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72296 Environmental Impact Assessment

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1 Introduction

According to the International Association for Impact Assessment, public participation and transparency are two of the basic principles applying to all stages in the impact assessment process (International Association for Impact Assessment in cooperation with Institute of Environmental Assessment, 1999). As the ultimate purpose of environmental impact assessment (EIA) is to inform decision-making in a way that promotes ‘sustainable development’¹, it must ensure that the public has access to all information relating to a proposal and ought to allow the public to participate in the decision-making process.

In New Zealand, EIA is performed through the Resource Management Act 1991 (RMA), a comprehensive environmental management framework governing the allocation and utilisation of natural resources and controlling adverse effects on the social, natural and constructed environment. According to Sadler (1996), environmental assessment under the RMA “operates within the statutory planning and consent system rather than as a separate procedure [and] applies explicitly to projects” (Sadler, 1996, p 31). The consent system requires project planners to submit an environmental impact statement (in New Zealand this is called an Assessment of Environmental Effects or AEE) in order to be able to obtain the resource consents needed for the implementation of the project. As the AEE is prepared by the project proponents (or assessors hired by them), the review of the scope, accuracy and level of detail of a given AEE is of great importance to ensure that decision-makers in the council have sufficient information to make decisions that are sound from a socio-economic and environmental point of view.

In an editorial of the Resource Management Bulletin entitled “Improving environmental assessment under the RMA”, David Grinlinton makes the following statement regarding the review of poor-quality environmental assessments or potentially harmful proposals:

Councils often do not have the inclination to challenge an AEE, particularly if the development may bring benefits to the region. It therefore often falls to individuals or public interest groups to grasp the thorn and challenge them. (Grinlinton, 2000, pp. 110-111)

To discuss and evaluate this claim, we shall take a closer look at the resource consent process, focusing on the influence of consultation and public participation on decision-making.

¹The actual meaning of the fuzzy term *sustainable development* is the subject of continuing debate. In this essay it is used to describe economic development that neither compromises ecosystem services nor discounts shared community values. For a discussion of the term *sustainable development* see <http://elephly.net/downies/3-1-sustainable-development--a-revolution-or-business-as-usual.pdf>.

2 Before the application

In New Zealand development activities are regulated through regional and district plans. These plans are prepared by the regional and district councils in a long process that provides ample opportunity for consultation with the public and industry representatives alike (Miller, 2010). For any activity not explicitly permitted by the plans and policy statements a resource consent must be obtained (Fookes, 2000). Any development activity that is advertised as resulting in significant positive impacts on the region—the type of activity that this analysis focuses on—is very likely to also require resource consents.

After checking the appropriate district or regional plans to confirm whether a resource consent is required, the applicant is to prepare a thorough assessment of environmental effects (AEE). Although it might be beneficial to consult with possibly affected people and interested members of the general public at this stage, consultation is not a general requirement under the RMA. However, consultation may be the best means to comply with those sections of the RMA that require the recognition of the interest of *tangata whenua*, for example, when a development proposal affects locations or resources that are of special interest to the Maori (Ministry for the Environment, 2009b). Any consultation undertaken before the application including any results or agreements must be included in the AEE.

3 Review and notification

After the application is lodged and the AEE submitted, the council will process it. If the AEE is considered lacking, the council may ask the applicant to provide further information; inadequate applications that are unlikely to be improved significantly may also be rejected altogether. After a review of the AEE, the council processing the resource consent application may decide to involve the public by means of notification or determine that notification is not required when the activity is expected to only have minor effects and all affected parties agree on the proposal (Fookes, 2000).

A publicly notified application will be advertised in the newspaper and be sent to all people thought to be affected by the activity. The council will also call for written statements on the proposal from members of the general public (Ministry for the Environment, 2009a). In some cases, the council may decide to notify only directly affected people (for some definition of ‘affected’); the purpose of such limited notification is to give affected people—those who have not provided their written approval to the applicant—the opportunity to suggest conditions for the resource consent. Limited notification may result from an applicant’s failure to engage in consultation with the affected people before lodging the application, although it may also be required when affected people refuse to provide written approval before the assessment of environmental effects has been carried out and submitted.

