

PHASE TWO RESOURCE MANAGEMENT ACT REFORMS

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Paper Overview

Phase Two of the RMA (RM II) reforms consists of ten key work programmes that, individually and in combination, have the potential to significantly affect Iwi and hapū. This paper provides an overview of the reforms and particularly highlights areas of concern. Specifically;

- Section A – provides an overview of the nature of the RM II reforms and particularly highlights potential concerns with the current consultation process;
- Section B – provides a more detailed analysis of the Environment Protection Authority;

Recommendations to Iwi Chairs Forum

The paper recommends that the Iwi Chairs Forum consider the following;

- Intervening in the consultation processes, with particular consideration of direct engagement between responsible Ministers and Iwi Chairs and supporting technical level engagement with officials;
- Developing Iwi proposals for the outcomes of the various workstreams, with a view to leading reform that is generated by the rights, interests and values of Iwi and hapū, and includes consideration of kaitiakitanga best practice guidelines.

Section A: Phase Two RMA Reforms

Context

At the Iwi Leaders Hui prior to Waitangi Day this year Ngatiwai offered to report on the RMA Phase Two Reforms. An initial brief report noted that there are Technical Advisory Groups (TAGs) for infrastructure and urban issues, and an Aquaculture TAG report had been released in November 2009. Fresh Water is being addressed by the Forum.

Development of the operational details of the EPA is another significant work stream in progress currently. A paper on the EPA was provided earlier to the Iwi Leaders.

This paper has been written in the form of advice to the Iwi Leaders on the full range of the Phase Two Reforms.

Summary

- The Phase Two RMA Reforms have the potential to affect iwi significantly
- Informed input and analysis from iwi perspectives is essential if the Reform is to appropriately address iwi issues
- A range of mechanisms are being used to develop Reform policy, and Māori engagement ranges from significant to non-existent
- TPK is convening workshops to address a limited perspective of the Reform process

Recommendations

Immediate options for addressing this issue include:

- The convenors of the TPK hui can be advised of issues discussed in this report and requested to ensure that following workshops adequately address the whole range of Phase Two Reforms.
- Iwi leaders can engage with government in the Phase Two Reforms in a process similar to that for other policy development such as Foreshore and Seabed

More effective, but involving more work, would be to:

- Develop, independent of government and ahead of government, iwi proposals for the outcomes of the various workstreams. These could include kaitiakitanga based proposals for:
 - A new regime for heritage management to replace the current HPA
 - Notification decision making that ensured inclusion of appropriate tāngata whenua as affected parties
 - A s32 regime which includes consideration of intangible values
- Develop kaitiakitanga based best practice guidelines for a range of processes identified in this report.

Background

The government has identified the following related workstreams for Phase Two reforms:

- Addressing barriers to sustainable and cost-effective aquaculture development
- Improving infrastructure provisions, including the application of the Public Works Act 1981
- Exploring better approaches to urban planning
- Establishing a fairer and more efficient water management system
- Developing further the scope, functions and structure of the EPA
- Alignment of consenting processes under the RMA and the Building Act 2004
- Alignment of consenting processes under the RMA and the Conservation Act 1987
- Alignment of consenting processes under the RMA and the Forests Act 1949 and Forests Amendment Act 1993
- Alignment of consenting processes under the RMA and the Historic Places Act 1993
- Investigating generic issues in the RMA that were too complex to be dealt with in Phase One

Workstreams 1 – 4 are being or have been addressed by specialist groups. Technical Advisory Groups (TAGs) have been appointed for aquaculture, infrastructure and urban planning. A Forum has been developing responses for fresh water management. Of these only the urban TAG has had no direct input from Māori.

Development of the EPA has had limited consultation with Māori, and unless there is a need for statutory change to establish a new Crown entity, no further opportunity for input is intended. Advice on the options for the EPA is currently with the Minister for the Environment.

Alignment of the RMA with other statutes considered in workstreams 6 – 9 is of potential significance to Māori. For instance:

- There are numerous linkages between the RMA and the Building Act. Matters such as facilitation of building on papakainga land could be enhanced by improved legislation
- The obligations under s4 of the Conservation Act (“this Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi”) are higher than those of s8 of the RMA (“in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)”). Alignment must not reduce the obligations under the Conservation Act.
- Iwi interest in CFRT settlement forests, or in their own independent forestry enterprises, has been the basis for their engagement with the ETS legislation. The RMA has few references to forestry legislation, and none to the statutes referred to in this workstream.

