

Report to the Environment Committee  
from Richard Peterson, Policy Advisor (Statutory)

## **Consultation Requirements in the Resource Management Act 1991**

### **1. Purpose**

During the last Environment Committee meeting a request was made for information about the requirements that territorial authorities have to consult with the Regional Council on planning issues or decisions. The information that follows is intended to fulfil that request.

### **2. Overview**

#### **2.1 District Plans**

There are three areas within the Resource Management Act 1991 that direct territorial authorities to consult with the Regional Council. The most explicit is clause 3 of the First Schedule. Entitled "Consultation", this directs local authorities proposing changes to their plans or policy statements to consult other affected local authorities during the preparation of the change. Case law indicates that this requirement does not mean that a local authority must consult until it reaches consensus, rather that it must enter into the consultation in a spirit of goodwill and open-mindedness. The local authority must also wait until it has undertaken the consultation before it makes any decision on the change.

The two other relevant areas of the Resource Management Act 1991 are Sections 74 and 75. Section 74 states that territorial authorities "shall have regard to" any proposed regional plan and strategies prepared under other Acts (e.g. the Regional Land Transport Strategy). Section 75 states that district plans "must not be inconsistent" with an operative regional policy statement or regional plan.

The two phrases "shall have regard to" and "must not be inconsistent" have significantly different meanings. "Shall have regard to" is a lesser requirement and implies that the matters referred to must be given material consideration but need not necessarily be followed. The phrase is also used in Section 104 (matters to be considered when considering an application for resource consent). With regard to its use in this section the High Court noted "shall have regard to" requires a decision-maker to give genuine attention and thought to the matters listed, but that they must not necessarily be accepted.

“Not inconsistent” requires a much greater level of coherence between district plans and regional policy statements. The phrase also gives territorial authorities less discretion about the contents of their district plan. However, it should be noted that the phrase “not inconsistent” does not require a district plan to be exactly the same as the Regional Policy Statement, but nonetheless a plan should be supportive rather than oppose the Regional Policy Statement.

Given these phrases, good practice suggests that a territorial authority should address the matters listed in Sections 74 and 75 as part of the consultation carried out under clause 3 of the first schedule. Following the consultation process, the Regional Council will also be given the opportunity to make a formal submission on any plan change or variation.

Issue 2000/09 of the Councillors Information Bulletin contains a memo which considers clause 3, Section 74 and 75, and how they relate to Variation 17 (Lambton Harbour).

## 2.2 **Resource Consents**

Section 90 (Distribution of application to other authority) requires territorial authorities to forward to the Regional Council a copy of every application that is required to be notified. This gives the Regional Council the opportunity to submit on these applications.

Further, under Section 104 (mentioned above), territorial authorities “shall have regard to” the Regional Policy Statement and regional plans when considering applications for resource consent.

## 3. **Communications**

The Regional Council has stressed these points in its recent communication with the Wellington City Council.

## 4. **Recommendation**

*That the report be received and its contents noted.*

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