

Report of the

Controller and Auditor-General

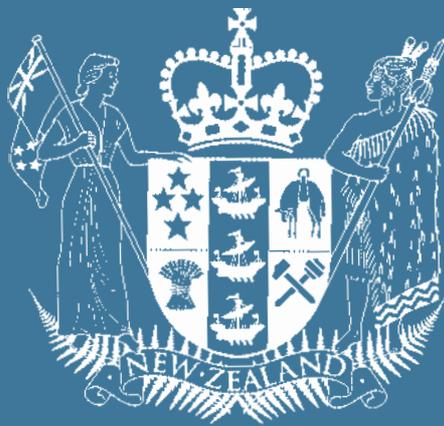
building
bridges to
the future

report to the public
on plans for 1996-97

draft

Public Consultation and Decision-
making in Local Government

CITY
OF
HAMILTON



Report of

**The Controller and
Auditor-General**

on

**Public Consultation
and Decision-making
in Local Government**

December 1998

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Foreword

Requirements for and expectations of local authority consultation have increased dramatically over the past 10 years. But what is “consultation”? And when and how are local authorities required to consult?

Some local authorities are experiencing difficulties in interpreting and applying the legal requirements concerning consultation. In addition, there may be different expectations and understandings of what consultation requires – both among local authorities and between local authorities and their communities.

Recognising that local authorities may find some guidance on the subject timely and helpful, we commissioned an analysis of the current statutory requirements and relevant case law from law firm Simpson Grierson.¹

Our intention is to add to the current understanding of consultation requirements affecting local government. However, consultation requirements under the Resource Management Act 1991 and consultation with iwi are not covered by this report as they have been comprehensively addressed by other agencies.²



D J D Macdonald
Controller and Auditor-General
2 December 1998

¹ A copy of the Simpson Grierson analysis can be obtained by writing to us at Private Box 3928, Wellington.

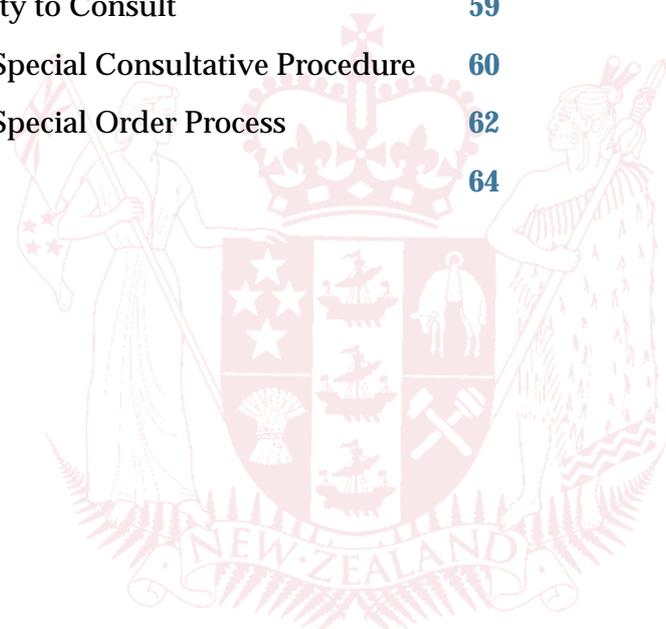
² For example, *Public Participation under the Resource Management Act 1991 – The Management of Conflict 1996* and *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management 1998*, both published by the Office of the Parliamentary Commissioner for the Environment.

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Note:

Where we draw on judicial statements for material in this report, we identify the case by quoting the name of the first party (sometimes abbreviated) followed by a number in parentheses. This number corresponds to the number of the case as listed in the bibliography in Appendix D on pages 64-65.

Executive Summary

The first three parts of this report reproduce or summarise points in the Simpson Grierson analysis that we consider to be directly relevant to the local government sector, with particular emphasis on the special consultative procedure set out in section 716A of the Local Government Act 1974. The fourth part discusses current trends in local government concerning consultation, and the fifth part presents our conclusions and recommendations.

Statutory and Related Legal Requirements

The Local Government Act 1974 imposes significant obligations for public participation, openness and accountability in local authority decision-making. The effect of these provisions is that local authorities are expected to include the community in the decision-making process, and in this sense to “consult” with the community on a broad front.

Whether consultation is required – and, if so, the nature of the consultation that is required – will depend on the facts and the legal requirements in each case. The obligation to consult is generally derived from express statutory provisions. However, in other situations, an obligation to consult may be implied in legislation, or an obligation may arise out of a “legitimate expectation” on the part of the public.

Certain provisions in the Local Government Act expressly provide for, or may imply, a requirement to consult, and set out the procedural requirements of the special consultative and special order procedures. Case law on the meaning of “consultation” can provide a guide to local authorities as to when a decision can be seen as having been made after “consultation”. In addition, circumstances may give rise to a “legitimate expectation” of consultation.

Application of Administrative Law

A decision to consult or not to consult, and any decision made after consultation, must be made in accordance with the principles of administrative law. These principles require local authorities to act:

- in accordance with law;
- reasonably; and
- fairly, in accordance with the principles of natural justice.

EXECUTIVE SUMMARY

Decisions not made in accordance with these requirements may be challenged on procedural grounds.

The requirement to act fairly is most relevant to consultation, and this requirement is given particular emphasis. Local authorities must follow proper processes to ensure that those individuals or groups affected by their decisions are given natural justice.

A decision can be challenged if a local authority member or officer is biased in such a way that prevents him or her from fairly considering the issue with an open mind. For example, where a decision-maker has a financial interest in the issue or has already made up his or her mind before considering relevant information (i.e. predetermination).

The very nature of consultation contains an inherent element of “predetermination”. The special consultative procedure is a situation in which a local authority has a pre-existing view on which it is seeking community comment. However, councillors should be cautious in what they say and do in relation to any issue upon which they may be called to decide. While statements that indicate a particular preference or view are not necessarily prohibited, any statements or conduct which may indicate a closed mind or predetermination – in the sense that councillors are not open to persuasion or argument – should be avoided.

Specific Issues

The **special consultative procedure** under section 716A of the Local Government Act is increasingly being used as the main vehicle for local authority consultation. It involves releasing a proposal (which may be a draft plan or policy or a specific proposal) to the community for comment.

Making a written submission gives the submitter a right to be heard orally, and the council must consider all submissions before it makes its final decision on the proposal. The procedure provides an opportunity for community feedback on major proposals before they are finalised.

The special consultative procedure is different to the **special order procedure**, and local authorities need to be aware of the characteristics associated with both procedures.

Problems and Current Trends

In addition to interpretation and analysis of the legal requirements for public consultation, there is the important dimension of its application in practice. The report discusses some of the problems which are being experienced with the special consultative procedure, and current trends in the application of the legislation.

Perceived Problems with the Special Consultative Procedure

The Perception that Consultation Is “a sham”

For a number of reasons, the public may believe that the consultation process carried out by the local authority was not adequate or appropriate. Issues that have come to our attention include:

- the local authority is unwilling to listen;
- too little time for compiling submissions;
- too little time for presenting submissions;
- lack of feedback about the final decision;
- the vested interest of a council and its officers;
- different expectations; and
- avoiding making a decision.

Costs of Consultation

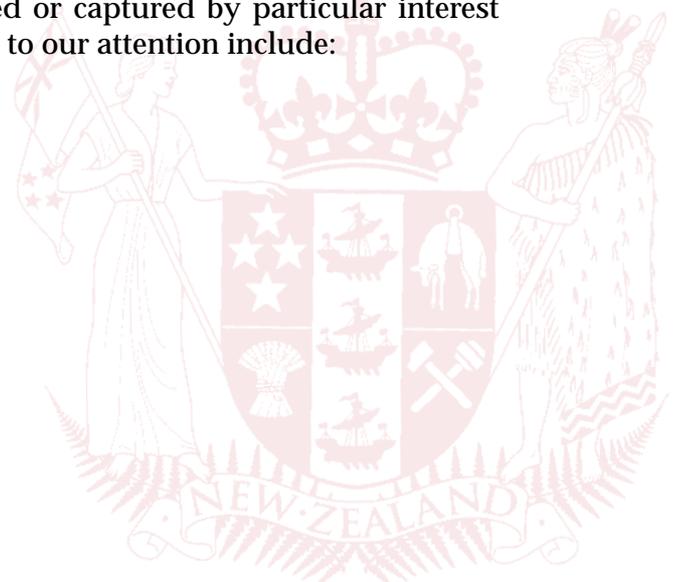
There are also concerns that the heavy emphasis on consultation may be giving rise to difficulties and costs that local authorities had not fully anticipated. Examples that have come to our attention include:

- publishing and distribution;
- keeping in touch; and
- public meetings.

Undue Pressure Group Influence

Both local authorities and the public have expressed concern that public consultation processes can be dominated or captured by particular interest groups. Particular issues that have come to our attention include:

- reluctance to voice opinions;
- local authority “capture”;
- the nature of the process; and
- the “squeaky wheel syndrome”.



EXECUTIVE SUMMARY

Current Trends

Aside from the direct problems, which we have highlighted above, the implementation of the special consultative procedure and the development of consultation practices must be seen within a wider context. We have observed the following trends:

- increasing diversity;
- local authority “capture”;
- need for resources;
- changing community expectations; and
- changing role of consultation.

Conclusions

A considerable body of knowledge and experience on good consultation processes exists within local government. Developments over the last ten years have established a sound foundation for public consultation as an appropriate management technique for improved representation, informed decision-making, and better results for local government.

From “requirement” to “investment”

The attitude of some local authorities on public consultation has shifted from viewing it as a legal requirement to regarding it as good management practice and a better way to communicate with communities and represent their interests and expectations.

Informed Decision-making

The most tangible benefit of adequate and appropriate public consultation is that it will help to produce better decisions. Informed policy decisions are more likely to avoid constant review and revision. Projects that are understood and accepted by the community are less likely to face pressure for their revision or removal. Good consultation can produce better, sustainable decisions. Getting it right first time can save time and money.

Good Consultation Practice

Indicators of good consultation practice are:

- having the right attitude;
- allowing sufficient time;
- being clear;
- identifying all those with an interest; and
- providing good feedback.

Recommendations

We recommend that every local authority should:

- Have appropriate policies and practices in place to ensure compliance with any specific legislative requirements, or any general duty to consult, when designing and carrying out a public consultation exercise.
- Use the special consultative procedure in section 716A as a framework for public consultation where an issue is controversial and likely to attract public interest and opinion.
- View public consultation as more than simply notifying the public and receiving written submissions.
- Ensure that the public and the council are clear about how the consultation will influence making the final decision.
- Develop a consultation process that:
 - ★ **Is compelling**, so that all affected parts of the community will want to be involved and know that the council is interested in listening to their views.
 - ★ **Allows sufficient time**, so that everyone who wants to is given an appropriate amount of time to respond to the proposal.
 - ★ **Is clear** about what the proposal is, why the consultation is necessary, what will be done with the information, and who will be making the decisions.
 - ★ **Identifies all those with an interest**, so that all those affected and interested are identified and informed about the proposal and encouraged to participate.
 - ★ **Provides good feedback**, so that all those who participate are given reassurance that their views and efforts are valued.
- Recognise that public consultation is good management practice and a pragmatic way to assist with informed decision-making.
- Ensure that sufficient appropriate skills and resources are available to develop and carry out public consultation exercises.

