

INVOKING THE PUBLIC INTEREST IN PLANNING

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Doctor of Philosophy

2010



## **CERTIFICATE OF AUTHORSHIP & ORIGINALITY**

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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## ACKNOWLEDGEMENTS

I acknowledge with sincere gratitude the assistance of my academic supervisors (in order of involvement) Dr Glen Searle for his commitment to the public interest and his confidence in the project, Dr Narelle Smith for her guidance in Q methodology, and especially Professor Spike Boydell who took over just in time to guide the writing process.

For their contributions of ideas and critical comments I thank the participants in the UTS DAB seminar series, especially the Wednesdays @ 5 series in 2007.

This research would not have been possible without the assistance of those who were prepared to share their views about the meaning of the public interest, including the student in the Master of Planning and the Master of Property courses 2007 and the industry leaders who participated in the online survey that generated the Q Method data. Special thanks also to the participants in the Delphi process who gave so generously of their insights and experience.

Several conferences audiences deserve special mention, including those at the 2006 Planning Institute of Australia NSW State Conference in Sydney; the 2007 Australasian Political Studies Association Conference in Melbourne; and in particular the audience at the 2008 Planning Institute of Australia National Congress, Sydney, who gave the research findings a memorable welcome.

I also wish to thank:

Chris Wheeler – NSW Deputy Ombudsman

Julie Conlon – NSW Department of Planning

John Roseth – Senior Commissioner, NSW Land & Environment Court

Norm Lenehan – Eurobodalla Shire Council

Members of interest groups associated with wind farming, urban density and maternity services.

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## ABSTRACT

The value to planning of the concept of the public interest is in question due to its lack of an agreed operational meaning (Campbell and Marshall 2002, Moroni 2006). This research identifies those aspects of the concept that are agreed on by discourses about the concept of the public interest found within the planning and property development sphere in New South Wales, Australia. It then identifies practices relevant to determining the public interest that are compatible with those areas of agreement and finally proposes and evaluates procedures for determining the substantive content of the public interest in any specific context.

Different research methods are employed at different stages of the research. The discourses are identified using Q Method, where practitioners rate statements about the concept of the public interest and a form of factor analysis is applied to those ratings. The ratings are also used to identify areas of agreement among the discourses. The proposed procedures are evaluated and refined using a Delphi process to structure discussion among practitioners who are experienced in determining the substance of the public interest.

By minimising reliance on contentious issues in the proposed procedures, emphasis can move away from procedural arguments to the important work of exploring the substance of the public interest. That is, the procedures act as a *modus vivendi*, a practical arrangement between those whose views differ, which by-passes areas of difficulty for the sake of a contingency (in this case, progressing their claims about the public interest, and more broadly, developing collective understanding what serves the public interest).

The proposed procedures are outcomes-focused (consequentialist) but deal with the weaknesses of traditional utilitarian approaches by including common interests as well as individual interests, using qualitative evaluation processes that address the problems of value incommensurability, and allowing for the consideration of distributional effects. The procedures also allow for the inclusions of private interests where it is in the public interest to do so (the Wood-Robinson principle), thus ensuring that individual rights are taken into account.

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 BACKGROUND TO THE RESEARCH**

In jurisdictions such as New South Wales (NSW) Australia, where planning legislation and policies require the consideration of the public interest, invoking the public interest in debate about good planning and development is routine. Proponents of developments claim that their proposals serve the public interest while objectors claim they do not. Planners set out public interest considerations in their reports, and appeal courts consider them and sometimes overrule them. Interest groups have different views about what is in the public interest, and politicians seek compromises.

There has been debate over the meaning of the concept of the public interest over many centuries and in many disciplines including philosophy (Bentham 1789; Held 1970), political science (Downs 1962; Flathman 1966; Barry 1962, 1965, 1967; Cochran 1974; Gunn 1989; Uhr 2005), regulation (Pal & Maxwell, 2004) and planning (Banfield 1955; Friedmann 1973; Klosterman 1980; Howe 1992; Taylor 1994; Alexander 2002b; Campbell & Marshall, 2002a; Moroni 2006). The debate has continued unresolved, in part because of the diametrically opposed views on some key issues. Whether there has been any movement towards resolution is debatable.

