



Planning Pains? Don't Panic!

Hamish G. Rennie

A question commonly asked by students and some readers arose in public at the Living Lake Symposium held at Lincoln University in 2011. ECan Commissioner Peter Skelton commented, during his presentation on the Canterbury Water Management Strategy, that members of the Zonal Committees would be able to make submissions on the Zonal Implementation Plans (ZIPs) they had recommended for the ECan Commissioners approval. He was then asked if staff of ECan would also be allowed to make submissions on the ZIPs. The Committees are serviced by ECan staff. Commissioner Skelton replied that staff submissions were not necessary as appropriate avenues were available internally for staff to express their views. When pressed, because presumably the Committee members had even greater opportunity than staff, he said that the Commissioners had not yet made a policy decision whether staff could make submissions on the plans.

Behind the question lies a common concern for planning and policy staff in local or central government. How do they represent their personal views on a council/government proposed plan or policy if those views are different from their employer? This becomes even more important if they are professional planners as their professional opinion may in fact be different from the views of their organisation.

The issue deserves serious reflection and possibly research. It has been a long-standing unwritten convention of public service that it is inappropriate for a staff member to comment in public on such policies or plans. The closest to a logical argument in support of such positions is along the lines that a public servant is a different category of employee, and that they should not be seen to be criticising the Crown, or Government, who of course are either appointed by God or elected by the public. You are the servant of these masters. As watchers of *Downton Abbey* will know, the servant's job is to save the face of their masters, not to express contrary views in public.

An alternative argument, deriving more from the private sector angle, is that you bring your employer into disrepute by challenging its well thought out position. A salesman for a particular product made by his company does not say the product is no good, at least not if they want to keep their job. This is less valid when applied to a plan or even a resource consent application. Whereas a salesman for a particular product does not have to buy it or use it themselves, a plan or a resource consent may very well impact on ones home or activities in an unavoidable way.

Moreover, the very basis of the New Zealand planning approach is that those affected by a change to a plan or an activity that requires a resource consent should have a say. As a staff member who lives in an area affected by a policy or plan, such as a ZIP, you may have knowledge and values that should be put before decision-makers. This both informs the decision-makers of relevant issues, but also helps them to gain a sense of the values that will be affected by the change. Denying staff of the organisation that has prepared a plan the

opportunity of making their personal views known to decision-makers, or challenging a decision, seems very Victorian, but it appears to remain the norm.

There may be reasons why you might not have had a say internally. The proposal might have been dealt with by another part of the organisation that failed to recognise your expertise or knowledge were relevant and so you were not made aware of the proposal or the opportunity to respond. You might be out of the country at the time. Or you may have expressed your views, but those with 'better judgement' disagreed and their view prevailed. In any of these situations, your only recourse may be when the proposal goes through public consultation. Then, if you make a submission your council, as your employer, may not only be unhappy that you have, but may make it quite clear that you are not to pursue any legal action on your own behalf against the council's proposal (eg an appeal to the Environment Court). Indeed, making submissions against a plan or position that your employing council has taken is usually described as 'career threatening' and demonstrating 'poor judgement'.

Decisions in planning are usually subjective, and two professionals given the same information are quite entitled to weigh it differently in terms of the outcome – this is part of the 'overall broad judgement' that Commissioner Skelton has strongly supported. The information that you have that is relevant to a decision should be able to be picked up internally. But even if it is, the decision-makers may weigh the information and the values differently from the way you would, but they would not have had the benefit of hearing your views and the reasons why you put weight on particular matters. If they had, then they may have reached a different conclusion. What, then, are the avenues open to you?

You could resign, and pursue the matter from outside the organisation. However, you may not be financially in a position to do so and why should you? Provided you handle the issue professionally, this should not be a matter of calling your organisation into disrepute, but rather weighing the information differently and ensuring the hearing panel has full values and views in front of it when reaching a decision.

The alternative usually adopted by staff is to find someone to front their arguments and concerns. This is indeed what mentors will often advise and, where possible that is perhaps pragmatically the best course. However, when questioned or cross-examined on the stand will the person fronting for you have as much credibility or be able to present your arguments as well as you? More importantly, it smacks of the underhand. How will your employer react if they think you have been working with others against them? If you can be transparent about it, then you should be. If not, then be prepared to suffer the consequences.

Ultimately, you could stick to your guns, represent yourself and run the almost certain consequence of having your career not advance as smoothly as it might otherwise have done. Then it will be up to you to use employment agreements, union and possibly employment lawyers to get your just rewards. It will be a hard life and you will almost certainly eventually leave, but perhaps at a time that suits you better rather than an immediate forced resignation.

Ideally, managers of councils will create systems that enable their staff to make their information available through internal processes and accept, without recrimination, that their staff might oppose them in a hearing. If you are aware of any councils or government departments that have shown such a mature approach, please email lpr@lincoln.ac.nz.