1 Part One

Statutory and Related Legal Requirements

New Zealand Bill of Rights



- Title
- 1. Short Title and commencement

ANALYSIS

- PART I
- GENERAL PROVISIONS
- 2. Rights affirmed
- 3. Application
- 4. Other enactments affected

- 13. Freedom of thought, conscience and religion
- 14. Freedom of expression
- 15. Manifestation of religion and belief
- 16. Freedom of peaceful assembly
- 17. Freedom of association
- 18. Freedom of movement

GENERAL PROVISIONS

2. Rights affirmed—The rights and freedoms contained in this Bill of Rights are affirmed.

3. Application—This Bill of Rights applies only to acts done—

- (a) By the legislative, executive, or judicial branches of the government of New Zealand; or
- (b) By any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

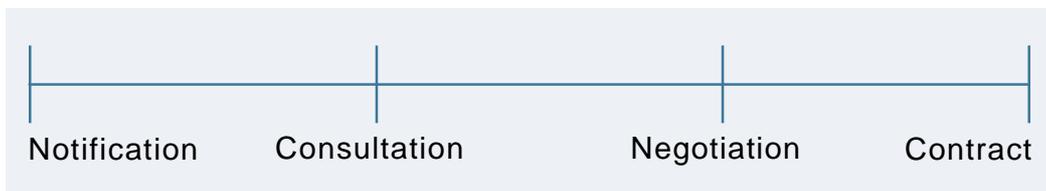
27. Right to justice—(1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

(2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

(3) Every person has the right to bring proceedings against, and to defend civil

What Is Consultation?

- 101 “To consult” means to seek information or advice, or to take into consideration. In the present context, consultation is essentially a tool or mechanism for citizens’ participation – which can inform and assist the local authority in its decision-making.
- 102 If we consider that there is a “spectrum” of decision making (as illustrated), consultation sits somewhere between notification and negotiation. While it may require something less than negotiation, it nevertheless encompasses a broad range of situations in which the public may have some input.



- 103 Whether consultation is required and, if so, the nature of the consultation that is required, needs to be determined by reference to the factual and legal circumstances of each particular situation.

When Is Consultation Required?

- 104 A local authority’s obligation to consult with the public on particular issues, or with particular persons or organisations about a particular subject, is generally derived from express statutory provisions. These provisions may stipulate a particular procedure, which must be followed,¹ or may require consultation with particular persons or organisations about a particular subject.²
- 105 However, a local authority’s obligation to consult may also arise other than from express statutory requirements. For example:
- statutes may contain an implied obligation to consult; or
 - such an obligation may arise out of a “legitimate expectation” of the public that consultation will occur.
- 106 In exercising their functions, powers and duties, local authorities are also subject to the New Zealand Bill of Rights Act 1990.³ This Act gives every person the right to observance of the principles of natural justice when a public body is making a determination *in respect of that person’s rights, obligations or interests protected or recognised by law*.⁴ The right to natural justice may require local authorities to consult people whose legal rights or interests are affected by a policy or decision.

1 For example, the special consultative procedure and the special order procedure in sections 716A and 716B of the Local Government Act 1974.

2 Examples of the relatively few statutory provisions imposing a duty on local authorities to “consult” are listed in Appendix A on page 59.

3 New Zealand Bill of Rights Act 1990, section 3(b).

4 Ibid, section 27(1).

Nature of the Obligation to Consult

- 107 Legislation requiring or implying consultation does not help to determine the *nature* of the obligation to consult. However, the courts have considered the nature of that obligation.
- 108 The concept of consultation was discussed by the Court of Appeal in the *Wellington International Airport Limited* case (26). At issue in that case was the airport company's obligation to fix charges after "consultation with airlines that use the airport".
- 109 The Court identified certain principles or elements of consultation. These can be summarised as follows:
- Consultation is not to be equated with "negotiation". The word "negotiation" implies a process that has as its objective arriving at agreement. However, "consultation" may occur without those consulted agreeing with the outcome.
 - Consultation includes listening to what others have to say and considering the responses.
 - The consultative process must be genuine and not a sham.
 - Sufficient time for consultation must be allowed.
 - The party obliged to consult must provide enough information to enable the person consulted to be adequately informed so as to be able to make intelligent and useful responses.
 - The party obliged to consult must keep an open mind and be ready to change and even start afresh, although it is entitled to have a work plan already in its mind.
 - Consultation is the statement of a proposal not yet fully decided upon.
- 110 The Court's discussion of the meaning of "consultation" is useful in considering the nature of the obligation to consult, and provides a general guide to when a decision can properly be seen as having been made after "consultation".

Consultation in Local Government

- 111 The Local Government Act 1974 imposes significant obligations for public participation, openness and accountability in local authority decision-making. For example:
- As part of the annual planning process, and in a number of specific circumstances, the Act requires local authorities to use the special consultative procedure set out in section 716A in making their decisions.

- In other specific circumstances, local authorities must use the special order procedure set out in section 716B.

Statutory Framework – Local Government Act 1974

- 112 The special consultative procedure was introduced to the Local Government Act 1974 (the Act) in 1989 as part of a package of accountability reforms. New provisions introduced by these reforms included:
- Section 37K – setting out the purpose of local government as including:
 - ★ recognition of the existence of different communities in New Zealand;
 - ★ recognition of the identities and values of those communities;
 - ★ scope for communities to make choices between different kinds of local public facilities and services;
 - ★ recognition of communities of interest; and
 - ★ providing for the effective participation of local persons in local government.
 - Section 223C – setting out general principles applying to the conduct of local authority affairs, including that:
 - ★ its business is conducted in a manner that is comprehensible and open to the public;
 - ★ its performance is regularly measured by it in relation to its stated objectives and is capable of being so measured by persons and organisations interested in the performance and activities of the local authority; and
 - ★ its local communities are adequately informed about its activities.
 - Section 223D – the annual plan:
 - ★ is to be adopted each year in accordance with the special consultative procedure, setting out the intended policies, objectives, significant activities, performance targets and measures; indicative costs and sources of funds; forecast financial statements; and significant trends.
 - Section 223E – the annual report, reporting on performance against the annual plan.
 - Sections 247C and 247D and Part XXXIVA – authorising the performance of council functions through council-owned structures or private structures, but with decisions about divestment subject to the special consultative procedure.

STATUTORY AND RELATED LEGAL REQUIREMENTS

- 113 Financial accountability was further improved in 1996 by the new Part VIIA of the Act that deals with financial management. The key financial management documents – the long-term financial strategy and the funding policy – must be adopted at least every three years using the special consultative procedure. These documents build on the accountability structure already established by the annual plan.
- 114 In this context, the purpose of a special consultative procedure is reflected in the new section 122B:
- to provide a structured framework for council decision-making on financial management; and
 - to provide an effective and appropriate avenue for public participation in council financial policies and funding decisions.

The Special Consultative Procedure

- 115 The special consultative procedure is a key element of the accountability arrangements. It provides a process by which communities can be better informed about and participate in local authority decisions.

What Does the Special Consultative Procedure Require?

- 116 The procedure is set out in section 716A of the Act, and requires:
- Notice of the proposal (e.g. draft plan) to be placed before a council meeting.
 - Public notice (and any other specific notice which the council considers appropriate) of the period in which a person may make a submission on the proposal. The period must be at least one month and may not be more than three months unless the council decides otherwise.
 - Any person who makes a written submission must be given a reasonable opportunity to be heard in person.
 - Any meeting where the proposal is considered or the submissions are heard must be open to the public unless exclusion is permitted under the Local Government Official Information and Meetings Act 1987.
 - All submissions must be available to the public unless there is good reason for not making them available.
 - The council may choose to have submissions heard either by the council itself, a community board, or a committee of the council.
 - The final decision on the proposal (e.g. adoption of the plan) must be made at a council meeting.

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When Must the Special Consultative Procedure be Used?

- 117 The special consultative procedure must be used when expressly stated as necessary in legislation. In certain situations voluntary compliance may be appropriate. For example, while not required to do so, the Papakura District Council used the procedure when it considered franchising its water and waste water services.⁵
- 118 Since 1989, the range of circumstances in which there is a statutory obligation to use the special consultative procedure has expanded significantly. Statutes requiring the special consultative procedure to be followed in particular circumstances include:
- the Local Government Act 1974;
 - the Resource Management Act 1991;
 - the Rating Powers Act 1988;
 - the Building Act 1991; and
 - the Energy Companies Act 1992.
- 119 The three most common applications of the special consultative procedure are:
- As part of the ongoing accountability process; i.e. for the annual plan, long-term financial strategy or funding policy (“Accountability”).
 - To deal with specific proposals, particularly divestments of significant public assets (“Specific proposals”).
 - As a legislative process. This reflects a move towards a more consultative process being required when local authorities are “legislating”. Previously, special orders were used for this purpose (“Legislative process”).
- 120 The legislation requiring the special consultative procedure to be used is listed in Appendix B on pages 60-61.

Special Orders

- 121 A special order is a resolution of the council made in accordance with subsections (2) to (7) of section 716B of the Local Government Act. The most common situations where a special order must be used concern the exercise of local authority powers in relation to rates, bylaws, roads, water supply, and drainage. The special order process is different from the special consultative procedure because it is effectively a law-making process rather than a consultation process.

⁵ *Report of the Controller and Auditor-General on Papakura District Council: Water and Wastewater Franchise*, April 1998, ISBN 0 477 02852 7.

STATUTORY AND RELATED LEGAL REQUIREMENTS

- 122 The particular situations requiring a special order are listed in Appendix C on pages 62-64.
- 123 Special orders require:
- A resolution to be passed at a special council meeting, or at an ordinary meeting, if proper notice of intention to consider the subject matter of the resolution has been given to all council members before the meeting.
 - A second resolution confirming the first resolution, passed at a council meeting held no later than the 70th day after the first meeting.
 - In the period between the two meetings, a copy of the resolution to be confirmed must be placed at the offices and libraries of the council and be open for public inspection during normal office hours.
 - Two public notices must be given before the date of the second meeting setting out specified details of the proposal and meetings. The first public notice must be at least 21 days before the second meeting, and the second public notice must be no more than 14 days nor less than 7 days before that date.
- 124 Statutory provisions requiring special orders frequently specify additional procedural requirements.⁶

Special Order Procedure and Consultation

- 125 The only explicit consultation-related obligation imposed by section 716B is public notification. The courts have recognised that the section anticipates that some form of consultation is required, but that the level of consultation required is something less than that required by the special consultative procedure (the *Begley* case (21)).

Alteration of Special Order

- 126 The public notification and confirmation processes would be of little value if there were no opportunity for the public to comment on the special order resolution and for the council to respond. Unlike section 716A, section 716B expressly provides (in subsection (8)) for the special order resolution to be modified by the council as necessary following representations. However, if the modifications which the council considers necessary are such that the confirming resolution is substantially different than the initial resolution adopted, the proper procedure for the council is not to confirm the resolution but to recommence the special order process.

⁶ For example, sections 84 and 100 of the Rating Powers Act 1988.

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Legitimate Expectation

127 Our comments to this point have focused on the provisions in the Local Government Act concerned with public participation in local authority decision-making. However, as already noted, an obligation to consult may arise other than from express or implied statutory requirements. In some situations, such an obligation may arise out of a “legitimate expectation” on the part of the public that consultation will occur.

