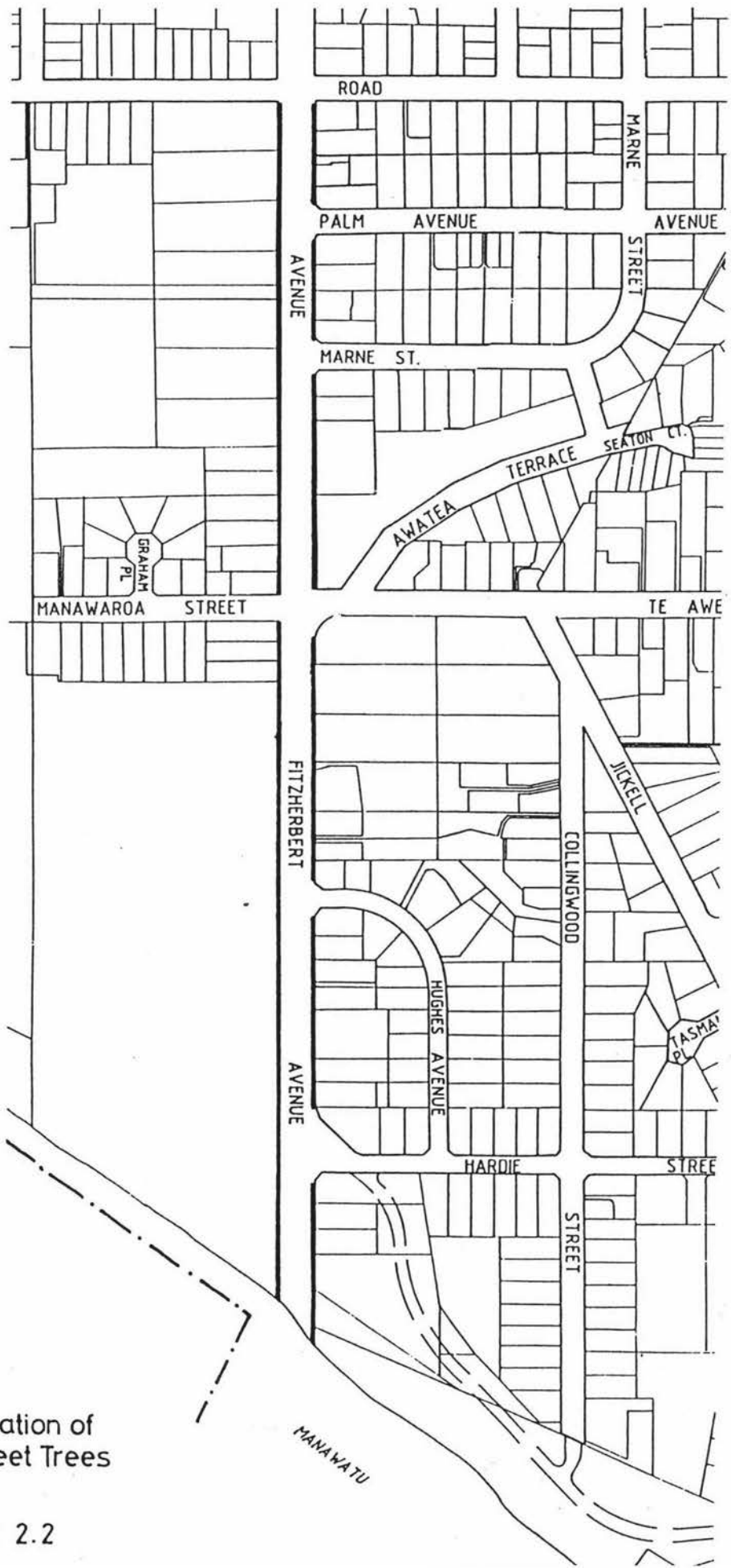
(a) **The necessity for the work considering alternative methods of achieving the solution the application seeks.**

(b) **The age and condition of the tree.**

(3) **Where one or more of the trees planted on the edge of the Fitzherbert Avenue carriageway and identified in Figure 2.2 (on page 51) has died or been removed, it will be replaced in the same or an adjacent position in the first planting season after the tree has died or been removed with a tree capable of growing to a height of 5 metres.**

Source: Palmerston North City Council Transitional District Plan, 1991.

FITZHERBERT AVENUE



— Location of Street Trees

Refer Ordinance 02.25.1

FIGURE 2.2

SCALE 1:5000

APPENDIX IX ESTABLISHING THE CROSS RIVER TRANSPORTATION WORKING PARTY

A **The Facilitators "Terms of Engagement"** (dated 21/11/94)
Standard Terms of Engagement

1 The Facilitator is a nuetral intemediary, and not an advocate for or adviser to any participant or sponsor.
2 The Facilitator may invite any person or group with an interest in the outcome to be a participant in the facilitated process.
3 The Facilitator may conduct the facilitated proces in such manner as he thinks fit, having regard to the nature and circumstances of the matters under consideration, and arrange a timetable and meeting places to suit the participants.
4 One or more participants shall agree to sponsor the facilitating process, including the fees and expensess of the facilitator, but any such sponsorship does not involve any client-consulant relationship or duty owed by the facilitator to the sponsor.
5 The Facilitator may conduct joint or separate meetings with any one or more of the participants.
6 The Facilitator may at any time comment on any aspect of the maters under consideration. Such comments may be made to all participants or to any one or more of them, at the discretion of the Facilitator.
7 The Facilitator does not maintain any technical or legal expertise. Any comments or suggestions by him are therefore not intended to be relied on as technical or legal or professional advice.
8 Negotiations in the facilitated process shall be without prejudice and shall not be referred to or relied upon in any other proceedings.
9 The Facilitator shall not be liable for negligence in respect of any act or omission in connection with the facilitated process.
10 At a separate meeting with a participant, the Facilitator may hear information which is requested to be kept confidential from other participants. If so, provided there is no apparent danger or ciminality or bad faith involved, the Facilitator shal keep the information confidential and shall exclude consideration of it from any comments subsequently provided to other participants on the matters under consideration.

Additional Terms of Engagement The Facilitator will endeavour to:
1 Ensure that agenda objectives are met.
2 Ensure that the Working Party operates within its Terms of Reference.
3 Provide leadership for the group, to ensure the objectives of the Working Party are met within the timeframes specified.
4 Ensure the Working Party adopts a consensual method of working and facilitate agreement.
5 Liaise with the Committee Administrator to ensure administrative support is organised.
6 Give early warning to the City Manager, if the Working Party needs more time or is unable to meet its objectives.
7 Ensure that the Working Party develops agreed criteria against which options will be evaluated.
8 Ensure that Working Party technical expertise requirements are resourced adequately.
9 In the event taht technical reports are commissioned, ensure that full briefs and terms of reference are prepared for such parties, or individuals so commissioned.
10 Act as media spokesperson for the Working Party as appropriate.
11 Ensure a final report is prepared for the Council as outlined in the Terms of Reference for the Working Party.
12 The faciitated process may be terminated at any time by the mutual agreement of the participants or by the Facilitator.

CROSS RIVER TRANSPORTATION WORKING PARTY

1. Problem Definition

The current level of service for cross river transportation offered by the City of Palmerston North is not meeting the needs and expectations of its users.

2. Goal

To find acceptable means of improving the movement of people and goods across the Manawatu River.