In the Forests Act there are provisions which relate to the RMA, such as importing Part 2 into some sections. Any reduction of Part 2 provisions should be opposed.

- Much of the effort of iwi RMA responses is related to the interface between the RMA and HPT. Reform of alignment between these statutes has major practical implications for Māori

The final workstream, which is to focus on less defined and more complex reforms, also has potential impacts on Māori. These in the main are consenting and planning issues.

On the MfE website there is an “Overview” of the Phase Two reforms, which describes the workstreams and the rationale for the reforms. However in the Cabinet Paper driving the reforms the following objectives are listed:

- providing greater central government direction on resource management
- improving economic efficiency of implementation without compromising underlying environmental integrity
- avoiding duplication of processes under the RMA and other statutes
- achieving efficient and improved participation of Māori in resource management processes

It is noticeable and concerning that this last objective is not considered by MfE as worth signalling in its Overview.

Details of Proposed Reforms

As noted above, TAGs for the first three of the workstreams and the Forum for the fourth have been formed and have reported or will report their recommendations. Some consultation on these can be expected.

EPA

Unless a separate Crown entity is to be established for the EPA it is likely that there will be no further input sought into its development. The decision regarding the Crown entity is currently with the Minister for the Environment.

The Building Act

Alignment of the Building Act processes with consenting is proposed, with possible combined processes being considered.

The Conservation Act

Reform is focussed on the concession process, aiming to streamline issuing of concessions which require a resource consent with the RMA processes. Te Runanga o Ngai Tahu has had some input into discussions. This forms part of a fuller DoC review of concessions. Advice is currently with the Minister of Conservation.

The Forests Act

Some forest activities require both a resource consent and Sustainable

Forest Management permits or plans under the Forests Act (DoC also has input). The intent is to streamline these processes. In practice there is only a small number of instances where this applies, and statutory change is not currently recommended.

Historic Place Act

The problems with the HPA and the HPT are well known to iwi. The dual roles of being both the advocate for historic heritage and the regulatory body which authorises destruction of historic sites (and often landscapes) are in conflict. Most iwi have experienced many instances of authority being given for destruction of sites against their wishes.

The HPT is of special concern to Māori. Those sites and landscapes of concern – such as bush clad pa sites and coastal middens in sand dunes – often are far less visible and are usually of lower general public importance than a colonial era building. Protection of much Māori heritage is consequently more difficult.

The RMA can effectively implement heritage management, but frequently district and regional plans have weak provisions and by default leave regulation to the HPT.

The Ministry of Culture and Heritage is reviewing the HPA, and has established a Reference Group, the findings of which will inform an MfE / MCH process (in consultation with TPK) to develop recommendations for statutory change. Recommendations are currently with the Minister.

Effective integration of the HPA functions into the RMA is of critical interest to Māori. Effective Māori participation in the development of policy is essential, but currently not adequately provided.

Generic issues

This work includes:

- Facilitating more efficient and effective central government direction via National Policy Statements, National Environmental Standards and Crown submissions
[Comment: There is need for development of NPS and NES, but efficiency must not be at the cost of input by iwi being limited]
- Further streamlining application processes, refining statutory timeframes, distinguishing minor from significant consent processes, and clarifying information requirements
[Comment: Faster time frames may put pressure on iwi response capacity; failure to identify tāngata whenua interests often results in non notified consents in which affected hapū or iwi are sidelined. Care that “improvements” do not exacerbate this situation is needed.]
- Improving the security of resource consents by clarifying the rights of existing consent holders, and facilitating effective registering and transfer of consents
[Comment: This matter applies in the main to coastal permits. The security of consent is critical to the long term viability of developments such as aquaculture or marinas. How the Foreshore and Seabed is resolved is of relevance, as are iwi aquaculture and other Coastal Marine Area development aspirations]