3.1 The importance of reviews

The review of the application and the AEE and the decision whether to notify the application or not (and to what degree) is the first step in the resource consent process that Grinlinton referred to in his statement. A council that—for whatever reasons—fails to reject applications with poor or deliberately misleading assessments effectively off-loads the burden to challenge the application to members of the general public. The Parliamentary Commissioner for the Environment (1995, p 41) stresses that

[t]he full evaluation of AEE information provided by applicants is one of the most critical aspects of the entire resource consent process. The applicant is responsible for a full assessment of the proposed activity, but such responsibility is meaningless unless a council provides guidance and, where necessary, forms judgements on the adequacy of this assessment.

An investigation into the consent processing performance of selected councils conducted by the Ministry for the Environment revealed that councils rarely reject subpar resource consent applications as permitted by section 88(3) of the RMA; much more often, faulty applications are accepted and gradually improved through requests for additional information, a mechanism provided by section 92 of the RMA (Ministry for the Environment, 2008). In earlier case studies, the councils estimated that further information was requested (either formally under section 92 or informally) from at least half of all application before the application was accepted (Parliamentary Commissioner for the Environment, 1995). It is doubtful whether poor quality assessments significantly improve as a result of these repeated requests. It is conceivable, however, that this approach not only delays the processing of resource consents, but also increases the likelihood of poor quality applications slipping through.

If the application is not considered to have more than minor impacts and is thus not publicly notified, it becomes very difficult for members of the public to affect the outcome of the resource consent decision. According to Higgs (2007), only those parties who make a submission on a notified application have legal standing to appeal a council's resource consent decision to the Environment Court. As revealed by the 2010/11 survey of local authorities the New Zealand Ministry for the Environment (2011) carries out every two years, only about four per cent of all resource consents in the two-year period were publicly notified. Unfortunately, there is little data on what proportion of the remaining 96 per cent are small-scale applications submitted by private people and how many are larger projects where the decision not to notify may not have been justified. According to a report by the Parliamentary Commissioner for the Environment, complaints about councils' decisions not to notify applications are rather common and are often upheld due to the fact that local authorities "failed to carry out sufficient enquiries before deciding that there were no affected parties or that it would be unreasonable for the applicant to obtain written approval from affected parties"

(Parliamentary Commissioner for the Environment, 1995). In fact, according to the Ministry for the Environment (2011), the number of formal objections against consent decisions follows an upward trend in recent years.

3.2 The importance of plan quality and coverage

Often the quality and coverage of activities in the council's plan determine whether or not the expected effects of a development activity will be considered minor and thus influence directly whether an application will be publicly notified. This dependency on plan quality and coverage can be seen in the dealings of the Christchurch City Council with a series of resource consent applications between 2004 and 2006 relating to the construction of a 53 metre high office block and an adjacent car park building (Ruske, 2012). The first application in 2004 was processed on a non-notified basis, despite the opposition of about 1,300 people who presented a petition to the council in which they demanded a change to the city plan to explicitly restrict the height of buildings in the affected zone. Since the city plan did not include any height restrictions for buildings in the zone, the application could not be rejected on grounds of non-compliance. A second application for a scaled-down proposal was also approved without public notification.

While it is possible to amend plans and established mechanisms for extensive consultation exist in the plan creation process, it is clearly not feasible to modify plans on a case-by-case basis. Under the assumptions of the RMA, plans are the foundations on which resource consent decisions are made to achieve sustainable development; they were not meant to be used as a tool to block individual proposals and hence do not support quick amendment procedures.