3. Principles

The Working Party seeks to achieve the goal according to the following principles:

a To encourage participation by those outside the Working Party who have an interest in the issues, including cyclists.

b To report regularly on progress to the Council (through the City Manager) and other parties to advise progress.

c To be led by an independent facilitator.

d The Working Party undertakes to co-operate in good faith with the Facilitator and with each other and with any other participants in attempting to resolve the matters under consideration. They will comply with the Facilitator's reasonable directions to attend meetings and to provide information.

4. Brief

That the brief of the Working Party will be to:

a Develop meeting procedures in association with the independent facilitator.

b Engage further technical expertise, if required.

c Achieve a common information base by:

- Setting in place the necessary research and information gathering including the review of existing data.
- Where agreement has not been reached each party will record its reasons.

d Develop criteria to evaluate any options.

e Develop, investigate and evaluate options (including the Council's current strategy) which will:

- Solve the Cross River Transportation problems, taking into account short and medium term Cross River Transportation needs and current and long term growth options identified by previous Council research.

f Prepare a final report to Council by 30 April 1995 which will include recommendations for solutions to the defined problem and the basis by which those recommendations were arrived at.

g Seek the acceptance of all parties to that recommendation.

5. Membership

In accordance with the recommendations of the meeting held on 29 September 1994, the Working Party shall include the following representatives:

Automobile Association	1 member
Palmerston North City Councillors	2 members
Emergency Services Coordinating Group	1 member
Fitzherbert Science Centres	1 member
Manawatu Commerce Centre	1 member
Massey University	1 member
Palmerston North Girls High School	1 member
Save the Avenue	2 members
Student Representative from Massey University	1 member

Each organisation shall nominate its members from the particular interest group.

Because the success of the Working Party depends on the continuity and developing understandings, the same representatives will endeavour to attend all meetings.

Where this is not possible alternatives from the particular interest groups may attend.

6. Ground Rules

a Since the success of the Working Party depends on co-operation among all involved, participants will observe the following guidelines:

(i) The personal integrity and values of participants will be respected.

(ii) Personal criticism and stereotyping will be avoided.

(iii) Disagreements will be regarded as problems to be solved rather than battles to be won.

b It is recognised that some participants have an obligation to make decisions necessary for the proper functioning of their Council, group, organisation or agency. Participants will advise the Working Party of pending decisions and information that are within the scope of the Working Party, unless prior disclosure would jeorpardise actioning the decision. In the latter case, participants will be notified of the decision as soon as practicable. It is the intention of this ground rule that irrevocable financial or policy commitments will be disclosed while still pending and able to be discussed by the Working Party.

c The Working Party may create committees of its own members, or form task groups that may also include others who are not participants, for detailed study of specific topics.

d The Facilitator may meet with the parties jointly or individually, and may agree to keep certain information confidential if so requested.

e If discussing the Working Party with reporters, participants, and observers shall be careful to present only their own views and not those of other participants. The temptation to discuss someone else's statement or attitude should be avoided. A positive tone shall be conveyed wherever possible.

f While the Working Party is studying, negotiating or evaluating issues, participants will not make public statements prejudging the outcome. Such statements could jeorpardise constructive discussion and reduce someone's ability to accept or modify a proposal.

g It is the joint responsibility of all Working Party participants and the Facilitator to ensure these groundrules are observed.

7. Public Reporting

Public meetings may be called by the Working Party as progress is made. Public meetings shall be notified by both newspaper advertisements and letters of notification to those already on the contact list held by the City Council.

Only the independent facilitator shall make media statements on behalf of the group.

Except by joint agreement all working party meetings are closed to members of the media and the general public.

8. Funding

The Working Party shall prepare budgetary advice for the activities which it advises or recommends should be undertaken.

Funds will only be committed in accordance with the Council's budget for the activities advised or recommended for the Working Party and only with the agreement of the Council.

The Council shall administer any funds it makes available.

9. Support

The Council will provide reasonable support and expertise to enable progress to be maintained.
The Council will provide relevant information in a timely manner to support the progress of the Working Party.

The Council will arrange and provide all support services associated with meetings of the Working Party. This includes any photocopying, typing, OHP production and general clerical support.

Representatives of voluntary organisations who attend any approved meetings shall be entitled to the following payments from the Council:

a Travel costs based on a mileage allowance of .45c per km

b Accommodation and meals where appropriate.

c Meeting attendance allowances may be considered, at Council's discretion.

All of these items are subject to Council policy and guidelines.

The Council will engage a technical writer to assist in the writing of any summary material and assist in the preparation of the final report.

10. Agreement

The Working Party will be led by an independent facilitator who will act in the role of mediator in facilitating agreement. Such agreements may be binding on parties.

11. Legal Prejudice

Being involved in a facilitated process shall not prejudice any existing legal rights of a participant.

Except as agreed, communications opinions or tentative agreements or other information initiated in the course of developing understandings and agreement within the Working Party will not be offered or utilised as evidence in any administrative or judicial proceedings.

12. Confidentiality

Reports made available to the Working Party on a confidential basis may not be discussed with or disclosed to any person or organisation other than members of the Working Party or appropriate Council officers. The reasons for which reports are to be treated as confidential will be given to the Working Party and will be in accord with reasons permitted by the Local Government Official Information and Meetings Act 1987.

Tentative or sensitive information will be respected as such.

I agree to the above Terms of Reference.

APPENDIX X THE FACILITATOR'S INTRODUCTION TO, AND THE CROSS RIVER TRANSPORTATION WORKING PARTY'S FINAL REPORT

David E Hollands
Auckland 10, New Zealand
Phone: (+64+9) 480-6858

22 April 1995 ATTACHMENT 1

Palmerston North City Council
Private Bag 11-034
The Square
Palmerston North

Attention: Susan Burnet
City Secretariat

Your Worship the Mayor and Councillors

Re: Cross River Transportation Working Party

I am pleased to submit the attached Final Report of the Cross River Transportation Working Party. It is not my report. It is the report of Members of the Working Party, in response to your challenge to find ways of improving the movement of people and goods across the Manawatu River.

The need for a new approach arose from the failure to gain a resource consent for the felling of certain trees in Fitzherbert Avenue, thus frustrating the proposed four laning of Fitzherbert Avenue. After examining a number of alternatives, Council decided that a Working Party presented an opportunity for the Council and the community to work through this divisive issue together, rather than continue with an adversarial planning approach. This was seen as allowing all parties to look at the issues, explore the options in a relatively constructive and open manner, and re-evaluate Council's original thinking.

Cross river transportation is a complex problem, and the Working Party therefore sought a wide range of information. This has not been easy during the time period allocated, as it coincided with the Christmas period, the University break, and work on the new District Plan. Nevertheless I can assure you that all members worked conscientiously and cooperatively throughout, to produce the best outcome possible in the circumstances, and were greatly assisted by Council officers and consultants.

The choices came down to one or more further bridges, increasing the number of vehicle lanes across the existing bridge and approaches (including three-laning or four-laning the section of Fitzherbert Avenue between Te Awe Awe Street and the bridge), or tolerating on-going and increasing delays

PROFESSIONAL ENGINEER IN DISPUTE RESOLUTION AND MULTI-PARTY PROBLEM SOLVING
MEDIATOR • CONCILIATOR • FACILITATOR • COMMISSIONER • ARBITRATOR • ADR NEUTRAL
FICE, FIPENZ, FAIbINZ, MNZIS, MSPIDR, FMediNZ
Fax on manual extension when attended (NZ business hours only please)

in the meantime. Indeed it would seem that delays can only be reduced (and not eliminated) by additional lanes or further bridges, due to the nature of the traffic demand involved.

