

5.5.3 Plan change and variation future year assessments

Plan changes or variations are intended to have a permanent effect. Variations and council plan changes have immediate legal effect when first notified; private plan changes only have legal effect when approval by a council. An appeal may be lodged, but this is unlikely to alter the ITA unless it relates to the scale of development envisaged.

For plan changes, a much longer assessment year should be considered. Other studies may be relied upon confidently regarding a 20- or 30- year time frame. However, where that technical forecast information is not available, or if the plan change or variation has a limited area of influence, then a minimum time of 10 years may be appropriate.

Current guidance provided to communities regarding expected changes to the transport network, and which the community and government consider affordable, are signalled in various documents including the government policy statement, RLTSS, LTCCPs, the NLTP and regional plans. All these documents focus mainly on the first 10 years. It is known that at least one regional council is attempting to co- ordinate local and state highway projects within their region to identify programming and/or funding shortfalls, and are trying to rationalise, on a regional network basis, desirable enhancements that should be funded over a longer period.

Given the certainty of existing planning documents, the future assessment year(s) should be 10 years from notification of the variation or council- initiated plan change, or 10 years from the date of the expected decision on a private plan change.

5.5.4 Future year assessments for designations

Designations allow for future intentions to be indicated. The proposed designation only proceeds to a Notice of Requirement if it is supported by the utility network authority's planning and funding commitments. Under current legislation, designations are typically only for five years unless a different period was approved as part of the notice of requirement process. This statutory five- year limitation (s184(1)) is currently under review.

Given the variability of designation periods, and the variety of the scale and types of designations, it is recommended that the future year assessment be 10 years at a minimum, and a longer period where regional plans or longer term forecasts are reliably based on sound land use and transport planning projections.

5.6 Confidence and sensitivity testing

An ITA is based on a specified methodology to give a degree of confidence that the conclusions drawn from that ITA are sound. The use of assumptions, estimates and predictions all affect the certainty of the analysis and the resulting conclusions. It is therefore important that the assumptions used in an ITA are clearly identified and explicitly available for later review, confirmation and use in support of reports and any future evidence. It is also important that where certain assumptions are combined, yielding an unduly conservative result, the assumptions can be 'unravelling' for clear review and, if need be, reassessment.

The sensitivity of the result in the event of the assumed variables changing should also be tested. For example, if a certain variable changes by plus or minus 10%, does the resulting outcome change by more or less than 10%? This provides guidance to decision makers as to the relative importance of the variables affecting the outcome, the risks associated with the alternatives, and the decisions to be made.

A number of analytical techniques can be used for assessing the risk of a conclusion. These techniques may be applied to the analysis and ITA summary conclusions. It may also be useful to include a risk analysis where the likelihood of a certain event happening can be compared with the alternatives. The RMA recognises that high- risk effects (ie those with low probability but high potential impact) are able to be assessed (s3(f)) and these should also be considered within an ITA. It will, in specific cases, be appropriate to include past development clauses that cover 'after studies' where the risk of increased traffic is sufficient to warrant such a provision.

5.7 Expert evidence

All material presented to a council hearing or to the Environment Court by a witness is to establish facts or express an opinion. Only witnesses who have formal qualifications and/or proper experience may give opinion evidence, and then only within their field of expertise. Evidence given by a witness on matters relating to their profession, eg a planner or an engineer, is termed expert evidence. Evidence presented to a council hearing will not be subject to cross- examination other than by the decision makers concerned. Evidence presented to the Environment Court will be subject to cross- examination by all parties.

An ITA should often be undertaken in a manner that, if necessary, it could be used or developed into expert evidence for presentation at a council hearing or to the Environment Court. When expert evidence is presented to the Environment Court, it must be done in a manner described in the Environment Court of New Zealand Consolidated Practice Note 2006 (Environment Court of New Zealand 2006). All expert witness must abide by two principal matters:

- An expert witness has an overriding duty to assist the Environment Court impartially on relevant matters within the expert's area of expertise.
- An expert witness is not an advocate for the party who engages the witness.

In addition to testifying to the Environment Court, expert witnesses have been acknowledging the code increasing frequently at council hearings to provide commissioners with the confidence as to how the expert has prepared their evidence.

In terms of the expert's area of expertise, it is usual for a member of a professional institution to be bound by a code of ethics where the member has already agreed to only offer commentary within their area of expertise and competence.