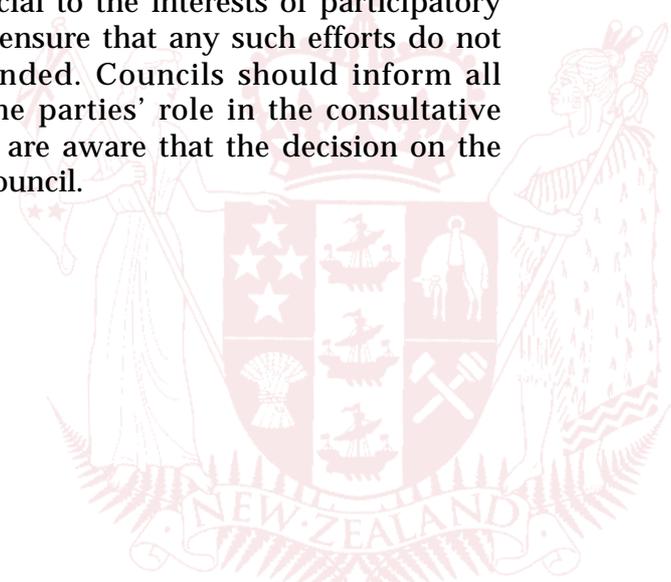
128 The doctrine of legitimate expectation was recently considered in the *Te Heu Heu* case (11). There the High Court accepted that a duty of consultation might arise in public law from a legitimate expectation of consultation based either on a promise or on an established practice of consultation. In the particular case before him, Robertson J stated that the test was:

whether objectively the Council by conduct or assurance had created a situation which gave rise to a legitimate expectation as to consultation about matters affecting the mutual interests of the two groups.

129 Generally, it will be evident where a duty to consult arises from a legitimate expectation based on a promise. Where it is alleged that the previous conduct of the consulting party gives rise to such a duty, the existence of that duty will obviously depend on the previous conduct. Robertson J in *Te Heu Heu* expressed caution in the courts too readily finding a legitimate expectation of consultation:

One is concerned that because of the experience of this Council in this litigation local authorities may tend to shy away from tentative exploration of means of better achieving an open, frank and sympathetic relationship. It is important that the Courts do not quickly find a willingness to talk is deemed to have given rise to a legitimate expectation when all it has done is demonstrated an openness of process and a willingness to be receptive to ideas.

130 Any attempt by a local authority to involve the public in the consultation and decision-making process is beneficial to the interests of participatory democracy. However, councils should ensure that any such efforts do not create a precedent that was not intended. Councils should inform all parties with whom they consult of the parties’ role in the consultative process, and ensure that those parties are aware that the decision on the matter is ultimately to be made by the council.



Part TWO

Application of Administrative Law

This is your chance to have your say

This Document is a draft

Council has endeavoured in preparing this Draft Annual Plan to meet the needs of our community.

- ### An Annual Plan outlines
- the council's proposals for the coming year
 - how much the activities will cost
 - how to measure the council's performance

Now it is your turn to have your say

To do this, write your submission by completing the form overleaf which, when completed, must be returned to council by 13 May 1996. All submissions are welcome. Please indicate whether or not you wish to speak in support of your submission. Do not forget to supply us with your contact telephone numbers and the time you would prefer to speak. We will do our best to meet your preferences.

Consideration of submissions

A special committee of council will meet to consider all submissions received. All the hearing meetings are open to the public and you are welcome to attend. Should you decide not to appear, your written submission will still be given careful consideration. If you do attend the hearing and have indicated you wish to speak, the chairperson will normally allow you 5-10 minutes to address the meeting and councillors may ask you questions. All hearings will be held at the Council Offices, Garden Place, on 4, 5 & 6 June.

What happens then?

Following the hearing of submissions and public consultation the special committee meet on 11 June to deliberate on the issues raised and make a final recommendation to the full council. The 1996/97 Annual Plan will be adopted on 11 June. All written submissions will be replied to.

If you need assistance

For further information or assistance, please telephone the Strategic Unit (telephone 838 6810) and a council officer will endeavour to help you.

Important

Written submissions must be received by 13 May 1996 if you wish to have your say.

We invite your contribution to the 1996/97 Annual Plan



CITY OF HAMILTON

Information form

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Principles of Administrative Law

- 201 As with any decision of a local authority, a decision to consult or not to consult, and any decision made after consultation, must be made in accordance with the principles of administrative law. These principles form the grounds for judicial review of decisions. Put simply, they require that local authorities act:
- in accordance with law;
 - reasonably; and
 - fairly.
- 202 Decisions not made in accordance with these requirements may be challenged on procedural grounds. Of the three broad grounds of review, the requirement that decisions be made fairly impacts most directly on the consultative process. However, a decision to consult or not to consult, and a decision as to what to consult on, could be challenged on the basis that the decision is unreasonable or illegal.

“In Accordance with Law”

- 203 All decisions of a local authority must be made in accordance with law. A decision will *not* be in accordance with law if:
- it is not made in accordance with any procedural requirements to be followed; or
 - the decision is *ultra vires* the council in that it did not have authority to make the decision; or
 - the decision is made for a purpose other than that for which the power to make the decision was conferred.

“Reasonably”

- 204 The question of reasonableness is relevant at a number of different levels throughout a consultative process. Most obviously, the decision ultimately made after consultation, or upon which representations or submissions were invited, must not be “unreasonable”. However, any decision made as part of a decision-making process may also be challenged as being unreasonable.
- 205 For example, if there is no express requirement to consult, a decision either to consult or not to consult may be challenged as unreasonable. If a council decides or is required to consult, the decision as to the matter to be consulted on, and the form of consultation, may be unreasonable if it is too wide or too specific, such that it does not result in meaningful consultation.

APPLICATION OF ADMINISTRATIVE LAW

- 206 Where there are no express criteria which a council has to take into account when determining the kind of issue upon which it will consult, it is for the council to determine that issue. Unless the decision to consult upon a particular issue is so unreasonable as to be absurd or beyond contemplation by a reasonable council properly considering relevant issues, then the decision will not be unreasonable (*South Taranaki* (10)).
- 207 The approach of New Zealand courts to the question of unreasonableness is more or less settled, particularly as regards local authorities, following the decision of the Court of Appeal in the *Wellington City Council v Woolworths* case (13). That case involved a review of the Council’s differential rating system. Richardson P, delivering the judgment of the Court, stated:

For the ultimate decisions to be invalidated as “unreasonable”, to repeat expressions used in the cases, they must be so “perverse”, “absurd” or “outrageous” in [their] defiance of “logic” that Parliament could not have contemplated such decisions being made by an elected council.

“Fairly”

- 208 The final broad ground of review is the requirement that decision makers act fairly in coming to any decision. This ground requires decision makers to act in accordance with the principles of procedural fairness and natural justice. This requires that:
 - parties be given adequate notice and an opportunity to be heard; and
 - decisions be made free from bias and predetermination.
- 209 A local authority’s decision to consult, or the consultation process, or a decision made after consultation, could be challenged on the ground of lack of “fairness” if these requirements are not met.

Procedural Fairness – Obligations

- 210 Where a council is obliged to undertake some form of consultation, the first requirement is that interested parties must be notified so as to enable them to take part in the consultation process. Open consultation cannot occur if interested parties are not aware of their right to be involved in the process.
- 211 Generally, public notice will be sufficient notification, although some situations may require notice to be given to a party that may be particularly affected by the outcome of the consultation. This special interest may arise either by statutory provision or from a legitimate expectation held by that party that they will be consulted.
- 212 Procedural fairness requires that, once notified, the interested parties must receive a “fair hearing”. What amounts to a fair hearing will depend largely on the statutory context.

- 213 A “fair hearing” does not necessarily mean that there must be an opportunity to make oral submissions. Where the legislation simply imposes a duty to consult, or where such a duty arises from the existence of a legitimate expectation, it is generally sufficient that the public or interested parties are given an opportunity to make written submissions or comments on the proposal in question. Similarly, if the legislation simply gives a right to make submission or representations, there may not be an obligation to hear oral submissions.⁷
- 214 Where the legislation allows for a “hearing” or “an opportunity to be heard”, it usually imposes an obligation on the consulting party to conduct a hearing at which oral submissions may be made.⁸ Where there is a right to make oral submissions, or oral submissions are allowed to be made, this right should be extended to all parties. Such an opportunity must also be a real opportunity that is not unreasonably constrained by time limitations or any other restrictions.

Rule Against Bias

- 215 As part of the right to a fair hearing, procedural fairness requires that the decision maker should not be biased or prejudiced in such a way that prevents him or her from giving fair and genuine consideration to the submissions received.
- 216 There are at least three elements of public policy underlying the rule against bias:
- accuracy in public decision-making;
 - ensuring impartiality on the part of the decision maker; and
 - public confidence in the decision-making process.
- Justice should not only be done, but should manifestly and undoubtedly be seen to be done.*
- 217 The rule against bias is primarily concerned with preventing the appearance of bias (apparent bias) rather than “bias in fact” (actual bias). While bias in fact will invalidate a decision, it is often difficult to determine whether a decision maker was actually biased so as to be prejudicial against, or in favour of, one outcome.

⁷ *Ealing B.C. v Minister of Housing and Local Government* [1952] Ch 856.

⁸ *Local Government Board v Arlidge* [1915] AC120.

Actual Bias

- 218 Actual bias arises if the decision maker has a pecuniary or proprietary interest in the outcome of the proceedings or the decision. It does not matter that the decision maker was not in fact biased, or could not reasonably have been suspected of having allowed himself or herself to have been influenced by the pecuniary interest.

What is a Pecuniary Interest?

- 219 A pecuniary interest or proprietary interest can be considered to exist in situations where the decision maker personally stands to benefit or suffer from, or has a personal financial interest in, a particular outcome of the hearing. Examples include where the decision maker owns shares in a company that is a party to the proceedings, or owns property which is the subject of the proceedings.

Local Authorities (Members' Interests) Act 1968

- 220 Section 6(1) of the Local Authorities (Members' Interests) Act 1968 prohibits members of local authorities from discussing or voting on matters in which they have a direct or indirect pecuniary interest, other than an interest in common with the public. The Act sets out a number of situations that are deemed to be pecuniary interests – thereby disqualifying the member from voting on or discussing the matter under consideration.
- 221 Judgments in cases under this Act have taken a strict approach and have ruled that a pecuniary interest is a disqualifying interest “however remote” it may be. Further assistance on this topic can be obtained from our publication *A Guide to the Local Authorities (Members' Interests) Act 1968*.⁹

Apparent Bias

- 222 Apparent bias may emerge from conflicts of interest of various kinds. A decision maker may appear to be biased if he or she:
- participates in an appeal against a decision which he or she made;
 - has any relationship to a relevant party;
 - has any personal prejudice towards a party or a party's case; or

⁹ Revised edition, October 1998, ISBN 0 477 02856 X.

- has predetermined the issue (by making his or her mind up before hearing all the relevant information).

223 The line between what is a permissible interest and what is not is flexible and depends on the particular factual and legal circumstances of each case. The test for apparent bias is whether, in all the circumstances of the case, there exists “a real likelihood or danger of bias” on the decision maker’s part (*Auckland Casino*(1)).

Predetermination

224 A decision in the consultative process could be challenged if a decision maker has predetermined the question on which comment was sought. The rule against predetermination requires decision makers to remain open to persuasion and to not commit themselves to a decision until after having heard all the evidence. Predetermination on the part of one councillor alone may be enough to invalidate a decision.

225 The law recognises that in matters of policy and politics it is to be expected that decision makers, and democratically elected members in particular, will have particular views on a matter, and may have made those views public.

226 Even strong expressions of views do not necessarily disqualify a person from hearing the matter. This was recognised by the Court of Appeal in the *Devonport Borough Council* case (3). There, Cooke P said:

They may have provisional views and policies, but they must keep open minds in the sense that at the time or period of decision they must genuinely consider the issues, applying any prescribed criteria, and not merely go through the motions. In other words ... they must remain amenable to argument. Fairness obviously requires as much.