A person wondering how to satisfy the statutory requirement to serve the public interest might turn to the legislation for guidance, but, at least in the case of NSW, they find little to help them. Most NSW legislation that requires consideration of the public interest does not provide a definition or instruction on how it might be determined. Government policies require public officials to put the interests of the public ahead of their own self-interests (the trust principle (Wheeler 2006a)) but there is little in state publications that would assist in the making, evaluating or challenging of claims and decisions about the public interest.

In contrast, there is a rich debate about the substantive content of public interest. The vigour with which people in NSW debate what is or isn't in the



public interest, and whether public officials are failing in their obligation to serve the public interest, indicates that the electorate believes the public interest is something knowable through the exercise of reason. The nature of that reasoning is the subject of this study, which aims to clarify the logical processes that are used, and those that should be adopted, when invoking the concept of the public interest. The research therefore has a descriptive and a normative component (described below in section 1.2.1).

## **1.2 RESEARCH PROBLEM, ISSUES AND CONTRIBUTION**

### **1.2.1 Research problem**

Campbell and Marshall (2002a, p163) suggest, "What constitutes the public interest has always been contentious but its value as a legitimising concept has increasingly been called into question in the recent past for the reason that it cannot be given operational meaning either by those who make policy or by those who evaluate it".

What is it that prevents agreement about an operational meaning of the public interest? Is it possible to identify the aspects of the concept that are in dispute, find a defensible position on each, and then reconstruct the concept using those defensible positions? What might be a 'defensible' position? It cannot simply be a position that is defended by logic or belief, because those criteria gave us the plethora of theories that are part of the problem. On the contrary, at this stage of the history of the concept of the public interest, it is appropriate to examine the variety of meanings given to the concept in modern society, and see, for each aspect of the concept, how 'divided' the debate really is. This would show whether the contrasting positions are irreconcilable, or if they are in agreement on some aspects that could form the basis of an operational meaning of the concept. Such an approach would assist those involved in debating the public interest to see past their different views about the concept of the public interest and focus instead on their different views about the substantive content of the public interest.

**The research problem that is addressed in this thesis is to determine what operational meaning of the concept of the public interest might be compatible with the differing views about the concept that occur within the planning and property development sphere and to develop that operational meaning into procedural guidelines for invoking the public interest<sup>1</sup>.**

This thesis explores the different operational definitions of the public interest employed by the various stakeholders in the planning process and investigates how far these perspectives are compatible. It then goes on to develop an operational meaning based on areas of agreement in order to reduce definitional disputes and so facilitate debate about what arrangements best serve the public interest.

The research problem therefore has two components: a descriptive component that explores differing views of the concept of the public interest among planning and property development practitioners, and a normative component that uses those findings to develop procedural guidelines. The descriptive component of the thesis identifies discourses about the concept of the public interest, and areas of agreement and disagreement among those discourses. The normative component of the thesis synthesises those areas of agreement, and uses trialing and verification processes to build a coherent set of procedural guidelines. This approach is used because guidelines based on areas of agreement might be less likely to cause breakdown of the process of debating the substantive content of the public interest. Furthermore, if the areas of agreement indicate that some of the positions expressed in the theoretical debate about the concept of the public interest are less relevant to modern

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<sup>1</sup> The phrase 'invoking the public interest' is used here to describe a range of situations where a speaker or writer claims that something is or is not in the public interest, proposes criteria for testing what best serves the public interest, justifies a decision about the public interest, or challenges such a claim, test or decision. The speaker or writer might be a member of the public who is not bound by any regulations about how to formulate their claim or challenge, or an elected or appointed official who is more likely to be required to follow regulated procedures and professional standards. This research aims to encompass all of these situations.



planning practitioners, this might indicate that there is a growing potential for agreement on an operational definition of the public interest.

While this research uses analytic approaches involving statistically significant areas of agreement to develop an *operational* meaning of the concept of the public interest, the proposed procedure for determining the *substantive* meaning of the public interest makes no mention of statistical processes and is more interested in diversity of opinion than consensus. The proposed procedure aims to focus attention on identifying the relevant public, recognising the full range of public interest considerations and the extent to which these are valued by different segments in society, debating if and when the protection of private interests is a matter of public interest, and thereby developing a collective understanding of the public interest. In this context a 'collective understanding' does not necessarily imply agreement, but rather an understanding of the range and status of the multiple facets of the public interest with respect to the matter at hand.