An advocate, on the other hand, is a person who speaks on behalf of another person – advocacy is the act of arguing on behalf of a particular issue, idea or person. An expert witness can not advocate for a certain position, because this would mean the expert witness has not met their code of conduct. The Environment Court has censured witnesses that drift in their evidence towards advocacy.

When an expert witness prepares or delivers evidence in terms of the Environment Court of New Zealand Consolidated Practice Note 2006, they must:

- (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it;*
- (b) state the witness's qualifications as an expert;*
- (c) describe the ambit of the evidence given and state either that the evidence is within the expert's area of expertise, or that the witness is relying on some other (identified) evidence;*
- (d) identify the data, information, facts, and assumptions considered in forming the witness's opinions;*

- (e) state the reasons for the opinions expressed;*
- (f) state that the expert witness has not omitted to consider material facts known to the witness that might alter or detract from the opinions expressed;*
- (g) specify any literature or other material used or relied upon in support of the opinions expressed;*
- (h) describe any examinations, tests, or other investigations on which the expert witness has relied, and identify, and give details of, the qualifications of any person who carried them out; and*
- (i) if quoting from statutory instruments (including policy statements and plans), do so sparingly. A schedule of relevant quotations may be attached to the statement of evidence, or a folder produced containing relevant excerpts.*

In addition to preparing evidence, the expert witness must confer with other expert witnesses, if requested to do so, to narrow or clearly identify issues of disagreement between the witnesses. This requirement overlaps somewhat with the assistance that an appointed peer reviewer can provide.

The Association of Consulting Engineers New Zealand (ACENZ) has published two useful guides on the role of the expert witness and court procedure; these are available to ACENZ member organisations:

- *Practice note B52: the expert witness* (ACENZ 2007a)
- *Practice note B51: evidence and court procedure* (ACENZ 2007b).

5.8 Peer reviews

In terms of peer review, the Institution of Professional Engineers New Zealand (IPENZ) has published a guide to peer review (IPENZ 2003). This document notes that the peer reviewer 'must be recognised by fellow members of the appropriate learned society as at least equal in experience and technical capability to the designer/author,' and also notes that 'must be independent from the author's or designer's own organisation and have no financial or other interest in the outcome of the review.'

The role of the peer reviewer can be varied and may include consultation with the designer or author to check regulatory compliance or acting as an expert witness. Ultimately, the role of the peer reviewer is to comment on some or all of the following (IPENZ 2003):

- *whether the completed work has met the objectives set out for it*
- *other options that could have been included in the preliminary design*
- *whether the evaluation of options is rigorous and fair*
- *the validity of the assumptions*
- *the validity of the conclusions*
- *the process towards completion of the work*
- *the validity of the recommendations*
- *the objectives set out for the work*
- *adherence to relevant regulations and codes of practice*
- *the fitness for purpose of the work.*

In addition to the content of the peer review, the process for how the peer review is carried out is also described by IPENZ (2003), which also notes such matters as conflicts of interest, professional jealousy, intellectual property and use of hindsight.

Undertaking a peer review can be very difficult, although for an ITA, it is especially important where matters such as future years, certainty and sensitivity of conclusions are being considered. It would be probable that for an ITA of a major proposal, a peer review would be a standard practice, either undertaken internally within the appropriate regulatory authority or externally via another consultant on behalf of the regulatory authority. Peer reviews are also increasing necessary when an ITA moves from being assessed against a district plan's rules to being more discretionary in nature, such as the addition of new land zoning and new rules to designations.

5.9 Conditions and monitoring

The assessment of effects and, if appropriate, granting an application for a proposal are often done hand in hand with consent conditions intended to contain or mitigate these effects. The drafting of these conditions may be simple, although the exact wording for how to monitor the expected effects is sometimes difficult. Monitoring determines if the actual effects of the proposal are within the expected effects and therefore if the proposal is operating within acceptable environmental limits.

When setting monitoring clauses for further mitigation or enforcement, these clauses must include only the matters that the applicant can control and that can be measured without ambiguity. The monitoring of transportation performance requires the use of quantifiable measures such as parking occupancy, delay, travel time, levels of service, traffic flows or the number of trips. Other possible conditions of consent are determining the one who undertakes monitoring (eg the applicant, the council or an independent professional), and who pays for this monitoring, and setting the frequency of testing.

Where the risk of increasing traffic or significant variations from those expected could occur, then a condition should be included under s128 of the RMA that would require, after a given time, a post development review of specific transport and traffic conditions to be re-examined.