- Improving the cost/benefit analysis requirements in section 32 of the RMA
[The analysis in s32 establishes the need for and justification of a plan change. The cost/benefit analysis is important, but methodologies do not generally provide for intangible values – in practice often cultural values. Care in developing legislation must be taken so that an entirely economic based set of decisions dominate. Best practice guidelines are also needed to address intangible values appropriately.]
- Increasing the effectiveness of performance monitoring programmes both in terms of environmental outcomes and process efficiency
[Comment: Performance monitoring for both purposes needs to effectively take into account kaitiakitanga and tikanga. A simplistic set of measures and indicators, and consequently a limited State of Environment Reporting can ignore these values]
- Facilitating more effective mechanisms for identifying and addressing cumulative effects
[Comment: Cumulative effects are recognised in the RMA, but often inadequately provided for in planning instruments. The one-off decision making for consents does not easily provide the type of strategic approach needed for managing cumulative effects. Many of those cumulative effects impact cultural resources, such as gradual destruction of heritage sites, or ongoing degradation of water ways affecting tuna habitat.]
- Further improving the quality of decision-making
[Comment: Skills training for commissioners must include higher levels of competence and understanding of kaitiakitanga and related issues]

TPK workshop – 16 April

The purpose of this workshop was to “to discuss how Māori participation in resource management processes is working [to] inform the government work programme on Phase Two of the Resource Management Reforms”. Those attending the workshop were both RMA practitioners working with iwi, and council staff, such as Iwi Liaison Officers. The workshop was to focus on the intent of the government’s Phase Two reforms to enhance Māori participation in the RMA.

A checklist of questions and issues was provided to workshop attendees, most of which could be addressed by best practice guidelines and improved processes, rather than by statutory change. These included:

- Best practice for writing and receiving Cultural Impact Assessments (CIAs) and Iwi Management Plans (IMPs)
- Council staff responses to s92 requests
- Failure of councils to recognise affected party status of tangata whenua
- Lack of capacity of council staff in understanding and providing for kaitiakitanga and matauranga
- Failure of the RMA (with the HPA) to protect Māori heritage
- Reluctance or refusal to pay for CIAs

Most of the discussion at the workshop was around these best practice issues. There were some statutory change suggestions, but they were not fully developed. For instance, it was suggested that IMPs could have the status of having to be “recognised and provided for” rather than “being taken into account” as is presently required. In answer to a question MfE officials acknowledged that no documents currently have that higher status and what it would mean was unclear.

However, the current status of consideration of IMPs is higher than previously applied (“have regard to”). If there has been no improvement in council responses since that change almost seven years ago, it is likely that there is a problem with either the IMPs themselves, or with how councils use them, which may remain the same with further statutory change.

Similarly, the potential for appropriate inclusion and use of CIAs is already in the RMA:

- Council can return an application for a resource consent which lacks an adequate Assessment of Environmental Effects (AEE) (s88(3))
- The 4th Schedule contains “matters which should be considered” in an AEE including “Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations”

This gives sufficient basis for a council officer to require a CIA as part of an AEE where there is the potential for relevant impacts. Certainly if there is, for instance, the potential for contaminant discharge or other effects, an AEE will be required to address those matters. As that is often not the case for CIAs which address impacts on values relevant to kaitiaki. Education, guidelines, best practice and increased Māori staff and representation could produce improvements. Legislative change is probably not needed.

Certainly those who attended the workshop found it a useful day, but this was more as a result of its networking and information sharing aspects, rather than for its potential to inform ongoing Phase Two reforms.

Another workshop is planned to look at solutions to the issues identified in the first one. But if the agenda of the first workshop determines that of the second, few recommendations or directions are likely to emerge to influence statutory reform. It is currently intended that a consultation phase would follow any announcement of new policy, but without effective input into its development by iwi, it is unlikely that iwi aspirations will be provided for, and consultation is unlikely to be an effective mechanism for modification.

There is a need for best practice guidelines and other non statutory mechanisms, and development of those could be a benefit arising from the workshop. But there are many elements of the government’s reform programme identified in this report into which iwi practitioners may not be given the opportunity to have input through the workshop or through other means; nor are there currently any processes being proposed by government for input other than consultation after policy decisions have been made, or through the Select Committee process.

The input to the first workshop, and therefore into the second workshop, on barriers to participation, is largely directed at the tenth workstream – ie “the generic issues in the RMA that were too complex to be dealt with in Phase One”. Any influence of the workshops on the other workstreams will be incidental and accidental. If the workshop is to effectively address those other matters, they will need to be more clearly identified, and the proceedings focussed on other components of the Phase Two programme.