227 The very nature of consultation contains an inherent element of “predetermination”. Before a council or a decision maker is able to consult, they must first formulate a proposal or an issue that is to be the subject of the consultation. Even if the proposal is phrased in neutral language and is not predicated towards a particular option, it is unreasonable to expect that the council as a whole, and the individual councillors, have not formed some view about the proposal.

228 Provided decision makers consider the issues with open minds and remain amenable to persuasion, the fact that they hold existing views on a matter will not disqualify them. In this sense, the Courts draw a distinction between a “blank mind” and an “open mind”.

229 The cases clearly establish that the section 716A special consultative procedure is a situation in which a council will naturally have some form of pre-existing view (*South Taranaki* (10) and *Auckland City Council* (14)).

- 230 However, in taking any preliminary steps or making any provisional decisions, a council must be careful not to get itself into a position from which it cannot move. This situation occurred in the case of *Lower Hutt City Council v Bank*,¹⁰ where it was held that the Council effectively predetermined the matter by entering into a contract binding it to a particular outcome.
- 231 The fact that a council has resolved to undertake certain action if a proposal is confirmed following a special consultative procedure does not amount to predetermination. It is open to a council to refuse to confirm the proposal, if the consultative process indicates that it should not be confirmed, and begin the procedure afresh with a new proposal.

Bias/Predetermination by Officers

- 232 Although it is the decision maker who is required to retain an open mind, a decision may be challenged if an officer who is involved in the decision-making process – although not making the decision – improperly influences the minds of those considering the matter.
- 233 In the *Gough* case (6) it was alleged that there was bias on the part of a magistrates' clerk. After setting out the test for apparent bias, Goff LJ stated:

Though in a case concerned with bias on the part of a magistrates' clerk, the court should go on to consider whether the clerk has been invited to give the magistrates advice, and, if so, whether it should infer that there was a real danger of the clerk's bias having infected the views of the magistrates adversely to the applicant.

- 234 On this basis, it is arguable that a decision by a council could be challenged if an officer who is biased or has predetermined the matter “infects” the minds of the decision makers.
- 235 Clearly, a line must be drawn between a decision maker being influenced by an officer's bias, and genuine recommendations and reports given by the officer as part of his or her functions. However, it will not always be evident to a decision maker that the recommendations of an officer are motivated by bias rather than based on evidence.

¹⁰ [1974] 1 NZLR 545.

What Your Council is Proposing

the present level of basic services
following major initiatives:

Undertake ... tourism promotion

Part Three

Specific Issues

Average increase
No increase for properties in the plains
No increase for properties in the rural rating group

Changes to Rating System:

of new Differential Rating Area One (DRA 1) and Differential Rating
system involve a separate consultation
changes to rating system should be
at meetings on 21st May

HOW TO HAVE YOUR SAY ...

SUBMISSION TO 1998/99 DRAFT ANNUAL PLAN (INCORPORATING DRAFT FUNDING POLICY & DRAFT LONG TERM FINANCIAL STRATEGY)

Name Mr/Mrs/Ms/Miss

Postal Address

Telephone No (daytime)

Facsimile No (if applicable)

Please Forward To:

Draft Annual Plan
Submissions
c/ The Chief Executive
Hastings District Council
Private Bag 9002
HASTINGS

This is a submission on:
 Draft Annual Plan
 Draft Funding Policy
 Draft Long Term Financial Strategy

DO YOU WISH TO COME AND SPEAK TO THE COUNCIL ABOUT YOUR
Yes, I would like to speak to my submission at the Council meeting
No, I do not wish to speak to my submission at the Council meeting

A Council meeting is scheduled for Thursday 25 June
to consider submissions and present
Please ensure your submission is received by Wednesday

How to Have Your Say ... Your Ideas are Important

After reading Council's Draft Plan you can comment on the proposed activities, projects and policies of
Council. This year you are also asked to comment on Council's draft Funding Policy, details of which are on
pages 84 to 96 and on the draft Long Term Financial Strategy on pages 77 to 81. You can have your say two
ways:

1. **Written Submission**

Either complete the form supplied with this document or write a letter. When making your submission
please indicate whether or not you wish to speak to council in support of your submission. If you
indicate that you wish to speak you will be contacted to arrange a time.

Council will consider submissions on Thursday 25 June 1998.
Written submissions must be received by Council no later than Wednesday 3rd June
Submissions should be addressed to:

The Chief Executive
Hastings District Council
Private Bag 9002
HASTINGS

Residents' Meeting

Alternatively you can attend a residents' meeting in your area and have your views
Council Officers will be at these meetings to listen to your views.

Date	Time	Location
Monday 11 May	7.00 pm	Civic Centre
Tuesday 12 May	7.00 pm	Civic Centre
Wednesday 13 May	7.00 pm	Civic Centre
Thursday 14 May	7.00 pm	Civic Centre
Friday 15 May	7.00 pm	Civic Centre

Introduction

- 301 The first two parts of this report summarise the legal requirements concerning consultation in local government and relevant administrative law principles. This part highlights some issues of practical application for local authorities arising from the legal requirements, with particular focus on issues concerning the use of the special consultative procedure.

Procedural Obligation

- 302 The courts have noted that the word “consultation” does not actually appear in section 716A. The section requires a local authority to follow a special consultative procedure in relation to a proposal. The public has the right to expect that the local authority will consider their submissions, but should not expect that their submissions will necessarily determine the outcome of the process.

- 303 The position was summarised in the *South Taranaki* case (10) as follows:

The section is procedural and I uphold [the] submission that, provided the council genuinely considers the submissions, retains an open mind and has proper regard to them, then that is all that those members of the public who elect to participate under section 716A are entitled to expect.

- 304 The rules against bias and predetermination must be considered to apply to the special consultative procedure as they do to any other consultative process. If it were otherwise, and all that was required was a strict compliance with the procedural steps set out in section 716A, then the process would be an “empty charade” (*Urlich* (19)).

Are There Any Mandatory Considerations?

- 305 It is necessary to examine whether there are any mandatory considerations that a council must, as a matter of practice, take into account as part of the special consultative procedure. If the council fails to have regard to any mandatory considerations its decision may be flawed and subject to challenge.

- 306 It was argued in the *South Taranaki* case (10) that the Act imposes a number of statutory considerations on a council that it is required to take into account as part of the special consultative procedure. Specifically, it was argued that sections 37K, 223C, 223D, 247C and 247D required the Council to have regard to a number of factors. On the particular facts of the case, it was found that such factors were not mandatory considerations. However, it is possible that the courts may, in certain circumstances, require local authorities to have regard to certain statutory considerations.

Annual Plan

- 307 A proposal that is inconsistent with or differs from the annual plan is not necessarily invalid, because the annual plan is not binding on a council and can be departed from if necessary. Hammond J had this to say in the *New Zealand Public Service Association* case (16):

With respect, that general line of argument is based on a misconception that an annual plan is a distinct and heavy-handed constraint on a local authority. That is, that it somehow binds a local authority's hands as to what it can do in the future.

Such a plan is certainly an integral part of enlarged participatory democracy at a local government level. But it would be utterly surprising if Parliament had intended such to be a formal blue-print which would attract heavy consequences if departed from. That that is not so is evidenced by section 223D(4) [sic – section 223D(5)] which expressly contemplates that departures from a plan may be made, but of course requires a subsequent formal explanation therefore.

Form of Proposal

- 308 According to section 716A, a “proposal” is either an “intention to act” or a “draft plan or policy”. These terms are consistent with all of the statutory provisions that require the use of the special consultative procedure.
- 309 Many of the statutory provisions requiring the special consultative procedure to be used delimit either the form of the particular proposal or the manner in which the proposal is formulated.¹¹ Where Parliament intends a local authority to have regard to particular considerations in formulating a proposal or policy, it has expressly stated this in the statute concerned.
- 310 In some situations it may be appropriate to include the whole of the resolution in question, or to incorporate by reference the particular plan or policy that is to be the subject of the consultation. However, where the special consultative procedure involves a specific proposal – and the relevant legislation does not specify any criteria for the formulation of the proposal – then, as noted above, the only limit on the formulation of the proposal is one of reasonableness.
- 311 It is for the council to determine the proposal that is to be the subject of consultation. A decision to consult on a particular proposal is not invalid simply because it is worded narrowly, unless it is so narrow that no reasonable council would have adopted it (*Urlich*(19) and *South Taranaki*(10)).

¹¹ For example, section 33 of the Resource Management Act 1991 and section 180b of the Rating Powers Act 1988.

Who May Make Submissions?

- 312 Section 716A allows any person to make any submissions on the proposal. This right is not limited to ratepayers or residents of the district.
- 313 Although submissions must be relevant to the proposal, this does not prevent submissions being made on any option as an alternative to that contained in the proposal.
- 314 Section 716A(l)(d) provides that any person who has made written submissions is to be given a “reasonable opportunity to be heard by the body to which the submissions are made”. These words clearly envisage that members of the public have the right to speak to their submissions.

To Whom are Submissions Made?

- 315 Section 716A(l)(g) provides that the final decision in relation to any proposal is to be made at a meeting of the local authority. However, section 716A(l)(c) allows a local authority, in its public notice, to state whether the submissions are to be made to the local authority, a community board, or a committee of the local authority. The combined effect of sections 716A(l)(c) and (d) is that submissions may be made to, and heard by, a body other than that which is the ultimate decision maker.
- 316 Where submissions are made to – and heard by – a community board or committee of the local authority, the community board or committee must inform the council of the evidence and submissions, in a way that is free from bias, so as to allow the council to make an informed decision. This information may be in the form of a summary, provided it is an accurate representation of the submissions received.

Effect of Submissions

- 317 There may be a perception among the public that they have a right to dictate the outcome of a special consultative procedure and that the majority view expressed by submissions is determinative. However, the courts have made it clear that the consultation process under section 716A is not a referendum. A council is not under any obligation to give effect to the majority view represented by submissions (*Urlich* (19)).
- 318 It is the quality of the submissions and not the quantity that is important. Giles J, in *South Taranaki*(10), commented as follows:

I pause to observe that mere weight in numbers is not and cannot be determinative. The reality of life is that notwithstanding public clamour and demands for democracy and transparency at local government level, section 716A consultation has an understandable tendency to attract submissions from

SPECIFIC ISSUES

interest groups and those electors holding a passionate view on a particular issue. The silent majority often have no desire to participate, either out of disinterest in or satisfaction with the proposal subject to consultation. As Williams J stresses in Auckland City Council v Auckland Electric Power Board (supra) sheer weight of numbers alone does not justify or require a Council to yield simply because of the numbers. The process is about securing public input and it is the substance of that input upon which the Council must reflect with the necessary open mind contemplated by section 716A.

- 319 The fact that the overwhelming majority of submissions support a particular option does not mean that the council is bound to adopt that option, provided that a council considers all submissions fairly and with an open mind.

Role of Council Officers

- 320 As with reports of committees or community boards to a council, any report that is prepared that purports to summarise the views of the public expressed through the consultation process must be a fair and accurate representation. Council officers have a role to present their professional opinion with regard to a proposal, but they must be careful to represent fairly the views that they gather as part of any public consultation process.
- 321 In exercising that role, council officers must act fairly, lawfully and reasonably or their actions could be challenged in judicial review proceedings. Where the matter could be contentious, they might consider the use of independent facilitators or reviewers for the consultation process.