These choices are illustrated schematically on the attached diagram. Traffic demand at the Fitzherbert Road bridge is expected to nearly double over the next 25 years. Additional lanes can reduce vehicle delays, but the traffic will build up again and delays will become unacceptable by about 2010 or possibly sooner (the date is uncertain), when a second bridge will be needed anyway. A second bridge will reduce delays significantly (note that two 2-lane bridges have higher vehicle capacity than one 4-lane bridge). If nothing is done in the meantime, delays will continue to increase until a second bridge is built, with the proviso that a dramatically improved bus service could reduce vehicle demand and hence vehicle delays.

However, there are other issues than just vehicle delays and costs to consider. Quoting from the report Chris McDonald, Architect and Urban Planner, prepared for the Working Party:

> "Fitzherbert Avenue is a boulevard. It is approximately 30 metres wide and two kilometres in length and it leads directly from one of the city's major gateways to the heart of the CBD. The ends of the street are strongly defined where State Highway 57 (sic) crosses the Manawatu River and where the Avenue enters The Square. As a consequence, Fitzherbert Avenue links Palmerston North's two main landscape features. The Avenue also provides the most visible connection between the city centre and the knowledge-based industries clustered around the Massey Campus. Fitzherbert Avenue is one of four arterial streets which divide the city into quadrants. This street features on the Council's logo and the route probably forms part of a similar conceptual "diagram" of Palmerston North which residents and visitors construct in order to understand and remember the city's form. For all these reasons, Fitzherbert Avenue might be called the "front door" of the city. It serves an important symbolic role and the character of this street is an essential component of Palmerston North's identity."

Hence, the dilemma of cross river transportation is not just a matter of traffic capacity. It raises a fundamental issue for the identity of Palmerston North. Fitzherbert Avenue, with its trees, is a landscape feature which residents and

visitors alike relate to when they think of the city and what it stands for. It can be likened to a prominent historic building, with its links to the past and its symbolism for the future.

Hence, just as the correct engineering and cost-effective answer was to widen the Avenue and bridge, Save the Avenue and others were making an important statement when they opposed removal of the older trees. Both viewpoints are sincere and valid, and hence it has been challenging to find answers that can be accepted by all members.

Quoting again from Chris McDonald's report:

> "Some conflict exists between the Avenue's status as an arterial route and the present character of the streetscape. However, on balance, I consider that the route's strategic location and intensive use contribute to its significance as an amenity. The route is experienced by large numbers of motorists, cyclists and pedestrians as well as those who work, study or reside there." ..
>
> "The original pattern of streetscape has been eroded but a group of older plane trees survive within each of the major blocks south of Ferguson. From the motorist's viewpoint, these gaps between these groups appear "compressed" by perspective and by the speed of travel. For these reasons the Avenue can still be perceived as an intensely "treed" street with consistent character." ..
>
> "Overall the visual character of Fitzherbert Avenue will become more conventional if the new landscape pattern prevails. Specifically, the street trees will be experienced more strongly as edge features and will no longer appear as central elements within the street's cross-section. All these visual characteristics provide "clues" to the relative status of pedestrians and motorists. If street trees are all placed on the new alignment, emphasis will shift to vehicular traffic and the car will assume a "privileged" position within the landscape." ..

and from his recommendations, ..

> "Between Te Awe Awe and Ferguson, as many as possible of the older plane trees should be retained. Most of the younger trees should be removed or relocated. The original landscape pattern should be reinstated by planting new plane trees at 20 metre intervals, approximately eight metres inside the right-of-way in line with the mature specimens. This layout should provide the primary, characterising feature of the Avenue." ..

It should be noted however that Yvonne Weeber (PNCC Senior Landscape Architect) and David McKenzie (Landscape Architect from Works Consultancy) consider that the newer trees in their present (wider) alignment have the potential to grow to a height of 30 metres and form a total enclosed canopy across the Avenue.

There is no doubt that delays to cross river vehicle traffic are occurring on weekdays during term time, especially on wet days. I personally measured a maximum delay of 15 minutes on a Thursday morning and 8 minutes on a Wednesday evening, and the group agreed these delays to vehicles were typical and were often exceeded. Hence, something must be done, especially for the long-term.

There is a strong body of feeling in the working party that a second bridge has been needed for some time, and many are frustrated that it will still take a minimum of a further seven years to achieve this. Hence the recommendation that studies for a second bridge, taking into account the city's entire transportation network and the Council's strategic planning, be commenced immediately.

There are also perceptions that four lane roads divide communities and create their own safety risks (to vehicles, cycles and pedestrians).

Whilst further bridges provide an answer, they raise difficult funding issues, especially as Transit funding is uncertain. Can the cost of a second bridge be justified in order, amongst other things, to save the existing amenity value of the Avenue? What part do bridges and tree-lined streets play in the future form of the city? What are the environmental impacts of constructing further bridges?

These are important questions for you, as elected representatives of the community, to consider as part of the City's overall strategy planning. The Working Party, as a microcosm of the community (including the Council), is providing recommendations on how the dilemma might be resolved.

The recommendations can be summarised as follows:

(a) Take immediate action to:

- encourage improvement in the bus service (which involves other parties)
- address safety and traffic management issues along Fitzherbert Avenue
- make minor traffic-capacity improvements along Fitzherbert Avenue
- improve cycle facilities
- commence detailed studies for a second bridge.

(b) Take short to medium term action to:

- increase the number of vehicle lanes over the bridge and approaches (including the section of Fitzherbert Avenue from Te Awe Awe Street to the bridge), either by four laning (which involves removal of the older and protected trees in this section and questions of cycle safety) or by three laning (which involves tidal flows and questions of vehicle safety)
- enhance the streetscape (including keeping the older trees between Park Road and Ferguson Street).

(c) Take medium to long term action to:

- construct a second bridge
- consider the possibility of a third bridge to serve future urban growth and the desired form of the city

  (subject to detailed studies to be commenced now, taking into account the entire transportation network and the Council's strategic planning)

An important recommendation is for the Council to establish a Liaison Group, from those involved in the Working Party, to facilitate communication between the parties during the further development, design and implementation of the current recommendations. It is also recommended that additional parties affected by future bridge proposals be included in the consultation process.

There is complete agreement on the vast majority of the recommendations in the report. However, one important issue which has not been able to be agreed is whether the section of the Avenue from Te Awe Awe Street to the bridge, which needs additional traffic lanes, should be three laned or four laned. The report suggests a process by which the relevant information (including that available to the working party, and further details which have not yet been clarified) is collated into a report, and for the parties to be able to make formal submissions. Council will then have to make its own decision on this issue.

Some might suggest that failure to reach agreement on this issue means the working party process has been futile. I would strongly disagree. The group has achieved the best possible outcome that could be expected with the information and within the time it has had available.

I believe it has been a valuable exercise to bring together disparate information and views, and develop options and recommendations through this working party process. There has been a sense of harmony in the group and of growing understanding and respect for each other's views. Council's aspirations in embarking on this exercise have therefore been realised.

It has been a privilege for me to work with members of your community, and I thank you for this opportunity.

Yours sincerely

David E Hollands

David E Hollands
Facilitator

CROSS TRANSPORTATION WORKING PARTY, PALMERSTON NORTH CITY

FINAL REPORT

1.0 SUMMARY OF RECOMMENDATIONS

1.1 The recommendations of this report can be summarised as follows:

1.2 Take immediate action to:

- encourage improvement in the bus service (which involves other parties)
- address safety and traffic management issues along Fitzherbert Avenue
- make minor traffic-capacity improvements along Fitzherbert Avenue
- improve cycle facilities
- commence detailed studies for a second bridge.