Options for Response

The Phase Two Reforms could have major impact for iwi. Appropriate reforms could greatly enhance iwi ability to engage with the RMA. Inappropriate reforms could considerably exacerbate an already unacceptable situation. Officials in Wellington need input from informed iwi practitioners to be able to make relevant policy recommendations. Iwi need to provide the analysis of the information and its consequences if relevance is to be maintained. Current processes offer little opportunity for this to happen.

Immediate options for addressing this issue include:

- The convenors of the TPK hui can be advised of issues discussed in this report and requested to ensure that following workshops adequately address the whole range of Phase Two Reforms.
- Iwi leaders can engage with government in the Phase Two Reforms in a process similar to that for other policy development such as Foreshore and Seabed

More effective, but involving more work, would be to:

- Develop, independent of government and ahead of government, iwi proposals for the outcomes of the various workstreams. These could include kaitiakitanga based proposals for:
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Section B: The Environmental Protection Authority – RMA Phase Two Reforms

Context

At the Iwi Leaders Hui prior to Waitangi Day this year Ngatiwai offered to report on the RMA Phase Two Reforms. An initial brief report noted that there are Technical Advisory Groups (TAGs) for infrastructure and urban issues, and an Aquaculture TAG report had been released in November 2009. Fresh Water is being addressed by the Forum. Development of the operational details of the EPA is the other significant work stream in progress currently.

This paper has been written in the form of advice to the Iwi Leaders.

Summary

- Development of operational details for an EPA is the only current RMA Phase Two work stream, and will need legislative change to implement
- The EPA differs significantly from overseas examples
- The EPA created by the Phase One RMA reforms only provides for calling in of RMA decision making, and taking over existing ERMA functions
- What is yet to be determined is whether the EPA remains within MfE, or a separate Crown entity is created
- Submissions are not being sought now, and recent hui are intended to be the sole means of feedback at this stage. Submissions to legislative change will later be sought
- Failing to establish an EPA with broader powers is a missed opportunity
- Iwi Leaders could consider proactive opportunities, rather than being reactive to Crown initiatives

Background

The usual nature of an EPA

EPAs exist in many overseas jurisdictions, such as in the USA, states of Australia, Ireland, Scotland, Sweden and Denmark. While the details of their roles and responsibilities vary, they all are environmental regulators of some sort.

In those jurisdictions there is a separation of land use decision making and environmental regulation. This differs from the local situation where the RMA is combines land use planning (such as in the former Town and Country Planning Act) with environmental management. The RMA is still alone globally in fully combining these functions. In other countries with an EPA there is a separation of function: a land use zoning is determined under planning legislation, and the environmental effects of a proposed

activity are regulated by the EPA. So for instance, zoning may allow industrial development in an area, and then the waste discharge of a proposed factory would be regulated by the EPA. The one-stop-shop nature of the RMA removes the need for a separate environmental regulator of this nature.

The EPA within the RMA; the MfE hui

In Phase One of the RMA reforms amendments were introduced to create an EPA within the Ministry for the Environment. Its functions are to call in RMA decisions of national significance, and then refer them either to a Board of Inquiry or to the Environment Court; and to absorb the existing functions of ERMA.

In the international context, the EPA would seem to be misnamed in that:

- It is not a broad environmental regulator, but only provides an alternative form for existing RMA and ERMA decision making; and
- It does not have jurisdiction across all environmental decision making (eg conservation and fisheries management are outside its mandate).

While the EPA powers exist already in statute through the Phase One RMA reforms, no operational details of how they will be implemented have been determined.

Officials in MfE have been developing proposals for the operation of the EPA, and have held three hui (convened by TPK in Auckland, Wellington and Christchurch) to “seek input into how Māori can best be involved in the fully formed EPA”.

The extent to which input was sought at the Auckland hui was limited: should the EPA sit within an existing department, or be a separate Crown entity; and how can the ERMA advisory Kaihautu be adapted for the EPA. Creating a new Crown entity would require legislative change. All other implementation was described as being achievable within existing legislation.

On the issue of a Crown entity / existing department as the site for the EPA, the independence of a Crown entity from political influence was favoured by most at all hui.