### **1.2.2 Theories and issues**

Theories about the nature of the public interest differ in terms of a fundamental matter, namely the nature of the interests that comprise the public interest. Chapter 2 reviews these theories and describes, on the one hand, unitary and common interest theories of the public interest that are based on the collective interests of people in society, and on the other hand, group and individual interest theories that are based on private interests. Those who focus on collective interests include Plato (380 BCE), Hegel (1821), Rousseau (1762), Barry (1962, 1967), Friedmann (1973), Klosterman (1980), and Etzioni (2004). These theories suggest conditions that need to be met for an interest to be a collective interest, including whether an individual interest can conflict with a collective interest. Those who focus on private interests include those such as Cochran (1974), Susskind & Cruikshank (1987), Altshuler (1965) and Davidoff (1965) who view the public interest in terms of group interests, while Hobbes (1651) and Bentham (1789) established their views of public interest on individual interests. Many contributors to the theoretical debate about the public interest support one of these approaches and criticise the others. Some contributors, however, have proposed that the public interest can be determined through the consideration of a combination of interests. Klosterman

(1980), and Pal and Maxwell (2004), have proposed that the public interest incorporate both common interests and private interests, while Flathman (1966) proposes a combination of unitary interests and individual interests.

There are several issues that cut across these parallel theories of the public interest. They have been identified in this research as areas of persistent ambiguity that need to be resolved before procedures can be determined and they form the research issues that direct the data collection and analysis phases.

The research issues addressed in this thesis are:

1. Whether the clarification of the following areas of ambiguity would assist in the determination of an operational meaning of the public interest:
  - Whether the public interest is important (Flathman 1966; Cochran 1974; Lucy 1988; Howe 1992; Campbell & Fainstein 1996; Campbell & Marshall 2000a, 2002a).
  - Whether there are multiple public interests (Hess & Adams, 1999).
  - Acceptability of the practice of limiting the range of issues to be considered when determining the public interest (Flyvbjerg 1996; Yiftachel 1998; Healey 2006; Innes & Booher, 2003).
  - How far the 'relevant public' should extend in space and time (Taylor 1994; Wheeler 2006a).
  - The inclusion of both private and common interests in the operational meaning of the public interest (Klosterman 1980; Flathman 1966; Pal & Maxwell 2004); the relevance of self interest and altruism (Sagoff 1988; Mansbridge 1990); and the need to curtail private interests in order to serve the public interest (Stone 2002; Searle 2004b)
  - The people and processes that should be involved in resolving differences of opinion about the public interest (Forester 1989; Fischler 2000).

2. Are there areas of agreement on these issues among the differing views about the concept of the public interest held by practitioners in the planning and property development sphere?
3. Can an operational meaning of the public interest be based on these areas of agreement and, if so, what principles or procedural standards for invoking the public interest do they suggest?

### **1.2.3 Contribution of the thesis**

Addressing these research issues resulted in several contributions that will be described more fully in Chapter 10.

The main contribution is that thesis develops a defensible operational meaning of the public interest that has the potential to reinvigorate its role as a legitimising concept in planning. It does this by identifying of discourses about the public interest that are used in the NSW planning and property development sphere. The identification of these discourses is a contribution to research on the public interest, as are the findings that those discourses agree that the concept is important and should be persevered with, and that there is a place for consideration of private interests when determining the public interest.

Several aspects of the proposed procedures also make a contribution, including the selection of a test for determining when a private interest can be included in the determination of a public interest; namely the Wood-Robinson test that states that this should only occur if the protection of that private interest is itself a matter of collective (public) interest. Another aspect of the proposed procedures that is worth highlighting here is that they find a balance between the competing needs for inclusiveness and decisiveness in decision-making by breaking the process into stages that have varying degrees of public involvement.

The thesis presents a set of guidelines for determining the public interest (the final version of which is presented in section 9.9). Guidelines 1 is significant in that addresses the main flaw in most attempts to invoke the public interest in planning, namely that they claim that the public interest is best served by giving



priority to a sectoral interest. Guidelines 2 to 4 are also noteworthy in that they build an argument that the public interest is multifaceted, that determining the public interest involves weighing up the positive and negative effects on multiple shared interests, which in turn shifts the focus from people in conflict to common interests in competition.