1.3 Take short to medium term action to:

- increase the number of vehicle lanes over the bridge and approaches (including the section of Fitzherbert Avenue from Te Awe Awe Street to the bridge), either by four laning (which involves removal of the older and protected trees in this section and questions of cycle safety) or by three laning (which involves tidal flows and questions of vehicle safety)
- enhance the streetscape (including keeping the older trees between Park Road and Ferguson Street).

1.4 Take medium to long term action to:

- construct a second bridge
- consider the possibility of a third bridge to serve future urban growth and the desired form of the city

  (subject to detailed studies to be commenced now, taking into account the entire transportation network and the Council's strategic planning)

2.0 BACKGROUND

2.1 The Cross River Transportation Working Party was formed in October 1994, with the goal of finding acceptable means of improving the movement of people and goods across the Manawatu River. The Working Party was required to report by 24 April 1995.

2.2 The Working Party included representatives of the following parties:

Emergency Services (Police, Fire, Ambulance)
Fitzherbert Science Centre
Manawatu Commerce Centre
Massey University
Massey University Students' Association
NZ Automobile Association, Manawatu District
Palmerston North City Council
Palmerston North Girls High School
Save the Avenue

Two additional participants were invited to increase input on cycling issues.

2.3 The current level of service for cross river transportation is not meeting the needs and expectations of users. There are safety concerns for users and significant delays for motor vehicles at peak hours.

2.4 Based on professional advice, the Council had previously decided to widen the entire length of Fitzherbert Avenue, Fitzherbert Bridge and Tennent Drive as far as Massey University to four-lanes (two in each direction). At that time, the four laning was however felt by some other parties to introduce unacceptable safety and environmental effects.

2.5 The need for a new approach arose from the failure to gain resource consent for the felling of certain trees in Fitzherbert Avenue, thus frustrating the proposed four laning of Fitzherbert Avenue. After examining a number of alternatives, Council decided that a Working Party presented an opportunity for the Council and the community to work through this divisive issue together, rather than continue with an adversarial planning approach. This was seen as allowing all parties to look at the issues, explore the options in a constructive and open manner, and re-evaluate their original thinking in the light of additional information.

3.0 STUDIES UNDERTAKEN BY THE WORKING PARTY

3.1 Cross river transportation is a complex problem, and the Working Party therefore sought a wide range of information. Input was received from Council staff and consultants on a wide variety of issues, including city vision and strategy, planning (including future growth), traffic engineering,

cycling, accidents, public transportation, demand management (social options), streetscape, etc. In due course, this information will be collated by Council into an appendix to this report.

3.2 The timing of the process, over Christmas and through the University's holiday break, meant that reliable traffic information was unavailable in the early stages and still remains partly incomplete. Nevertheless, the available information has been used to arrive at the recommendations given below. Traffic consultant Graham Dickson (who had previously given evidence at the resource consent hearing for the trees, at the request of Save The Avenue) was engaged at the request of the Working Party to peer review and comment on aspects of the traffic engineering input provided by the Council's consultant, John Foster of Traffic Design Group. Further detail must be resolved during final design.

3.3 The Working Party met regularly to receive and discuss the information, develop and consider options, and resolve this final report.

3.4 A wide range of organisations and individuals was kept informed of progress of the Working Party through a monthly newsletter. The wider public was kept informed through regular media releases.

4.0 FUTURE GROWTH OF CITY

4.1 There are options as to how the city might develop in the future, which are currently being studied in conjunction with the new District Plan.

4.2 The most likely scenario involves major areas of urban expansion at Kelvin Grove and Aokautere to the year 2011, and then expansion in the Linton area.

4.3 Any substantial growth in residential development to the "south" of the Manawatu River would however produce a large increase in demand for traffic movements across the river, much of this in the opposite direction to the current peak demands (so that vehicle flows will become more balanced in both directions, rather than being tidal as at present).

5.0 COMMENTARY

5.1 There are safety concerns for traffic (vehicles, cycles and pedestrians) and significant delays for motor vehicles at peak hours along Fitzherbert Avenue, Fitzherbert Bridge and Tennent Drive.

5.2 Peak traffic demand on the section of road from the Te Awe Awe Street intersection to the Summerhill Drive interchange substantially exceeds its present capacity. The present two

lanes are inadequate to cope with the week-day term-time peak-hour traffic demands.

5.3 The current delays at peak hours along Fitzherbert Avenue, Fitzherbert Bridge and Tennent Drive can be substantially reduced by increasing the number of vehicle lanes across the river and adjacent sections of road.

5.4 In the short-term (i.e. prior to construction of any second bridge), this can only be done using the existing bridge. Some members perceive that a dramatically improved bus service could reduce vehicle demand and hence reduce vehicle delays.

5.5 It should be noted however that widening the existing bridge and approaches would not eliminate all delays. It could however be expected to reduce the time that the route is running to capacity and to reduce vehicle delays along Fitzherbert Avenue and Tennent Drive and in the adjacent roading system.

5.6 Traffic demand will gradually increase with time, much of this in the opposite direction to the current peak demands. Hence, the existing bridge and approaches, even when widened to provide more traffic lanes, would only provide relief until about the year 2010 with the assumed city growth pattern. Hence, a second bridge will be needed.

5.7 Factors other than traffic capacity indicate that a second bridge is desirable as soon as possible (although one member questions this immediacy), including those of amenity, robustness of system, response for emergency services, scale of intersections and desirable city form.

5.8 Present information indicates that a second bridge would need to be located reasonably close to the existing bridge if it is to alleviate traffic demands across Fitzherbert Bridge.

5.9 If urban expansion is to occur to the south of the river, as expected, the second bridge (and possibly even a third bridge) would help to serve this.

5.10 However, selection of a specific location for any future bridge requires further and more detailed studies.

5.11 Due to the lead-time of at least seven years required to investigate, evaluate options, design, obtain approvals and construct a second bridge, detailed studies should commence forthwith.

5.12 Studies for future bridges should take into account the entire transportation network and the city's strategic planning.

5.13 Decisions made on cross-river transportation should maintain flexibility; e.g. to respond to new information or changing circumstances.

5.14 Motor vehicles should be encouraged to use the roading hierarchy as intended; e.g. not to use the Esplanade as an alternative route.

5.15 Providing good and safe facilities for cyclists is seen as a way of reducing the number of cars and the congestion and environmental pollution they cause.

5.16 Providing a good bus service is also seen as important in serving the needs of the disadvantaged, providing an alternative to cars, and catering for the needs of some cyclists and pedestrians on wet days.

5.17 Further traffic information (including vehicle, cycle and pedestrian information) should be regularly obtained during term time, as necessary to establish the progressive effects of improvements (in terms of flows, delays and safety).

6.0 PUBLIC TRANSPORT

6.1 The City Council, Regional Council, bus operator, Massey University and Students Association should co-operate in making every effort to maintain, improve and promote bus services between the city and university, especially at peak hours.

6.2 It should be possible to develop new bus routes and strategies to better serve the needs of users and minimise bus delays. The cost-benefit, including amenity, of providing sufficient capacity to reduce travel time across the river needs further study, but some trials should be commenced forthwith.

6.3 Where justified, covered shelters should be provided at bus stops along streets served by the University bus route and within the University.

7.0 CYCLING

7.1 The Council should improve signs, routes, route definition and intersections for cycling.

7.2 All recognised cycle routes (including those through the Esplanade) should have smooth sealed surfaces and adequate drainage.