Alterations to Proposals

- 322 After consultation has taken place on a particular proposal and changes have been made, there may be an issue as to whether the amended proposal is so different to the original proposal that it needs to be re-notified. So, when is further or new consultation needed on a revised proposal?
- 323 Section 716A does not expressly provide for the possibility of the proposal subject to consultation being modified or altered at the time of confirmation (although it is implicit in the consultation requirement that changes could result), and case law provides little assistance on this matter.
- 324 Whether modification or alteration to a proposal at the time of confirmation of the proposal is reasonable may depend on the nature of the particular proposal that is subject to the special consultative procedure:
- **Accountability** – Where the special consultative procedure involves the adoption of general policy (e.g. the annual plan), changes are probably permissible and likely. Changes allow public participation in the formulation of policy. It is also significant that long-term policy documents such as the annual plan are, even once adopted, not binding on councils.

- **Specific Proposal** – A specific proposal may be more difficult to alter. Generally, the proposal is looking for a yes/no answer, and any alteration to the proposal is more likely to significantly alter the outcome of the special consultative procedure.
 - **Legislative Process** – Special consultative procedures used for legislative purposes are similar to special order procedures. It appears that the principles relating to the alteration of special orders would be applicable, and that only minor technical alterations would be permissible.
- 325 Although there is no case law on when a council may alter a proposal rather than recommence the procedure, the following guidelines may be of assistance:
- Alterations should result only from submissions made.
 - If the alteration changes the proposal to such an extent that the altered proposal would have attracted additional or different submissions to those actually received, the council should consider not confirming the proposal. Section 716A requires open consultation, which cannot occur if the proposal that is confirmed has not been adequately notified to the public.
- 326 Whether an alteration to a proposal is permissible may ultimately be decided on whether, in all the circumstances of the particular situation, it is reasonable.

Failure to Use the Procedure

- 327 A failure to use the special consultative procedure in circumstances in which it was expressly required by statute is likely to result in the courts invalidating the decision. In situations where Parliament has expressly shown its intention that decisions are to be made or plans or policies adopted only after compliance with section 716A, any failure to follow the procedure will place the outcome at serious risk of challenge.

Irregularities in Complying with the Procedural Requirements

- 328 The Act makes no provision for a failure to comply with the procedural requirements of section 716A, and there has been little judicial commentary on the issue. Traditionally, the approach of the courts to procedural failure has been to invalidate the outcome of the procedure.
- 329 Some guidance may be taken from the approach of the courts to procedural irregularities in the special order process. Courts have invalidated special orders because:
- the resolution confirming the special order was confirmed a day too early;
 - the public notice failed to state the time and place at which the confirming meeting was to be held;

SPECIFIC ISSUES

- the second public notice was not given; and
- an ordinary resolution was used instead of a special order.

330 However, the courts have recently appeared willing to take a more liberal approach where the breach is technical in nature. Tipping J stated in the *Westland County Council* case (24):

No doubt section 5 [of the Judicature Amendment Act 1972] or the general law can be used to excuse purely formal errors or technical irregularities, but hardly a failure to observe in substance an important statutory preliminary.¹²

331 A similar approach has been applied to procedural irregularities in other consultative processes. In the *Yovich* case (20), the Council's public notice of its intention to make rates incorrectly stated the time of the meeting at which the rates would be made. It was held, in the circumstances of that case, that any deficiencies in respect of the notice:

... are, in the absence of any suggestion of substantial wrong or miscarriage of justice, matters to be dealt with under section 5 of the Judicature Amendment Act, and to the extent necessary in so far as the deficiencies are of that kind the decision should be validated.

332 Whether the failure to perform a procedural requirement invalidates the outcome of a special consultative procedure is ultimately likely to be determined by reference to whether the failure has somehow prejudiced the rights of the public to be involved in the consultative process. Given that each procedural step in section 716A appears designed to ensure public participation in the decision-making process, anything other than the most minor breach may invalidate the process.

333 If a decision is invalidated by reason of a procedural irregularity, section 719 of the Act provides that the decision may be validated by the Governor-General, by Order in Council. This provision only applies where the decision is not made, or cannot be made, at the time required under the Act, or is otherwise irregularly made "in matter of form".

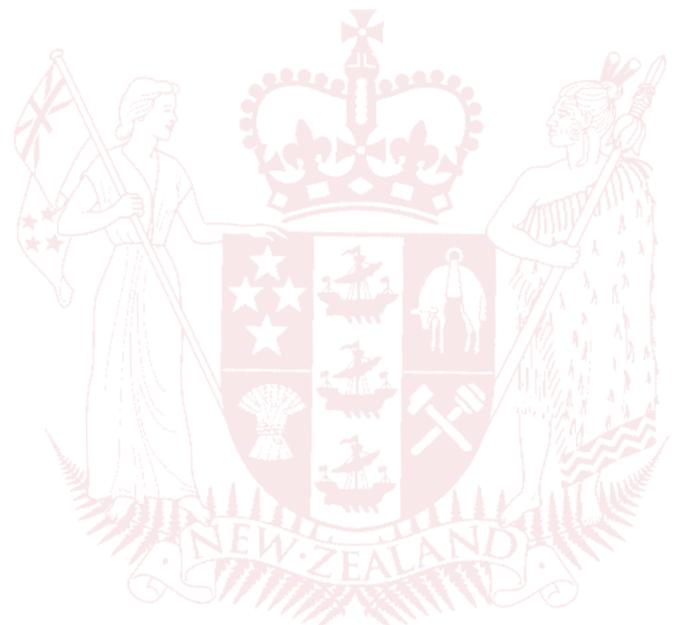
¹² Section 5 of the Judicature Amendment Act 1972 allows the Court to refuse relief in judicial review proceedings "where the sole ground of relief established is a defect in form or technical irregularity", provided that the Court finds that no substantial wrong or miscarriage of justice has occurred.

Timing – Special Consultative Procedure

334 One of the most significant elements in compliance with the procedural requirements of the special consultative procedure is timing, particularly as regards the giving of public notice and the time available for the making of submissions and representations. Section 716A requires that the period of submissions is to be not less than one month and (unless the authority directs) not longer than three months. In this context “month” refers to a calendar month. The time for receiving submissions must therefore remain open for at least one clear calendar month.

Timing – Special Orders

335 Section 716B does not specify any date by which representations must be received by a council. Indeed, section 716B(8) suggests that councils must receive representations until the day before the date of the confirming resolution. This will clearly affect the ability of a council to fairly and adequately consider all representations, particularly if a large number of them are received at the last moment. If that interpretation is correct, it appears to be one area in which legislative amendment is required.



Part Four

Problems and Current Trends

WELLINGTON REGIONAL COUNCIL

REGIONAL TRANSPORT RATE

Differential Special Order

At a meeting on 21 April 1998 the Wellington Regional Council resolved by way of Special Order to alter the system of differential rating for the purposes of collecting the Regional Transport Rate. The Special Order will be considered for confirmation at a meeting to be held on 25 June 1998, starting at 9.30am in the Wellington offices of the Council.

The differential takes account of the public transport services and population of each part of the region and the degree of benefit that different categories of ratepayers derive from those services.

Copies of the Special Order (including the explanatory statement required by section 84 (1) (c) of the Rating Powers Act 1988) can be inspected at offices of the Wellington Regional Council, at the address below, and 34 Chapel Street, Masterton during normal office hours. Any person upon inquiry either in person at the principal office of the Council or in writing addressed to the General Manager (at the address below) shall be advised of the category of property to which a particular property will be allocated for differential rating purposes. Any ratepayer may, at any time after the confirmation of the Special Order, object to the Wellington Regional Council in accordance with section 116 of the Rating Powers Act against the allocation of a property to a particular category of property.

LOWER WHANGAEHU RIVER MANAGEMENT RATING SCHEME

Differential Special Order

At a meeting on 21 April 1998 the Wellington Regional Council resolved by way of Special Order to create a system of differential rating for the purposes of collecting a Lower Whangaehu River Management Scheme Rate. The Special Order will be considered for confirmation at a meeting to be held on 25 June 1998, starting at 9.30am in the Wellington offices of the Council.

The differential takes account of the direct and indirect benefits likely to accrue to any property from channel clearing and maintenance of the Lower Whangaehu River, the characteristics or use of the property and the likelihood and severity of flooding and erosion.

Copies of the Special Order (including the explanatory statement required by section 84(1)(c) of the Rating Powers Act 1988) can be inspected at offices of the Wellington Regional Council, at the address below, and 34 Chapel Street, Masterton during normal office hours. Copies of the maps and plans identifying which rating class or classes a particular property has been allocated can also be inspected.

Any person upon inquiry either in person at the Masterton office of the Council or in writing addressed to the General Manager (at the address below) shall be advised of the category of property to which a particular property will be allocated for differential rating purposes. Any ratepayer may, at any time after the confirmation of the Special Order, object to the Wellington Regional Council in accordance with section 116 of the Rating Powers Act against the allocation of a property to a particular category of property.

Wellington Regional Council
The Regional Council Centre
142-146 Wakefield Street



PO Box 11-646, Wellington
Phone 04- 384 5708
Fax 04- 385 6960

working about you & your environment

WELLINGTON REGIONAL COUNCIL

PROPOSED ANNUAL PLAN AND AMENDMENTS TO FUNDING POLICY

Facing the Future 1997-2007: 1998 Update

The Wellington Regional Council has just produced FACING THE FUTURE 1997-2007: 1998 UPDATE.

This document tells you how the Wellington Regional Council will contribute to the community over the next ten years. Its contents will affect every person in the Region in some way or other.

FACING THE FUTURE 1997-2007: 1998 UPDATE incorporates the proposed Annual Plan for the 1998/99 financial year. It sets out the Council's proposed spending rates, together with measurable performance indicators. The projected financial position of the Council is also set out for the next nine years.

The Council is also proposing a number of amendments to its Funding Policy as required by the Local Government Amendment Act (No. 3) 1997.

Copies of the FACING THE FUTURE 1997-2007: 1998 UPDATE can be seen at the Council's offices, at the address below and 34 Chapel Street, Masterton from Monday 1 June 1998. Inspection copies will also be available at city and district offices, service centres and most public libraries throughout the Region. You would like a copy of FACING THE FUTURE 1997-2007: 1998 UPDATE, contact the Council at the address below or free-phone 04-384 5707.

The Council welcomes your comments. This is your opportunity to have a say in the Council's activities. To comment on the FACING THE FUTURE 1997-2007: 1998 UPDATE or the amendments to the Funding Policy you can contact a Regional Councillor from your constituency or a written submission. Written submissions should be addressed to the Council Secretary, address below, and must reach the Council no later than Friday 22 May 1998.

The Council's Policy and Finance Subcommittee will hear oral presentations on the support of written submissions on Thursday 4 and Friday 5 June 1998. If you wish to be heard in support of your submission, please state this clearly.

Wellington Regional Council
The Regional Council Centre
142-146 Wakefield Street



PO Box 11-646, Wellington
Phone 04- 384 5708
Fax 04- 385 6960

working about you & your environment

Introduction

- 401 As well as interpreting and analysing the legal requirements for public consultation there is the important matter of their practical application. A legalistic approach to consultation tends to emphasise an “individualistic” (even adversarial) feature in the process, which is potentially at odds with its spirit.
- 402 Since the introduction of these accountability requirements, councils have been faced with a range of questions:
- How should they interpret the legislation?
 - What are the problems and issues of applying it to their activities?
 - What is the role of consultation in the management and decision-making process?
- 403 More recently, there have been increasing concerns that – instead of creating increased confidence in local government – the special consultative procedure may be operating in a way that seems to be undermining public confidence, and contributing to growing disillusionment with local government.
- 404 In the paragraphs that follow, we discuss some of the problems that are being experienced with the special consultative procedure and current trends in applying the legislation. The information used has come from discussions with local authority staff, chief executives, and elected representatives, as well as from our observations from dealing with ratepayer groups and ratepayer enquiries we have received.