In the Auckland hui there were some erroneous and misleading statements. In response to a question the hui was told by an official that call-ins were only for resource consent applications. But in fact the legislation also provides for plan changes, variations and other decisions. (s140(2), and s141). Officials have since clarified that while the legislation does enable call-ins for a wide range of purposes; operating policy is that at present that only consent decisions should be called in by the Minister. However, a call-

in can be requested by a council, and the option remains for the Minister to respond by agreeing.

The hui was also told that there would always be someone on a Board of Inquiry with expertise in tikanga. Discussion then addressed how many such members there should be, how they should be appointed, and so on. But in fact there is no binding requirement for tikanga expertise. The statute says (s149K): “the Minister must consider the need for the board to have available to it, from its members, knowledge, skill, and experience relating to ... tikanga Māori”.

In reality this could result in no tikanga expertise in many cases. Recent appointments to TAGs are informative. The Aquaculture TAG only included a member with expertise in iwi development and kaitiakitanga after a late intervention by the Minister of Māori Affairs. The Urban TAG has no Māori member. Is this because the Minister did not perceive any relevant need? And if so, what does this imply? That a pre 1960 perspective, in which Māori are largely in rural areas, is maintained? Or that Māori RMA involvement is limited to impacts on wāhi tapu, discovery of koiwi, things that are less relevant to the Urban TAG's terms of reference? Whatever the mindset, the result is no Māori on a TAG which will be making recommendations affecting the majority of the Māori population who live in urban areas.

Officials have since clarified that while there is no obligation on the Minister to include tikanga expertise, their advice has always been to ensure there is such a person on Boards of Inquiry, and to date that has always been the case. Ministerial appointments to TAGs are made at the Minister's discretion, and are not necessarily comparable to Board of Inquiry appointments. However, whatever the common practice, there is in fact no mandatory requirement for tikanga expertise, and such appointments could be avoided.

The Auckland hui was also told that the only need for new legislation would be if a separate Crown entity were to be created. All other changes were presented as policy and not statutory changes. However a follow up e-mail from MfE corrected this. There will in fact need to be new legislation to enable many of the functions of the EPA, but officials have not detailed what that will include. That materially affects the nature of the hui. If there is to be a legislative change with the full opportunities for public submissions and appearance before the Select Committee, the pressure to respond at this stage is lowered.

In Auckland, when someone referred to the hui as consultation, an official responded that was not the case. This was not consultation. This was “engagement” to hear views which would be useful for officials advising government. Government has often recently used “engagement” to differentiate from “negotiation”, which is an important distinction. But holding a hui to hear responses to policy options, whatever label is

attached, is consultation. Case law has determined an effective nature of consultation (see Appendix). Merely calling it something else does not mean the consequences of that case law can be avoided. The hui was also told submissions were not being sought on this issue.

[The Auckland hui was told that the three national hui were the only “engagement” events for the EPA. The inference was that Māori were lucky to have three hui with last minute notice rather than none at all]

But the reality is that the nature of the current process is very limited, although not completely without value. Certainly the misinformation at the Auckland hui (and possibly at others) was not helpful.

There are some options that need to be considered for the nature of Nga Kaihautu and its equivalent for the EPA. But it would be naive to suppose that a highly more effective role than that of providing advice is currently envisaged by government. The role of Nga Kaihautu has some benefits, but they are limited. Elevating the status of its advice within the new EPA – eg requiring that it is taken into account – could help. That would require legislative change, which could be recommended now, and followed up in later submissions and presentations.

Combining the ERMA and RMA roles has other challenges. RMA decision making is generally finding a balance between opposing interests; ERMA decision making is essentially in terms of thresholds – ie if it doesn't pass the test it doesn't happen. Development of specific expertise is needed for the separate processes.

It was pointed out in the Auckland hui that the structure of Nga Kaihautu was one that was common twenty years ago, but times have changed. Twenty years ago iwi did not have a collective response that is now possible through Iwi Leaders; many individual iwi have gained capacity to address a range of environmental management issues; and electronic communication available today enables information flow and feedback. Those factors should be informing the design of a new version of Nga Kaihautu.

The hui are being considered by the officials as the sole means of soliciting a response from Māori. Without an opportunity for submission at this stage, and with what appears to be a short timetable for official input to Cabinet decision making, further efforts to address the issues now may be ineffective.