3.3 The implementation gap

The links between plan quality, plan implementation through AEE review and resource consent decisions, and environmental outcomes were the subject of the *Planning Under a Cooperative Mandate* programme (Day et al., 2003). One of the core findings of the programme that studied six councils over a period of several years was that

there was a gap between the environmental management techniques advocated in district plans and those being applied in resource consents. [...] For a number of reasons, most plans are more ambitious in their scope and intentions than is realised in practice through techniques used in consents. (Day et al., 2003, p 13)

The findings further suggest that the width of this implementation gap is closely linked to council capacity. Due to the devolved nature of environmental management intended by the RMA and the wide range of activities requiring assessment, an overwhelmingly large number

of resource consent applications is to be processed by local councils. Since the RMA specifies statutory time periods within which certain tasks must be performed and due to the need to save costs, many councils operate under tight constraints that negatively impact on their ability to implement plans. The very benefits that were thought to follow from a devolved mandate—such as specialised assessment methods most appropriate for the district and innovation in the area of evaluation techniques—may actually be suppressed as a consequence of a lack of capacity on the level of local government.

Summarising the effect of capacity on consent processing practice, Day et al. (2003, p 46) comes to this conclusion:

The findings of this research would suggest that low capacity forces councils to adopt policies that appear to favour economic growth. In many cases growth is needed in order to maintain—at the minimum— current service levels. Effectively, the pressure for development to proceed quickly and unimpeded does not foster a climate that considers and values environmental quality to the extent advocated in many district plans (or envisaged by the RMA).

4 Submissions, hearings and decision-making

For those applications that the responsible council has determined will have impacts on the environment that are more than minor and that have been publicly notified, members of the public can make submissions to challenge—or express support for—the application.

Following the submission period a pre-hearing meeting can be arranged, where submitters, applicant and council representatives try to clarify issues before the official hearing in a rather informal setting. Additional mediation sessions may be arranged to resolve conflicts and reach an agreement without the need for a formal hearing (Ministry for the Environment, 2009a). For publicly notified applications, the council usually organises a formal hearing in which submitters may present their submissions and where the applicant is to present whatever additional information has been requested. After an evaluation of the application and public submissions, council prepares a report based on the AEE and additional evidence provided by the applicant during the hearings in response to the submissions from the public. The decision whether to grant the resource consent or not is made on the basis of the officer's report.

4.1 Access to information and representation

It is of utmost importance that an assessment of environmental effects be detailed enough and understandable for interested members of the public to enable them to make submissions on the proposal without first having to engage in investigations themselves (Parliamentary

Commissioner for the Environment, 1995). A misleading or unintelligible AEE will be very difficult for the public to challenge on technical grounds. What presentation of information is ‘unintelligible’ and what is not depends to some extent on the public. At the example of three case studies, Johnson (2002) argues that higher levels of education and income (both facilitating access to information) are predictors of successful participation in the consultation stages of the resource consent process. Morgan (2000) distinguishes between physical access to information (e.g. when travel is required to obtain information) and intellectual access and concludes that access usually favours the “mobile, determined and educated European New Zealander, confident in dealing with public servants, able to seek advice from specialists, and competently handle the requirements of written submissions.”

The case of the Golden Link Project and the Correnso Underground Mine application by Newmont Waihi Gold illustrates this. The proposal for a new underground gold mine in the eastern part of Waihi, a town in the Hauraki district with a long history as a gold mine town, would directly affect about 50 homes below which the mining operations would take place. The application was publicly notified on August 30, 2012 and 501 submissions were received until the end of the submission period on September 28, 2012. 120 of the submitters requested to be heard at hearings, including representatives of organised citizen groups in opposition such as the Waihi East Ratepayers Group Inc (WERGI) and Protection of Waihi Environment and Ratepayers (POWER).

Despite the residents’ many concerns about blast vibrations, noise, dust, property value loss, and physical damage to their property, the resource consent for the underground mine was granted by the council. In its decision report the council states that “the positive effects of the proposal are significant” while the “adverse effects of the proposal will be minor”, the “most significant adverse effect on amenity [being] vibration” (Hauraki District Council, 2013).

According to Green MP Catherine Delahunty, the residents did not have the financial means to provide expert evidence at the hearings to demonstrate that their concerns are justified. Without expert testimony their experience with two other underground mines in the region (although not located directly underneath their homes) could be dismissed as anecdotal (APNZ, 2013). Both resident groups have announced they would be appealing to the Environment Court (Morton, 2013).