7.3 The Council should maintain all cycle paths in a clearly-marked and regularly-swept condition, so they are suitable for the use intended.

7.4 It is desirable for all main cycle routes to have an effective two-lane width (i.e. minimum 2.0m marked cycling zone, plus allowances such as 0.5m from moving vehicles, 0.5m from any barrier or trees, and 1.0m from parked cars) and where possible be legally designated to obtain maximum protection for cycle use.

7.5 The Council should improve the underpass at the bridge for cycles and pedestrians, including better lines of sight so that users coming from opposite directions can see each other.

7.6 The Council should, if feasible, improve cycle access over Hokowhitu Lagoon from Caccia Birch Lane.

7.7 The Council should endeavour to improve safety for cyclists on Centennial Drive, where parking of vehicles restricts carriageway widths.

7.8 The Council should consider cycle and pedestrian safety improvements at the Te Awe Awe St/Victoria Ave intersection and the Esplanade entrance off Park Road.

7.9 The Council should improve pedestrian and cycle facilities on the Massey side of the bridge (to University and other destinations), including especially the cycle lane to Massey from Batchelar Corner.

7.10 The Council, Massey University and the Students' Association should, together, continue to seek ways to improve egress for cyclists and pedestrians leaving the University and travelling towards the city.

8.0 IMMEDIATE ACTION TO IMPROVE TRAFFIC FLOWS

8.1 There are a number of safety and traffic management issues along Fitzherbert Avenue that should be addressed promptly, irrespective of any changes arising from a cross river transportation strategy.

8.2 Hence, subject to detailed design, the following improvements should be made along Fitzherbert Avenue as soon as possible:

8.3 Modify the Park Road intersection and install signals there.

8.4 Install signals at the pedestrian crossing outside Palmerston North Girls High School.

8.5 Review and as appropriate improve intersection layout and control (including phasing of signals) throughout, with consideration to cyclists and pedestrians.

8.6 Consider restricting egress from Hardie Street onto Fitzherbert Avenue.

8.7 Provide clear paint markings to define vehicle and cycle lanes, and parking and restricted-parking areas.

8.8 Remove specified trees adversely affecting intersections (after consultation through the Liaison Group - see clause 11.4).

8.9 Trim trees, as necessary to provide for full legal height clearance along traffic lanes.

8.10 Improve street lighting along Fitzherbert Ave, in sympathy with the amenity value of the road.

8.11 Arising from consideration of a cross-river transportation strategy, the following are also recommended (subject to detailed design) for the short term:

8.12 Retain two-lane vehicle flows (i.e. one lane in each direction) between signals and their approaches from Ferguson Street to Te Awe Awe Street, with a flush median.

8.13 Along the mid-block sections of the Avenue between Ferguson Street and Park Road:

(a) maintain the older trees along their present alignment

(b) maintain the newer trees and planters along the alignment of the newer trees

(c) provide a cycle path between the tree alignment and the vehicle lanes

(d) provide an open-textured (porous) surface over the root-zone between the trees, so that some air can enter the soil.

8.14 Along the mid-block section of the Avenue between Park Road and Te Awe Awe Street (as a holding pattern, pending future review - see clause 10.4):

(a) maintain the newer trees and planters along the alignment of the newer trees

(b) retain as many as practicable of the older trees, until the strategy for further bridge crossings is decided (see para 10.4)

(c) provide a cycle path between the tree alignment and the vehicle lanes.

8.15 Undertake cycling, pedestrian and public transport improvements, as above.

8.16 As the immediate actions recommended in this section are implemented, further information will become available as to their effects in reducing delays and improving safety.

9.0 SHORT TO MEDIUM TERM ACTION TO IMPROVE TRAFFIC FLOWS

9.1 Increase the number of vehicle lanes from Te Awe Awe Street across the bridge and provide four lanes (i.e. two in each direction) from there to the University.

9.2 This will require detailed design, but is expected to include the following:

9.3 Widen the bridge by minor modifications which involve structurally extending the width of the pathway on both sides, construction of a barrier between the vehicles and raised pathway, and relocation of the light standards to the outside of the pathway (this will only allow for a one-lane cycle path and a 1.0m-wide footpath, separated by a line, on each side of the widened bridge).

9.4 Provide across-road pedestrian links at both bridge abutments.

9.5 There is an unresolved difference of opinion between members of the Working Party as to how additional vehicle lanes should be achieved between Te Awe Awe Street and the bridge.

9.6 One opinion involves:

(a) four vehicle lanes, with a cycle path and footpath on each side of the road

(b) remove the existing trees and plant new trees on a different alignment (this would require legal procedures to remove the current protection afforded to the existing trees by the district plan).

This view is currently held by representatives of the following parties:

Emergency Services
Fitzherbert Science Centre
Manawatu Commerce Centre
NZ Automobile Association, Manawatu District
Palmerston North Girls High School
Palmerston North City Council

Their reasons are that four-laning:

- provides adequate traffic capacity for a longer period (including when flows in both directions are more balanced in the future)
- is more conventional, and hence is safer for vehicles, other road users and adjacent property owners
- involves lower capital and operating costs

9.7 The other opinion involves:

(a) three vehicle lanes (one in each direction and a centre lane for tidal flow, in the rush hour traffic direction), with a cycle path and footpath on each side of the road (this would require overhead lane signals to control use of the centre lane and a prohibition on right turns from adjacent properties during rush hours)

(b) retain the existing trees (with some trimming to ensure full legal height for vehicles in all lanes and visibility for overhead lane signals).

This view is currently held by representatives of the following parties:

Massey University
Massey University Students' Association
Save the Avenue

Their reasons are that three-laning:

- retains the amenity-value of the existing trees
- provides a comprise to minimise traffic delays in the meantime, pending construction of a second bridge
- has greater safety for cyclists
- minimises the potential for further division of residential areas by concentrated traffic routes
- is a compromise position that can be reversed
- can be more readily implemented, albeit without external funding

9.8 In resolving this difference, it is recommended that Council obtain a detailed report on the specific options of three or four laning between Te Awe Awe Street and the bridge (subject to peer review). Participants propose to review this issue with their constituent parties, and provide submissions to Council before it decides what course of action to adopt.

9.9 Between Te Awe Awe Street and Park Road, after the High School pedestrian crossing is signalised, further road design is needed. On the one hand there is a desire to retain as many as practicable of the older trees. On the other hand, some parties are opposed to any merging traffic in the vicinity of the High School and Huia Street (for safety reasons) and prefer that the older trees between Huia Street and Park Road be removed (to improve safety for cyclists and for vehicles coming in and out of Huia Street).

10.0 IMPLICATIONS FOR THE FUTURE

10.1 It is recognised that if a four-lane bridge was to be used to capacity in the future, this would require four-laning the rest of Fitzherbert Ave and further major upgrading of

intersections (for which extension of the road reserve would be likely to be required) and side streets.

10.2 However, this is not considered desirable, due to the importance of retaining the present streetscape along at least parts of the Avenue, minimising the need for major intersections, and minimising the potential for further division of residential areas by concentrated traffic routes.

10.3 Two-laning should therefore be retained in the long-term between Ferguson Street and Park Road.

10.4 Final treatment of the section between Te Awe Awe Street and Park Road will depend on the nature and effectiveness of the short-term and medium-term improvements (see clause 9.9), and on the number, location and timing of further bridge crossings.