Perceived Problems with the Special Consultative Procedure

The Perception That Consultation Is “a sham”

- 405 The public may develop an opinion that the consultation process carried out by a local authority was not adequate or appropriate. Possible reasons for this attitude that have come to our attention include:
- The local authority is unwilling to listen – Although a local authority carried out a consultation process, it had already made up its mind. It was not ready to listen to the views expressed nor change its position regardless of any views put forward. People gave up making submissions to the local authority on the grounds that all their previous submissions had been ignored and so they assume that the same fate awaits any new views they might present.

PROBLEMS AND CURRENT TRENDS

- Too little time for compiling submissions – Often, the organisations that would be interested in making submissions to a local authority are voluntary and only meet monthly. This is a problem if the consultation period is the minimum one month that is required under the Act.
- Too little time for presenting submissions – Some local authorities have restricted the time available for making oral submissions (e.g. 10 minutes per person or organisation regardless of the number of issues covered by the submissions). Given the complexity and significance of some issues, people felt that this was inadequate to make a suitable submission.
- Lack of feedback about the final decision – Despite the time and effort that some groups or individuals invested in a submission, often they received no information in return about the final decision taken, why it was taken, and any impact their submission had.
- The vested interest of a council and its officers – Some people have voiced a concern that local authorities have learned how to work with the legislation and use it as a means of eliciting citizen support for activities which they intend to undertake anyway. This can be a concern particularly with a smaller authority where the councillors and officers who develop the proposal may well be heavily involved in or responsible for the public consultation process.
- Different expectations – In making submissions, some members of the public assumed that they were taking part in a genuine debate over the issues and that their views would determine the outcome. This has been the case particularly when a local authority proposal attracted a large number of submissions. People tended to see the consultation process as a referendum or survey that the local authority would treat as binding.
- Avoiding making a decision – People are concerned that some local authorities are avoiding making hard decisions by constantly putting off those decisions pending further consultation.

Costs of Consultation

406 Concerns also exist that the heavy emphasis on consultation may be giving rise to difficulties and costs that were not fully anticipated. Examples that have come to our attention include:

- Publishing and distribution – Costs are incurred in publishing and sending annual plans and annual reports to a large number of national agencies; e.g. the Department of Conservation and Fish and Game Councils. On matters in which local residents are not necessarily interested, ratepayers are incurring the costs of keeping central government and other agencies “informed”.

Other Formats

One local authority has developed its draft annual plan in a number of different formats in order to try and reach a much wider cross-section of the population. For example, it has developed a “youth’s” version, which is specifically designed to attract the interest of and elicit a response from an interest group that has usually been overlooked in the annual plan consultation process.

- **Keeping in touch** – In smaller local authorities, the councillors and staff feel that they have good contacts with the public and know all the issues in their area. Why then should they go to the expense of carrying out further public consultation? And why waste scarce resources that could be applied to other activities?
- **Public meetings** – Costs may be incurred in organising public meetings – and paying staff and councillors to attend – when no members of the public turn up or a small number of the same people attend all the meetings. Where is the value in this to ratepayers?

“Go Where the People Go”

The policy of one large city council is to use established organisations to communicate policies with the public rather than organising meetings in the hope that people will turn up.

It is important to go where the people go – the vocal minority is known and it is easy for them to get involved (they know the system and the people). But, for the silent majority, you have to front up to where they are.

Established networks that can be used, and usually welcome a “guest speaker”, include local service organisations – such as Lions and not-for-profit clubs and societies.

Ongoing relationships can also be of value when it comes to notifying that a proposal is to be subject to consultation. A council could keep a register of the organisations that are known to have an interest in certain matters and notify them directly of the proposal.

Such a register may initially favour established groups, but over time a reasonably comprehensive register could be compiled listing the co-ordinating bodies in the community that could be used as a channel of communication. These bodies could include ethnic councils, chambers of commerce, councils of social services, and arts and recreation groups.

Undue Pressure Group Influence

- 407 Both local authorities and members of the public have expressed concern that public consultation processes can be dominated by sectional interest groups. This is sometimes known as the “squeaky wheel” syndrome, where a minority group is able to get its way at the cost of the “silent majority”. Examples of undue influence that have come to our attention are:
- Reluctance to voice opinions – The dominance of one particular sectional interest group at all public meetings tends to overwhelm other groups and individuals, making them reluctant to express their view.
 - Local authority “capture” – The local authority is continually persuaded by persistent representations from a well-organised and/or well-resourced group. However, there can be a tendency to dismiss such a group for being too enthusiastic or persistent rather than give it the appropriate level of attention. Some groups will always be more active than others in being attentive to notifications of consultations, but a balance can be achieved by use of a register as described in the previous example.

Sectional Interest Groups

Regional councils have a particular problem with public consultation, in that their role is usually more strategic and proposals do not impact directly on the majority of the public. Identifying and developing links with sectional interest groups (e.g. farmers or fishing clubs) is one way of focussing the consultation process to achieve meaningful results – subject to guarding against those groups exerting undue influence as a result.

- The nature of the process – The facts that the notifications are made through public notice sections in newspapers, and submissions have to be in writing, tend to alienate many individuals or sections of the community. Consequently, some sections of the community have better access than others to the local authority and programmes or resources available.
- The “squeaky wheel syndrome” – Some councillors feel that they are constantly subjected to the same views from the same minority groups or individuals. The special consultative procedure provides an opportunity for determined opponents, or well-organised sectional interest groups, to play a dominant role (at least in terms of timing) as opponents prove able to drag out the decision-making process. But what is the view of the “silent majority”? Should a council take silence as acceptance? How can it get feedback from the wider community?

- 408 The difficulty is how to treat all submissions on their merits, rather than give extra weight to a vocal group or dismiss the group as a nuisance.

- 409 One option would be to improve the information available on the purpose of consultation and how the process works – making it clear that consultation is not a referendum but an opportunity for the council to obtain community views on the potential impact of a proposal. Clarifying the purpose of consultation would be useful not just for the community – councillors and council staff also need to fully understand the purpose.

Current Trends

- 410 Eight years have now elapsed since the special consultative procedure was introduced. Local authorities have been through a difficult period of learning that implementing the special consultative procedure is not by itself sufficient to maintain public confidence in the decision-making process. Aside from the direct problems (some of which we have highlighted above), implementing the special consultative procedure and developing consultation practices must be seen within a wider context. We have observed the following trends over the eight years.

Increasing Diversity

- 411 Local authorities find that they are dealing with an increasingly diverse range of interest groups and communities of interest – as society has become more pluralistic, multicultural and complex. Associated with this is an increasing diversity of community expectations, which encourage local authorities to be involved in a wider range of social and economic activities.
- 412 Such expectations require local authorities to move outside the confines of their traditional infrastructure and regulatory core functions. Examples of new areas of activity include crime and public safety, Treaty of Waitangi, youth, education, and local health care.
- 413 Improved consultation and communication practices are seen as the mechanisms to effectively communicate with diverse communities and to fairly represent councils' increasing range of interests. A council is likely to be more successful in carrying out formal consultation when it:
- provides good quality information;
 - actively involves affected groups in the development of policies; and
 - is itself clear about the purpose of consultation and makes that purpose clear to others.

Balancing the Budget

- 414 Communities are increasingly interested in what activities their local authority intends to undertake with the resources available in the annual budget, while insisting that rates are kept to a minimum. The focus of consultation, debate and decision-making is increasingly about making funds available for social and economic activities that the community has requested.
- 415 At the same time, both the community and the local authority are keen to examine ways to rationalise and make savings in the “traditional” activities like water and roads and the operating costs of the authority. Councillors are faced with a number of dilemmas:
- Which projects should be given priority?
 - How can those projects be done without over-burdening the ratepayer?
 - How can they meet their statutory obligations and provide the increased services requested by the community?
- 416 Answering those questions points towards an increasing role for dialogue and consultation between local authorities and their communities, to determine the range and scope of services that should be available locally and how they should be funded.

Social Programmes

We have been told that community expectations of local government have increased as central government has reduced its levels of service or withdrawn from the provision of certain services. In many areas, local government is seen as the only form of government. The issues are local and, generally speaking, are best handled locally. It was felt that the demand by communities for a wider range of “social cohesion” initiatives would continue to grow in the future.

Need for Resources

- 417 As communities become more diverse and their expectations of consultation have increased, it has become apparent that significant skills and resources are required to develop and carry out appropriate consultation that will provide useful information. Staff time, councillors’ time, and a sufficient operational budget are essential components of adequate consultation.
- 418 In some smaller local authorities even complying with the minimum requirements of the Act can take up a substantial amount of staff time and budget.

- 419 On the other hand, it is questionable whether all interested groups and individuals within the community have the resources available to be able to make an effective response to proposals put out for consultation by local authorities.

Changing Community Expectations

More Frequent and More Detail

- 420 The community increasingly expects to be consulted about issues that affect it. Our observation is that people have a growing expectation that they will be consulted about more issues and at a greater level of detail.
- 421 Communities now expect to be consulted about a wide range of local authority activities – either before or after the annual plan consultation process – in more detail about the specifics of design and implementation. Typically, development of parks, drainage systems, flood protection schemes, the location of bus stops, parking arrangements and street tree planting are now projects that will involve fairly detailed community consultation.
- 422 Communities are becoming more discerning and are making greater demands for information. A more active public has implications for local government in the sense of increasing accountability for decisions.

Different Expectations

- 423 A number of people have told us that time spent on making clear not only what the local authority is consulting about but also what consultation consists of (and its limits), is likely to be repaid in avoiding needless dissension later.

“We know best”

We have been told that, historically, the approach among councillors and officers of a particular local authority was one of “we know best”. A number of decisions made with that attitude were now a major headache for the local authority because of constant ratepayer complaints, long discussions at committees about what should be done, and even (in some cases) litigation. The local authority was using significant resources trying to “put the decisions right” after the fact.

Annual Plan and Strategic Plan Relationship

- 424 The more direct the effect a proposal or policy will have on a community or individual, the more likely they are to be interested and become involved. Local authorities are still struggling to come to terms with how to present

PROBLEMS AND CURRENT TRENDS

strategic plans to the public in a way that is interesting, understandable and pragmatic. The annual plan is still seen as the primary “working agreement” or contract between the local authority and the community.

- 425 Where a strategic plan is successfully operating, the annual plan becomes a reflection of projects being undertaken each year to achieve the long-term objectives of the strategic plan. In these circumstances, periodic consultation to review strategic objectives is more critical than consultation about each annual plan objective.
- 426 Improved information on what is being done might help concentrate the expectations for consultation on the matters affecting what might happen. There is no point in responding to community pressure to undertake consultation on a matter on which decisions have already been taken.

Consultation Goals and Objectives

We have observed that, within the annual plan and annual report documents, many local authorities are setting themselves specific goals, objectives and performance measures with regard to public consultation. The following is an example of a goal:

To use an open and consultative approach to decision-making and provide an adequate system to inform the public on matters relating to local authority activities and policies.

Changing Role of Consultation

- 427 The introduction of legislative requirements to carry out public consultation was a significant step in the development of accountability and representation within local government. However, having embraced the changes required by the legislation, some local authorities have gone further – they have recognised and capitalised on a range of additional benefits which public consultation can achieve.

The Act as a Minimum Requirement

- 428 Local authorities are interested in developing new and better ways to consult with the community to an extent well beyond the statutory requirements. The special consultative procedure in section 716A of the Act is increasingly viewed as the “bottom line” or a “minimum standard”. The practical experience of people in local government has led to the development of some principles that might be regarded as forming the basis for best practice. We expand on these later.