At all hui Chappie Te Kani, Manager of Te Kāhui Taiao (formerly Maruwhenua), led the discussion. He had one or two other MfE staff members with him. But none were those with responsibility for and significant workloads related to the EPA. While it is reasonable for someone like Chappie to be there to facilitate the hui, it is unreasonable for MfE to withhold staff with the key expertise.

Potential benefits of an EPA

There are a number of shortcomings in our environmental legislation and its implementation which have been noted by many commentators. These include:

- Lack of integration, in particular in the Coastal Marine Area
- Inadequate processes for allocation of use rights for public resources
- Failure to manage urban growth effectively
- Responses to climate change
- Lack of central direction through national standards and policies

For those working with kaitiakitanga these issues have importance, particularly the need for integrated marine management. However there are others specific to kaitiaki. The RMA raises the opportunity for effective implementation of kaitiakitanga in several ways. Directly s7(a) requires that kaitiakitanga is given “particular regard”; recognition and provision for the national importance of taonga tuku iho is in s6(e); and the s5 definition of “sustainable management” includes the cultural wellbeing of communities. These aspects of the RMA in principle should have provided powerful means for the exercising of kaitiakitanga within the statutory context. In practice it has been very different. An EPA with the right design could have led to improvements.

Unfortunately the first opportunity to influence the nature of EPA to provide effectively for kaitiakitanga was in the RMA Phase One reforms, and that did not happen. If there is to be significant change, that will need to be addressed in the context of the next legislative change.

Other RMA work streams

In announcing Phase Two reforms Nick Smith referred areas yet to be addressed as:

further ... work streams involve better alignment of the Resource Management Act processes with those of the Building, Conservation, Forests, and Historic Places Acts. The final work stream involves a number of generic RMA processes that were too complex to include in Phase I of the reforms.

Due to the detailed and complex nature of the second phase of the RMA reform programme, work will progress at a more modest pace. It will involve a number of advisory groups and significant opportunities for public consultation and engagement. There is also a lot of detail to work through and it will take time to get it right.

Officials at the Auckland hui said none of those work streams were current priorities.

Future Strategies

Clearly there is a perception within government that a brief series of “engagement” hui, at which nationally only 37 (other than officials) are recorded as attending, was sufficient. And hui in which imperfect information was provided, and relevant senior officials did not attend.

If future policy and legislation development is to better provide for iwi input changes will be needed. These could include:

- Protocols developed between the Iwi Leaders and the Crown for identifying priority legislation, and the nature of early involvement
- Monitoring of legislative developments, and preparation of submissions at a national level. These could be determined by a consensual process, or could provide templates for local use and adaptation.
- Proactive initiatives could be developed by the Iwi Leaders. In the case of the EPA a tikanga / kaitiakitanga model could have been developed prior to any government proposals to direct Crown responses. This could still be developed prior to introduction of legislative amendment. There is time now to construct tikanga based alternatives for Historic Place, Conservation and other items from the future work streams
- Developing guidance for mainstream environmental managers on how to understand and respond to kaitiakitanga is needed.

Recommendations

In response to the EPA proposals:

- A brief paper outlining the nature of changes sought is prepared.
- There is preparation for subsequent submission to later legislative change.

With respect to future strategies:

- A suite of strategic options with implementation details could be developed
- Models based on tikanga / kaitiakitanga can be developed prior to government implementation of other RMA work streams and other environmental legislation

Appendix

Consultation

The leading case on consultation is *Wellington International Airport Ltd v Air NZ*. The elements of consultation can be summarised as including, but not limited to the following:

- Consultation involves the statement of a proposal not yet finally decided upon.
- Consultation includes listening to what others have to say and considering responses.
- Sufficient time must be allowed and a genuine effort must be made.
- There must be enough information made available to the party obliged to consult, to enable the consultee to be adequately informed as to be able to make intelligent and useful responses.
- The party obliged to consult must remain open minded and be ready to change and even start afresh. However, the party consulting is entitled to have a working plan already in mind.
- Consultation is an intermediate situation involving meaningful discussion.
- The party obliged to consult holds meetings, provides relevant information and further information on request, and waits until those being consulted have had a say before making a decision.

Consultation is not:

- Merely telling or presenting or
- Intended to be a charade or
- The same as negotiations, although a result of consultation could be an agreement to negotiate.