10.5 There is an evenly split difference of opinion as to where trees should be replanted when the older trees eventually need to be replaced - should they be on the alignment of the older trees or on the alignment of the newer trees? It is felt that this decision can be deferred until long term strategies are confirmed.

11.0 GENERAL

11.1 Trees along the alignment of the older trees should be clearly marked and lit to ensure they do not create a hazard to traffic.

11.2 Except as above, trimming of trees should only be done for reasons of safety, tree-health or aesthetics. Removal of trees should not be undertaken without prior consultation.

11.3 The Council should maintain a supply of suitable specimens for use in promptly replacing older trees and those younger trees that get damaged.

11.4 To facilitate communication between the parties during further development, design and implementation of these recommendations, the Council should set up a Cross River Transportation Liaison Group from those involved in this working party.

11.5 After further design and environmental studies have been done for future bridges, and Council planning and transportation aspirations have been clarified, the Council should consult with stakeholders again (including any additional parties affected by the proposals) to consider the next steps.

APPENDIX XI COUNCIL'S INFORMATION BROCHURES DISSEMINATED TO ALL HOUSEHOLDS.

CROSSING THE MANAWATU RIVER



Crossing the Manawatu River at peak times is becoming a problem. We have only one bridge but more and more of our people are wanting to use it.

Every morning and afternoon, especially during Massey University semesters, hundreds of Palmerstonians battle to cross the River resulting in traffic jams, delays and accidents.

The situation is going to get worse as our residents spread across to live on the other side of the River. The number of people attending Massey University and working at the Crown Research Institutes is also growing, adding to the congestion.

We set up the Cross River Transportation Working Party to look at the problem. They found traffic demand on the Fitzherbert Bridge is expected to nearly double over the next 25 years. They say we are going to need at least two bridges across the Manawatu River by the year 2010.

So, what are we doing to solve the problem of crossing the Manawatu River?

We are committed to building a second bridge. The consultation process and actual construction could take some time but if all goes well it could be finished in as little as seven years.

But first, to solve the problem at the Fitzherbert Bridge, we are going to expand it to four lanes. This will cost $1.4 million and should take only 12 months to complete.

This will mean there will be four lanes from the Bridge to Massey and the research centres. This will improve traffic flow considerably but we will still have traffic jams on the Fitzherbert Avenue side of the Bridge.

Let's look at the options for the approach to the planned four-lane Fitzherbert Bridge.

CROSS RIVER
PLANNING FOR PEOPLE

A SECOND BRIDGE WILL BE BUILT

Palmerston North City Council is committed to building a second bridge, regardless of how the Fitzherbert Avenue issue is resolved.

The Council is looking at all the issues surrounding a second bridge, including environmental impacts, roading and possible sites.

Consultation, planning, investigation and design for a second bridge will take at least five years. Every aspect of a second bridge will be looked at from finding the best site to designing the right bridge. Once the consultation and planning are finished it will only take between two and three years to build.

A second bridge will cost between $10 and $15 million to build, including approach roading, depending on the location and form.

Transit NZ may assist with funding for a second bridge if Fitzherbert Avenue is fully utilised. If it decides Palmerston North has not maximised the use of the Avenue, extra funds will need to be raised to pay for the second bridge.

FACTS TO CONSIDER

The Fitzherbert Bridge will be expanded to four lanes. Fitzherbert Avenue will be extended into four lanes or three lanes with a tidal flow system. We have to decide what option to take.

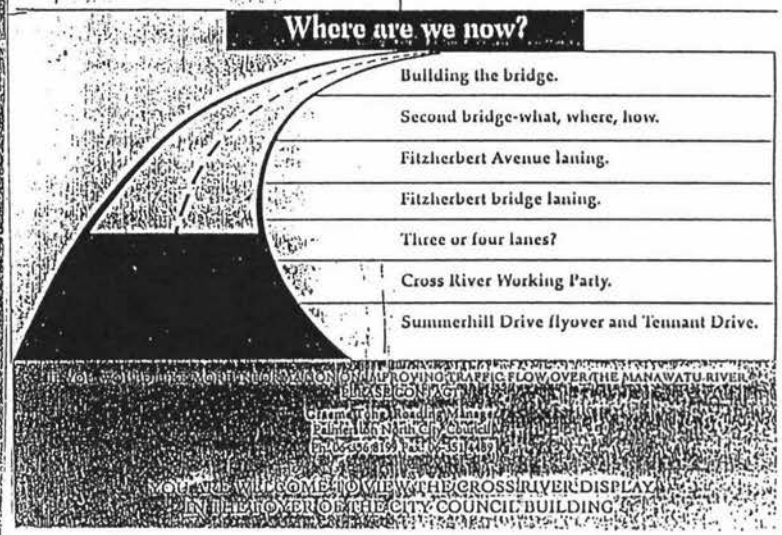
There will be four lanes from the Bridge to Massey University.

A four lane bridge and additional lanes on Fitzherbert Avenue will improve the traffic flow in the medium term but we still need more lanes across the Manawatu River.

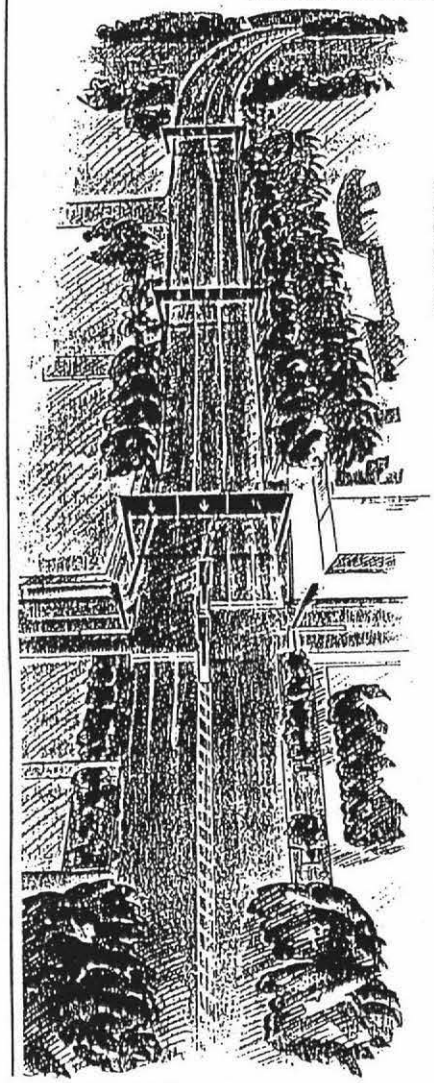
A second bridge will still have to be built to cope with future growth.

It will take some years before a second bridge can be built.

The Palmerston North City Council has commissioned a detailed report, due out in August that will provide more information about the three versus four laning of Fitzherbert Avenue. Council will use this report to assist in making its decision on whether to three or four lane the approach to the bridge.



IMPROVING TRAFFIC FLOW ON TO THE FITZHERBERT BRIDGE



We need to increase the number of lanes from Te Awe Awe St leading up to the widened bridge to improve traffic flow and increase safety.

SHOULD WE OPT FOR A ....

THREE-LANED APPROACH?

If we opt for three lanes, Fitzherbert Avenue will be three-laned from Te Awe Awe St to the north end of the Fitzherbert Bridge. It will work under a tidal flow system with two lanes of traffic heading toward Massey in the morning and two back into town in the afternoon. It will require detailed design but is likely to include the following features.