More Time for Consultation

- 429 Some local authorities have recognised that the compulsory minimum one-month consultation period is a problem for groups or organisations that meet on a monthly basis. As a result, those authorities have set a minimum period of six weeks to allow sufficient time for such groups to become involved.

An Attitude Shift from “requirement” to “investment”

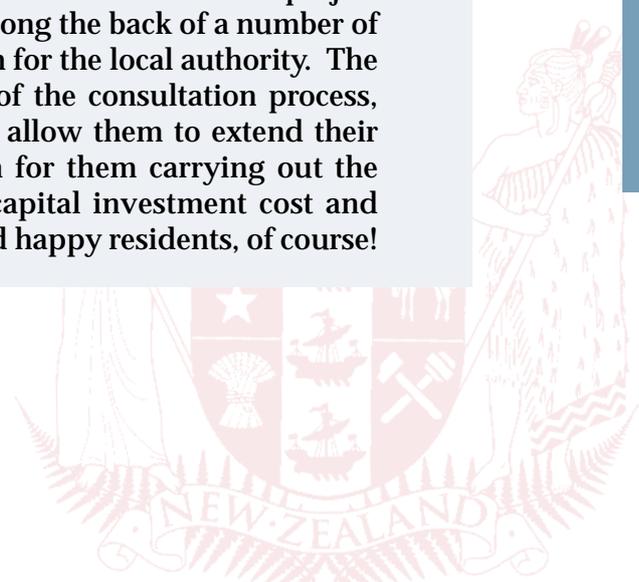
- 430 The attitude of some local authorities to public consultation has shifted from just a legal requirement to good management practice – and a better way to communicate with their community and to represent its interests and expectations.

Informed Decision-making

- 431 The most tangible benefit of adequate and appropriate public consultation is that it will help to produce better decisions. Informed policy decisions are less likely to need constant review and revision. Projects that are understood and accepted by the community are also less likely to face pressure for revision or cancellation. Good consultation can produce better, sustainable decisions. Getting it right first time can save time and money.
- 432 The “traditional” approach of placing public notices in newspapers, holding public meetings, and receiving written and oral submissions has its shortcomings. It is a method known to reach only a limited number of people within the community, and elicits a response only from those who are knowledgeable and confident about the system. By its very nature, it excludes those who do not read the public notices section of newspapers, and those who do not want to or cannot provide a written response.

Good Ideas

“Good ideas come out of consultation.” We have been told of a project to provide a culvert for a stream that ran along the back of a number of properties and was a maintenance problem for the local authority. The residents, who were approached as part of the consultation process, suggested a different solution that would allow them to extend their boundaries down to the stream in return for them carrying out the maintenance. The result was a reduced capital investment cost and reduced long-term maintenance costs. And happy residents, of course!



PROBLEMS AND CURRENT TRENDS

Providing a Balanced View

- 433 In order to develop balanced policy and to make informed decisions, a council should take into account the widest practicable representation of community views and concerns. Annual consumer surveys are one way to achieve this. While not always ideal, an increasing number of local authorities are carrying out such surveys to assess what the community thinks of their performance.

Gaining Experience and Knowledge

- 434 A local authority can set up a network of representatives – groups and individuals – throughout the community. The network provides the means for two-way communication between councillors, council staff, and the community – to constantly exchange information, opinions and options about a wide range of issues.
- 435 Such a working network effectively extends the pool of experience and knowledge that the local authority can draw upon to identify issues and concerns, develop policy, and deliver services. A successful dialogue with the community can reduce the need for (and costs associated with) major or haphazard consultation exercises, while obtaining significant relevant and useful information for the decision-making process.

Testing Assumptions

- 436 In some local authorities, particularly the smaller ones, councillors and officers can feel that they are sufficiently “in touch with the community” or that “there are no issues”. We agree that the nature of the special consultative procedure, particularly when applied to the annual plan, is such that proposals that are put forward for consultation will often have a certain inevitability about them. As a result, the local authority may see consultation as an unnecessary expense or the public might see it as “a sham”.
- 437 In order to make sure that any assumptions are correct, and that issues are not “hidden” within the community, some local authorities employ independent facilitators to conduct periodic “community forums”. These can be a regular way to test, independently, the assumptions behind a local authority’s decision-making.
- 438 Another advantage of using an independent facilitator is that it may avoid allegations of bias, where otherwise the council officer may be required both to serve the decision maker and to conduct the consultation on behalf of the decision maker.

Part Five

Conclusions and Recommendations

outcomes from first stage of public consultation

In December 1997 the Council considered 93 submissions from the community on its plans for the next ten years. At that stage the Council was proposing a continuation of our existing work programme, with additional work on wetlands enhancement (additional spending of \$100,000 per annum), the Regional Landcare Scheme (additional \$300,000 p.a.), possum control (additional \$167,000 p.a.) and flood protection (additional \$3 million over 10 years).

programme questioned

The only activity that was questioned in submissions was tourism promotion. After considering this issue further the Council decided to continue to include a commitment to funding tourism promotion in the draft long term financial strategy.

more work

Some submissions requested that the Regional Council undertake even more work on activities that it was already involved in. Council staff were asked to look into the introduction of an environmental education bus, assisting with the operational funding of Te Mata Park, the funding of an iwi environmental unit, and work required to control Chilean Needlegrass.

- The Council considered these issues in March 1998 and as a result -
- included proposed funding for Te Mata Park in both next year's Draft Annual Plan and the draft long-term financial strategy (at an annual cost for the next five years of \$20,000).
- proposed a feasibility study be undertaken in 1998/99 on biological control agents for Chilean Needlegrass (at a cost of \$6000).
- deferred a decision on the funding of an iwi environmental unit until more information is available.
- decided against proposing the introduction of an environmental bus.

Conclusions

- 501 A considerable body of knowledge and experience about public consultation has been developed in the last 10 years, both locally and internationally. Experience points towards an increasing role for local authorities – working with their communities – to determine the range and scope of services that should be available locally and how they should be supported.
- 502 The special consultative procedure will probably remain a feature of local government accountability and, as a result, local authorities need to continue the development and use of consultation policies and practices. The special consultative procedure should be seen within a context of a range of measures that make up good management practice.

Good Management Practice

- 503 What is obvious to those who have to put the consultation requirements into practice is that expectations on both sides of the process are changing and becoming more sophisticated. The significant benefits of increasing the opportunities for the perspective of community stakeholders to be considered an integral part of the planning process include:
- **Helpful** – Informed decision-making using local knowledge and experience can ensure that all viewpoints have been considered, that all perspectives have been considered, and that all pertinent information has been made available.
 - **Effective** – The range of expertise, ideas, and knowledge available is increased and a better end product can be supplied to the public.
 - **Good practice** – A greater sense of ownership of problems and solutions develops within the wider community and, in the long run, it can avoid an antagonistic or litigious relationship between the local authority and the public. A higher level of understanding, credibility, and trust between the authority and its community is attained.
 - **Pragmatic** – A local authority generally cannot achieve its desired objectives without the support of the community. Decisions that better reflect community needs and demands mean that service to the community is improved. In addition, issues and concerns can be identified and canvassed before plans or projects have been fully developed – thereby helping to reduce costly changes.
- 504 The ideas and experience being built up are generally available to other local authorities which are starting to develop policies and management processes for handling public consultation. That collective experience should provide a good starting point for those authorities that have limited resources and do not wish to “reinvent the wheel”.

Good Consultation Practice

- 505 Although the specific nature of any consultation exercise will vary with the particular circumstance of a policy or project, we have observed a number of practices which are indicative of “good” consultation. The key to good consultation is good process.
- 506 Some of these practices are preconditions – such as having the right attitude, being clear, and identifying all those with an interest – while others relate to carrying out the consultation and dealing with the community’s reaction to the matter.
- 507 Indicators of good consultation practice are:

- Having the right attitude – The consultation process must be compelling, so that people will want to be involved. A major barrier to participation in council affairs by the community is uncertainty as to whether the local authority really wants to listen to its views. The impression that the local authority is willing to both listen and respond to community views is the key to a successful process. This is a matter for institutional culture that needs to be backed up by administrative commitment and policies and practices governing how community views and concerns should be treated.
- Allowing sufficient time – Projects should be planned to allow sufficient time for appropriate consultation. The time will vary, but the community should be given long enough to consider and respond to the particular matter.

Matters that are of fundamental significance to the whole community may well be signalled through strategic and annual plans and the associated consultation processes. They should then undergo a more detailed specific period of consultation that allows the community to focus on the detail of the proposal.

Consideration should be given to the reduced ability of the community to respond to proposals at particular periods of the year, such as Christmas and New Year. The time allowed for consultation should be adjusted accordingly.

- Being clear – The local authority should ensure that the community clearly understands what it is being asked to comment on and how its views will be used in the decision-making process. The process should be demonstrably sensible and unbiased, and the outcome not predetermined.

Time spent on making clear not only what the authority is consulting about, but also what the consultation consists of and what its limits are, is likely to be repaid in avoiding needless dissension later.

Clarity of process and the purpose of consultation as a way to make informed decisions would reduce the risk of the consultation process being used to avoid making a decision.

CONCLUSIONS AND RECOMMENDATIONS

- Identifying all those with an interest – The local authority needs carefully planned consultation practices that identify the affected and interested parties with whom to consult, what they are to be consulted about, and the most appropriate consultation techniques to use.
- Providing good feedback – Communities expect feedback from consultation. They want to be told about:
 - ★ the process of subsequent decision-making, including delays, and, if appropriate, the reason for delays;
 - ★ the sorts of issues and options raised by others; and
 - ★ the decision made and the reasons for it.

Communities need reassurance that their views and the efforts they put into expressing them are valued. The effectiveness of future consultation is influenced by people's perception of the quality of past consultation and decisions.

Recommendations

508 We recommend that every local authority should:

- Have appropriate policies and practices in place to ensure compliance with any specific legislative requirements, or any general duty to consult, when designing and carrying out a public consultation exercise.
- Use the special consultative procedure in section 716A as a framework for public consultation where an issue is controversial and likely to attract public interest and opinion.
- View public consultation as more than simply notifying the public and receiving written submissions.
- Ensure that the public and the council are clear about how the consultation process will influence making the final decision.
- Develop a consultation process that:
 - ★ Is compelling, so that all affected parts of the community will want to be involved and know that the council is interested in listening to their views.
 - ★ Allows sufficient time, so that everyone who wants to is given an appropriate amount of time to respond to the proposal.
 - ★ Is clear about what the proposal is, why the consultation is necessary, what will be done with the information, and who will be making the decisions.
 - ★ Identifies all those with an interest, so that all those affected and interested are identified and informed about the proposal and encouraged to participate.

CONCLUSIONS AND RECOMMENDATIONS

- ★ Provides good feedback, so that all those who participate are given reassurance that their views and efforts are valued.
- Recognise that public consultation is good management practice and a pragmatic way to assist with informed decision-making.
- Ensure that sufficient appropriate skills and resources are available to develop and carry out public consultation exercises.