4.2 The commoditisation of resource consents

According to the Parliamentary Commissioner for the Environment (1998), the RMA creates a climate in which there are incentives for applicants to enter into so-called side agreements with directly affected persons, as through early consultation and mediation with the affected party public notification (and with its long delays) can be avoided. While the goal of the resource consent process is to lead to environmentally sustainable outcomes, the existence of

side agreements may result in worse environmental outcomes, for example when affected parties receive financial compensation in return for their approval of an environmentally harmful development.

Likewise, the evaluation of the positive effects of the mining proposal may have been influenced to some degree by Newmont's previous financial commitment to the community by funding local primary school and preschool facilities and providing \$400,000 for Waihi residents to spend on community amenities (Morton, 2013). These payments may benefit the general community and sway the public's attitude towards the proposal, but it does not necessarily compensate those who are directly affected by the proposed activities (if they are willing to receive compensation in exchange for accepting the proposal at all).

4.3 The value of submissions from the public

It would not be fair to conclude from this case study that economic benefit generally outweighs the concerns of the public. In September 2012, the Dunedin City Council publicly notified a proposal to construct a 28-storey² tall hotel on Wharf Street close to Otago Harbour. Despite the economic benefits that the city of Dunedin could derive from the construction of a modern five star hotel and the mayor's backing of the project, about 80 per cent of the 507 submissions were in opposition of the proposal, mostly because the bulky hotel was considered too tall and its style not in character with its surroundings. After two hearings and the applicant's refusal to demonstrate the height of the hotel using a tethered balloon or helicopter, the council sided with the opponents and rejected the proposal on 6 June, 2013 (Morris, 2013).

Interestingly, among the council's reasons for the rejection of the application this statement can be found: "for us to be able to grant consent, we had to be very certain that the effects of imposing this structure on this site had been fully canvassed in the application and were able to be fully understood. Unfortunately, this was not the case. *The application suffered, in our view, from a lack of proper information.*" (Dunedin City Council, 2013, p 93, emphasis mine). This is a somewhat surprising statement as this 'lack of proper information' did not prevent the application from passing the council's review and only became apparent after a record number of submissions from the public had been received. It appears that the submissions highlighted problems with the application and thus tipped the scales against the proposed development despite its economic benefits.

5 Conclusion

To summarise, there is little opportunity for the general public to influence the decision on resource consent applications, because only a fraction of them is publicly notified. The deci-

²In the initial announcement by the city council the hotel's height was reported as 27 floors plus basement, while news reports consistently referred to its proposed height as 28 storeys (Dunedin City Council, 2012).

sion whether to notify or not is made by the council and depends on the quality and coverage of the local plan. Overall, plans are of medium to poor quality, making it difficult for planners to evaluate a proposal and its accompanying assessment in the intended spirit of the policies.

More importantly, however, the implementation of a plan is influenced by the responsible council's capacity and the attitude of the council officers assigned to evaluate resource consent application. Councils are subject to capacity bottlenecks which give rise to an implementation gap, i.e. the use of less sophisticated procedures and methods than declared in the plans. As a result, inadequate assessments of environmental effects are more likely to pass through the review stage.

Since consultation is not a mandatory part of the resource consent process under the RMA, non-notified applications may never be exposed to much needed independent scrutiny. Notified applications with assessments that are hard to understand for lay people may require members of the public to gain access to expert knowledge and professional representation to have their concerns heard and accepted as valid.

Grinlinton's statement seems to imply that councils are purposefully negligent in the evaluation of applications that are expected to have economic benefits, or at least accept this bias. This analysis, however, suggests that this is not the case. While it may be true that individual councils are primarily interested in the economic effects of a proposal and only take a secondary interest in the environmental or social impacts, it seems that the two major difficulties in consent processing are a lack in the capacity to implement plans and a history of underestimating the size of the group of 'directly affected' persons. As a result, the ability of the general public to participate in the decision-making process under the requirements for consultation laid out by the RMA is severely limited.

Approximate word count: 3200

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