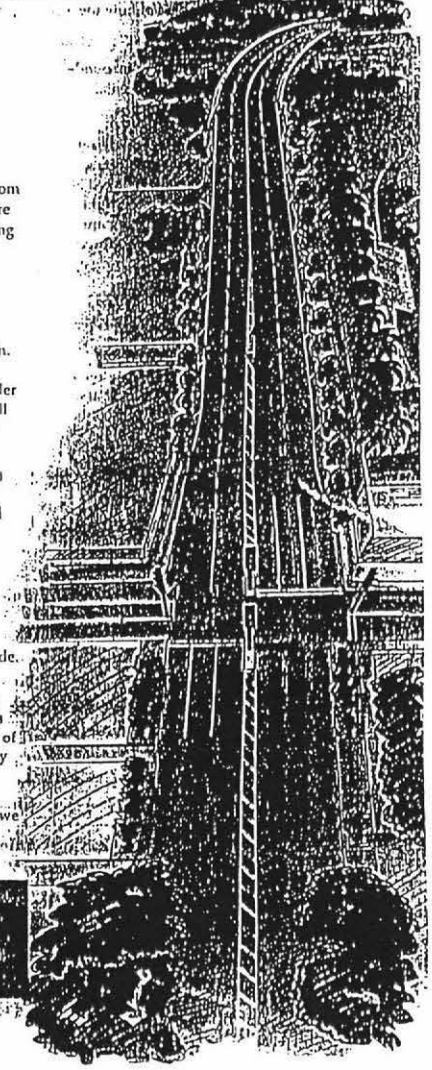
- There will be five sets of signals above the road to indicate which lanes are open for traffic in each direction.
- A visual indicator such as cones will be placed between the lanes to define them.The tidal flow direction will be changed twice daily.
- There are seventeen trees between Te Awe Awe St and the bridge which will be pruned to allow heavy vehicles to travel in the left lane. One tree will be removed. The trees from Te Awe Awe St to the Square will remain.
- The vehicle lanes will be about 3.5m wide. There will be a new kerb on the traffic side of the trees.
- Car parking at the side of the road will be reduced.
- Cycle lanes will be in much the same position as they are now. They will be marked and separated from the traffic behind the row of trees.
- Access into and out of properties on Fitzherbert Avenue between Te Awe Awe St and the Bridge will, at times, be restricted.
- The cost of three-laning Fitzherbert Ave between Te Awe Awe St to the Bridge will be at least $800,000. There will be ongoing costs to pay for running the tidal system.

OR FOUR LANES ?

If we choose this option there will be four lanes from Te Awe Awe St to Massey University. It will require detailed design but is likely to include the following features.

- Of the trees between Te Awe Awe St and the bridge, eighteen will be removed. The trees from Te Awe Awe St to the Square will remain.
- A new line of trees will be planted on the wider road, closer to the footpath. The new trees will be 2.5m tall when planted and will be in line with existing trees between Park Rd and Te Awe Awe St.
- Under a four-lane system the traffic lanes will be about 3.2m wide.
- Car parking at the side of the road will be reduced.
- The cycle lanes will be in front of the trees, next to the traffic. They will be at least 2m wide.
- A flush median strip of 2m will be painted in the middle of the road to separate traffic. This will also be used by traffic pulling in and out of driveways and side roads to enhance property access.
- The cost of four laning the Avenue from Te Awe Awe St to the Bridge will be about $200,000.





Read on to find out where we are now with the second bridge ....

Fitzherbert Avenue

Planning for the next century



Work has begun on the four laning of Fitzherbert Avenue from Te Awe Awe Street up to and including the Fitzherbert Bridge. This update on the project keeps you informed of where we've come from and where we are heading.



'We're not planning for the next year, we're not planning for today - the next lot of trees could be there for 200 years' - Mayor Paul Rieger
('Evening Standard', January 9, 1997)

There is a thirty year history behind the project to four lane Fitzherbert Avenue and Fitzherbert Bridge.

What was In 1964 a theoretical future need for the city has become a pressing necessity in the 1990s with up to 2,350 motor vehicles and 1,800 cycles per hour using this route during peak hours on weekdays.

PALMERSTON NORTH CITY COUNCIL

What Happens Now?

By the end of this year work will be completed on the Fitzherbert Bridge and the section of the Avenue from the bridge to Te Awe Awe Street intersection.

Thirty six replacement trees will be planted in the Te Awe Awe Street to Hardie Street section of Fitzherbert Avenue, to replace the 18 that were removed, with a further four trees being planted between Hardie Street and the bridge after work is complete.

Following recent stump removal and repair to the road surface work is scheduled as follows:

- New stormwater drains will be laid on the Fitzherbert Park side of the Avenue between Hughes Avenue and the Awatea Stream
- New kerbing and channelling will be constructed on both sides of the Avenue, including parking laybys and bus stops
- In April/ May 36 Oriental Plane trees will be planted between Te AweAwe Street and Hardie Street.
- Streetlighting will be upgraded to the current New Zealand Standards requirement
- The Fitzherbert Bridge will have a combined clip on cycle lane and footpath attached to each side and the bridge will be converted from two to four motor vehicle lanes

The work on this section of Fitzherbert Avenue will then be complete. From Te Awe Awe Street to the Palm Avenue intersection opposite Palmerston North Girls' High School tree removal and replacement is already done, and the road layout has been changed to the design ultimately planned for the rest of the Avenue.

By the end of 1997 traffic in Fitzherbert Avenue will be benefitting from the increased safety and vehicle carrying capacity of the roadway from the gates of Massey University right through to just short of the Park Road Intersection.

On a typical weekday, the Fitzherbert Avenue/Bridge route carries up to 29,000 vehicles. When four laning is completed it is expected that the daily morning and afternoon 'Massey Traffic Jam' will become just a very bad memory for Avenue users.



A new home at Aokautere Cobham end of Fitzherbert Avenue's London Bridge (Evening Standard)



Planned layout of Fizherbert A

What About the Rest of Fitzherbert Avenue?

Already replacement Oriental Plane trees have been planted on the section of Fitzherbert Avenue between Park Road and Ferguson Street, in preparation for the removal of the existing Plane, Oak, Elm, Ash and Chestnut trees. Once work on the Te Awe Awe Street - Fitzherbert Bridge section of the Avenue is complete then work will begin, if and when necessary, on the sections of the roadway that are still two laned.

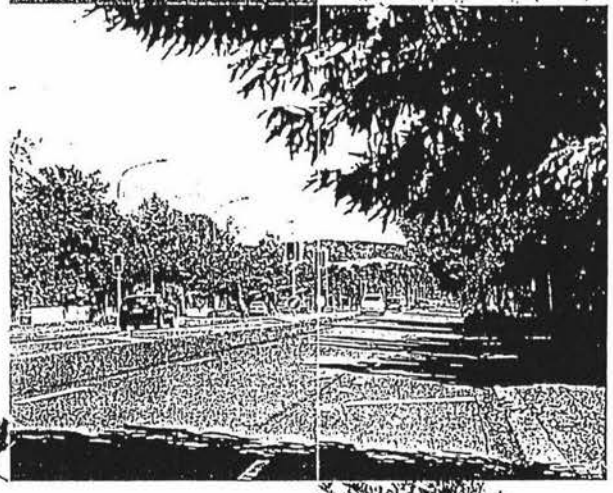
The earliest date that the whole of Fitzherbert Avenue could be four laned is December, 1998. Traffic volume, safely and availability of funding are the issues that will influence the timing of this stage of the project.