Appendix A

Statutory Provisions Imposing
a Duty to Consult

Biosecurity Act 1993	Section 73	Consultation on proposed regional pest management strategy.
Dangerous Goods Act 1974	Section 15	Restrictions on issue of licences by local licensing authorities.
Higher Salaries Commission Amendment Act 1989	Section 3	Obligation to consult Commission.
Land Transport Act 1993	Section 29J	Duty to consult in respect of regional land transport strategy.
Local Government Act 1974	Section 37ZT	Action required on receipt of reorganisation proposal.
	Section 101ZZ	Functions, duties and powers of community board.
	Section 114Q	Delegation to committees and subcommittees.
	Section 225D	Community trusts.
	Section 225L	Trust deed not to be inconsistent with provisions of this Act.
	Section 492	Making of trade waste bylaws.
	Section 497	Trade waste bylaws may be relaxed in certain cases.
	Section 709A	Prohibition of vehicles and consumption or possession of intoxicating liquor in public.
Resource Management Act 1991	Paragraph 11, Tenth Schedule	Temporary prohibition of traffic.
	Section 220	Condition of subdivision consents.
	Section 237	Approval of survey plans where esplanade reserve or esplanade strips required.
	Paragraph 3, Part I, First Schedule	Preparation of policy statements and plans by local authorities.
	Paragraph 26, Part II	Requests for changes to policy statements and plans.

Appendix B

Statutory Provisions Requiring the Special Consultative Procedure

Accountability Process –

Local Government Act 1974 Section 122K Long-term financial strategy.

Section 122N Funding policy.

Section 223D Annual plan.

Specific Proposals and Divestments –

Biosecurity Act 1993 Section 15 Transfer of powers, etc, by local authorities.

Building Act 1991 Section 25 Transfer of powers.

Energy Companies Act 1992 Section 24 Public consultation on establishment plan.

Section 88 Relinquishment by local authority of controlling interest in energy company.

Food Act 1981 Section 8ZA Transfer of functions.

Local Government Act 1974 Section 37SC Transfer of functions, duties, etc.

Section 37SD Revocation of transfer of functions, duties, etc.

Section 594D Transfer of existing under-taking to local authority trading enterprise or other entity in which local authority will not have majority interest.

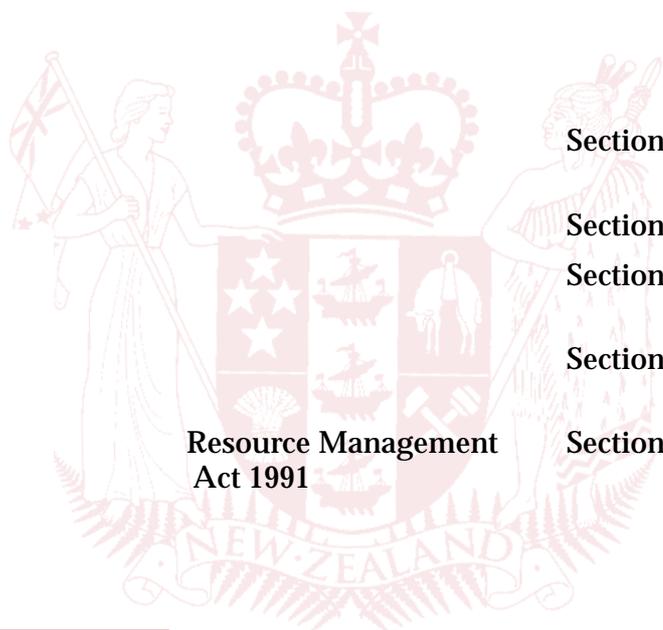
Section 594F Reduction of interest in local authority trading enterprise.

Section 594G Listing on Stock Exchange.

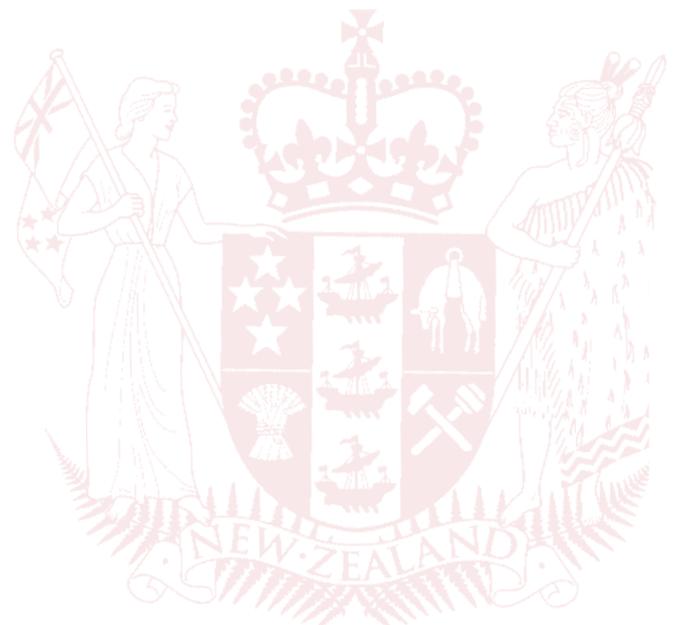
Section 594O Power of local authority in relation to divestment of undertakings.

Section 594P Effect of establishment unit determinations and recommendations.

Resource Management Act 1991 Section 33 Transfer of Powers.



Legislative Process –		
Dog Control Act 1996	Section 10	Duty of territorial authorities to adopt policy on dogs.
Local Government Act 1974	Section 539	Waste management plan.
Rating Powers Act 1988	Section 150E	Making of replacement rates.
	Section 180B	Policy to remit or postpone rates on development.
	Section 180G	Policy to remit or postpone rates on land voluntarily protected for natural or historic or cultural conservation purposes.
Resource Management Act 1991	Section 36	Administrative charges.



Appendix C

Statutory Provisions Requiring the Special Order Process

Land Drainage Act 1908	Section 16	Subdivision of drainage districts.
Land Drainage Amendment Act 1920	Section 2	Representation of subdivisions.
Litter Act 1979	Section 13	Territorial authorities may adopt infringement notice provisions.
Local Government Act 1974	Section 228	Council may purchase land by instalments.
	Section 316	Property in roads.
	Section 320	Certain powers as to roads to be exercised by special order.
	Section 329	Road gradients.
	Section 336	Pedestrian malls.
	Section 338	Council may grant right to lay petroleum conduit pipes along or under road.
	Section 345	Disposal of land not required for road.
	Section 346A	Declaration and revocation of limited access roads.
	Section 361	Establishment or abolition of toll gates at bridges, tunnels, and ferries.
	Section 377	Constitution of water supply areas.
	Section 423	Constitution, alteration, and union of water race areas.
	Section 424	Subdivision of water-race areas.
	Section 427	Discontinuance of water race.
Section 429	Water channel may be declared water race.	
Section 432	Appointment of managing ratepayers.	
Section 443	Constitution of urban drainage areas.	
Section 446	Council may cover in water course so as to make it a public drain.	
Section 494	Restrictions on rights of local authority to charge in respect of treatment or reception of trade wastes.	

	Section 504	Council may constitute areas for land drainage.
	Section 505	Union of drainage areas.
	Section 506	Subdivision of drainage areas.
	Section 606	Community centre areas.
	Section 610	Electors may petition for and participate in poll relating to uniform fee for community centre.
	Section 681	Procedure for making bylaws.
Meat Act 1981	Section 30	Establishment and maintenance of abattoirs and export slaughterhouses by local authorities.
Public Bodies Leases Act 1969	Section 23B	Power to lease reserves exercisable only by special order, unless otherwise provided.
	Section 23c	Leasing of adjoining land when leased land taken or acquired for public work.
Rating Powers Act 1988	Section 13	Territorial authority general rate where ward accounts kept.
	Section 14	Territorial authority may cease to make and levy general rates separately in each ward.
	Section 15	Community general rate.
	Section 26	Charges for water by quantity consumed.
	Section 61	Application of surplus certain rates.
	Section 80	Differential rates.
	Section 84	Introduction of differential rating.
	Section 85	Alteration to system of differential rating.
	Section 96	Rating system in district of regional council or special purpose authority.
	Section 100	Changes of rating system in district of local authority.
	Section 151	Payment of rates by instalments.
	Section 156	Variation of instalments intervals.
	Section 157	Abandonment of instalment system.
Resource Management Act 1991	Section 36	Administrative charges.

Appendix D

Case Bibliography

General Requirements of Consultation –

- 1 Auckland Casino Limited v Casino Control Authority [1995] 1 NZLR 142.
- 2 Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.
- 3 Devonport Borough Council v Local Government Commission [1989] 2 NZLR 203.
- 4 Howick Engineering Limited v Manukau City Council (High Court, Auckland, Thorp J, CP 2021/91, 11 August 1992).
- 5 NZ Fishing Industry Association v Moyle (High Court, Wellington, McGechan J, CP 649/87, 11 August 1988).
- 6 R v Gough [1993] AC 646.
- 7 R v Hendon RDC, ex parte Chorley [1933] 2 KB 696.
- 8 R v Secretary of State for the Environment, ex parte Kirkstall Valley Campaign Limited [1996] 3 ALL ER 304.
- 9 R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256.
- 10 South Taranaki Energy Users Association v South Taranaki District Council (High Court, New Plymouth, Giles J, CP 5/97, 26 August 1997).
- 11 Te Heu Heu v Attorney-General [1998] NZAR 337.
- 12 Waitakere City Council v Lovelock [1997] 2 NZLR 385.
- 13 Wellington City Council v Woolworths New Zealand Limited [1996] 2 NZLR 537.

Special Consultative Procedure –

- 14 Auckland City Council v Auckland Electric Power Board (High Court, Auckland, Williams J, CP 26/93, 16 August 1993).
- 15 Hamilton City Council v Waikato Electricity Authority [1994] 1 NZLR 741.
- 16 New Zealand Public Service Association v National Distribution Union (High Court, Hamilton, Hammond J, CP 52/96, 17 September 1996).
- 17 Norfolk Flats Limited v Wellington City Council [1980] 2 NZLR 614.
- 18 South Taranaki Energy Users Association v South Taranaki District Council (High Court, New Plymouth, Giles J, CP 5/97, 26 August 1997).
- 18 Tauranga District Council v Tauranga Electric Power Board (High Court, Auckland, Anderson J, CP 150/93, 23 November 1993).
- 19 Urlich v Wellington City Council (High Court, Wellington, McGechan J, CP 174/96, 29 July 1996).
- 20 Yovich v Whangarei District Council (High Court, Whangarei, Neazor J, CP 38/96, 8 April 1998).

Special Orders –

- 21 **Begley v Bay of Plenty Regional Council** (High Court, Rotorua, Morris J, M151/92, 5 September 1995).
- 22 **Broad v County of Tauranga** [1928] NZLR 702.
- 4 **Howick Engineering Limited v Manukau City Council** (High Court, Auckland, Thorp J, CP 2021/91, 11 August 1992).
- 17 **Norfolk Flats Limited v Wellington City Council** [1980] 2 NZLR 614.
- 23 **Wellington City Council v Stains** (1891) 10 NZLR 329.
- 24 **Westland County Council v Greymouth Harbour Board** [1987] 7 NZAR 22.

Duties to Consult –

- 25 **R v Secretary of State for Social Services, ex parte Association of Metropolitan Authorities** [1986] 1 WLR 1.
- 26 **Wellington International Airport Limited v Air New Zealand** [1993] 1 NZLR 671.



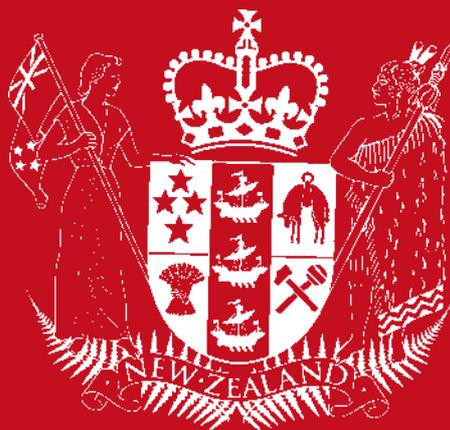
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Public Consultation and
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