Your Council is committed to the concept of Fitzherbert Avenue as a tree lined, aesthetically appealing street. The Fitzherbert Avenue redesign project has been carried out in the belief that within 10 years the trees already planted and being planted this season, will be sufficiently mature to offer the shade and attractive 'greening' effect that was provided by the original plantings.

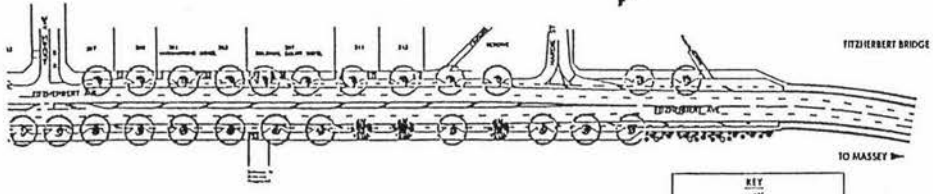
By replanting with Oriental Planes (Platanus orientalis) rather than with the London Plane (Platanus acerifolia) that was the choice of our forefathers, it is expected that there will be no problem with the fungus disease (Anthracnose) that plagued the original trees. The 95 replacement trees will have their lower branches trimmed sufficiently to allow traffic to pass underneath, but with no overhead electric power or telephone lines in Fitzherbert Avenue today, there won't be any need to carry out the drastic 'pollarding' tree pruning programmes of the past that deformed the original trees and probably contributed to their lack of resistance to disease.



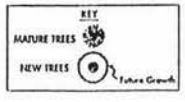








nue - Te Awe Awe Street to Bridge



What is the plan for the layout of Fitzherbert Avenue?

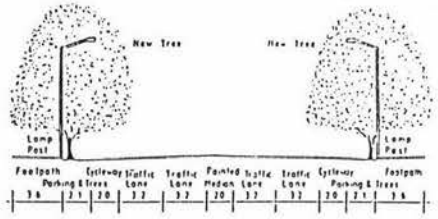
There will be four motor vehicle lanes in the central section of the roadway, two on each side of a centre median strip painted on the road surface. The motor vehicle lanes will be flanked by a cycle lane on both sides of the road immediately adjacent to the outer motor vehicle lane. Parallel parking places will be marked between the concrete kerbs which surround the Oriental Planes to be planted in the area of roadway outside the cycle lanes and next to the footpath.

The section of Fitzherbert Avenue outside Palmerston North Girls' High School is already laid out in this way.

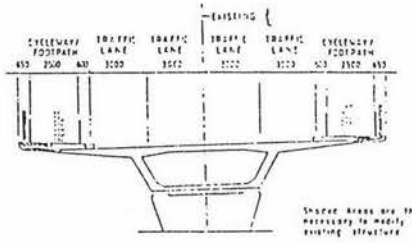
On the bridge four three metre wide vehicle lanes will be divided by a barrier from a cycleway footpath on both sides of the roadway. Part of the cycle pedestrian lanes will be accommodated by the new clip on additions.

Upgrading Cross Sections

Fitzherbert Avenue (Bridge-Te Awe Awe St)



Fitzherbert Bridge





Photographs of Fitzherbert Avenue
Gina Cresswell

Our Heritage

The Fitzherbert Avenue project has been a painful one for the City Council and for many residents of our community. Nobody wants to be the agent for the destruction of an admired feature of our city, but the Council was faced with the growing problem of how to get an ever increasing mass of commuter traffic safely and without delays across the river. A decision had to be made and ultimately the Council had to acknowledge that this was a 'no gain without pain' situation.

It will take time for the new trees to develop and the removal of other trees is essential for the completion of the project. Along with all the residents of our community, your Council now looks forward to the time when Fitzherbert Avenue will once again be a beautiful and admired entrance to our city - a thing of beauty and a continuing joy for many generations.

The New Bridge

In addition planning for a new bridge across the Manawatu River continues. A preferred site for the new bridge is now being selected by the Working Party and when this choice has been confirmed by the Council a designation will be put in place in the District Plan. It is expected that this information will be publicly available shortly.

Further Information

If there is anything else you would like to know about the Fitzherbert Avenue Fourlaning Project, contact

The Roading Division,
Palmerston North
City Council,
Private Bag 11034,
Palmerston North
or telephone: 356-8199



Wood from the felled trees will be put to good use by furniture makers and wood turners. (photo: Evening Standard)

The Saga of Fitzherbert Avenue

In 1964

Prediction of a future large demand for cross river transportation by the late 1980s results in a proposed six lane motorway which would cut through the city from Tremaine Avenue, along the eastern side of the central business district, through the suburb of Hokowhitu, to lead into a 'duplicated' Fitzherbert Bridge.

In 1967

The 'distributor' motorway route proposed in 1964 is abandoned in favour of developing Fitzherbert Avenue as the major arterial route for the city.

In 1969

National Roads Board approval sought for 'duplicate Fitzherbert Bridge' leading into a six laned Fitzherbert Avenue. The plan does not provide for cycle lanes and all trees are to be removed. A 'planted median strip' is planned.

In 1970

Community opposition to six laning emerges, on the grounds that the character of the Avenue will be destroyed, cycle lanes are needed and a second bridge at another site would be a better alternative. Investigation of other sites begins

In 1972

City Council announces plans to four lane Fitzherbert Avenue and to replace the 68 London Plane trees. Bridge project on hold, as siting remains an issue.

In 1973

Following the collapse of the Bulls Bridge concern emerges about the safety of the existing Fitzherbert Bridge. Examination finds weaknesses. Council decides to build a new four lane bridge next to the existing Fitzherbert Bridge.

In 1981

National Roads Board gives approval for building of a two lane Fitzherbert Bridge.

In 1987

The new Fitzherbert Bridge is completed - designed for two lanes, but capable of upgrading to three lanes with the addition of 'clip on' pedestrian walkways.

In 1988

The 'Massey Jam Buster' project begins. Summerhill Drive flyover proposed, along with the three laning of the new bridge and the four laning of the Avenue

In 1989

Replacement planting begins in Fitzherbert Avenue, preparatory to four laning.

The 1990s

Save The Avenue group begins campaigning against the removal of the original trees and the four laning concept.

By 1993 the Summerhill Drive Flyover is complete. There are now 45 of the original trees left in the Avenue and 51 new trees have been planted. Trees have been removed for safety reasons, because they are diseased or dying, or as part of the redesign project.

By 1994 the Council has dropped the 'tidal flow' three lane bridge proposal after investigation shows it is possible to have the safer option of four three metre wide lanes across the bridge leading into a four laned Fitzherbert Avenue.

Appeals, submissions, hearings, 'yellow ribbon' demonstrations on the Avenue as 'Save The Avenue' maintains its opposition.

In October, 1994, a Cross River Transportation Working Party is set up chaired by an independent facilitator and consisting of various interest groups. Purpose: 'To consider options for resolving the cross river transportation issues'. Result: Working party votes 9-3 in favour of four laning the Te Awe Awe Street to Fitzherbert bridge section. Traffic lights at Park Rd intersection recommended as immediate need, along with a signalised pedestrian crossing outside Palmerston North Girls' High School, upgraded streetlighting, and improved public transport to help reduce traffic congestion on the Avenue.

During 1996 four possible new bridge sites are selected and public opinion sought on these.

Continued opposition by 'Save The Avenue'. Finally after Hearing Commissioner Bruce Bornholdt finds that the Palmerston North City Council has the right to proceed with a proposed change to its District Plan removing protection from the trees in the Avenue, the four laning project begins with the felling of the trees between Te Awe Awe Street and the Fitzherbert Bridge on January 6 and 8, 1997.