An overarching contribution (presented in section 10.3) is that the proposed procedure for determining the public interest retains an outcomes focus (appropriate to the business of planning for better outcomes) but avoids the problems of Utilitarianism (especially its focus on individual utility to the exclusion on collective utility; its focus on good ends to the exclusion of other considerations especially right means; and its commensurability assumptions).

These contributions are each quite modest, but collectively they make the research significant.

### **1.3 JUSTIFICATION FOR THE RESEARCH**

This research is justified because of the continuing importance of the concept of the public interest (discussed in section 1.3.1), the poor practices associated with invoking the public interest (section 1.3.2), the need for a definition of the public interest that encompasses, or is at least sensitive to the range of ideological positions of the stakeholders in the planning and property development sphere (section 1.3.3) and the lack of research that attempts to create such a definition (section 1.3.4).

#### **1.3.1 Continuing importance of the concept of the public interest**

Evidence of the continuing importance of the concept of the public interest can be found in its role in (1) public service ethics and accountability, (2) the ethics of the planning profession (3) government legislation and regulation, and (4) disputed and emergent legislation and regulation.

- 1) The public interest is a cornerstone of the ethics of public service and political accountability. In this context, appeals to the concept of the public interest work at two levels (Uhr 2005, p34). First, it is used to set a minimum

standard of ethical behaviour for public officials who must not use their official position for their private interest or personal gain, which could constitute corrupt conduct. Much of the anti-corruption activity of governments, and associated media attention, is directed at exposing officials who serve private or partisan interests in decision-making rather than the public interest. Second, it is also used to set a higher, more exacting standard of behaviour of promoting the common good or public interest. Planners who are also public officials must, as public officials, serve the public interest. While planners acting for private parties are not bound in the same way, their plans and proposals are subject to the same legislation, and the approval of those proposals will (or should be) subject to the same public interest requirements.

The concept of the public interest draws attention to the shared or collective interest over the private or personal interest, thereby appealing to any sense of selflessness or altruism that the audience may have. It suggests that the speaker is also denying self-interests and is above reproach. As Uhr (2005, p34) argues, "formal consideration of 'the public interest' strengthens the deliberative process by putting all participants on notice of a presumption that, unless they can prove otherwise, they can be dismissed as protecting a range of private interests at the expense of the public interest".

Thus the concept of the public interest is a legitimising concept for government decisions and state activity in general (Alexander 2002b, p227). Claims that a government's decision or action will serve the public interest are likely to be made wherever the public interest is recognised as an important principle.

- 2) The public interest is also prominent in the ethics of the planning profession. Codes of conduct of professional planners' associations in many countries explicitly refer to the need for planners to serve the public interest. The Professional Code of Conduct of the Planning Institute of Australia (PIA 2002) states that the planning system's purpose is to ensure outcomes which reflect the interests of the community as a whole, and that planners' responsibility to the community must take precedence over sectional



interests (clause 2). Members are required “not to act in circumstances where there is a potential conflict of interest between their own private interest and the interest of their client or the public interest” (clause 8). Studies of the ethical frameworks used by practising planners (such as those by Marcuse (1976), and Howe and Kaufman (1979)) have identified planners’ concern for the public interest.

- 3) Existing legislation and regulations require planners to specifically consider the public interest. In 2006 Wheeler (2006a, p22) estimated that in NSW over 190 Acts required that the public interest be considered in the implementation of the legislation or when making particular administrative decisions under that Act. This includes the Environmental Planning and Assessment (EP&A) Act 1979, which is the main legislation dealing with urban and regional planning in NSW. Section 79C of the EP&A Act stipulates that in determining a development application a consent authority must take into consideration:
  - a) The provisions of any environmental planning instrument, any proposed instrument that is or has been the subject of public consultation, any development control plan, certain planning agreements, and all regulations that apply;
  - b) The likely impacts of the development on the natural and built environments, and the social and economic impacts in the locality;
  - c) The suitability of the site for the development;
  - d) Any submissions made; and
  - e) The public interest.

The substance of the public interest is not defined in the EP&A Act, nor are procedures for determining the public interest provided.

- 4) Disputed and emergent legislation and regulations are often debated and contested in terms of the public interest. For example, in NSW in recent times the issue of the compulsory acquisition of land by state-authorised bodies has become more prominent because of controversial legal cases<sup>2</sup>,

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<sup>2</sup> *Mac's Pty Ltd v Minister Administering Local Government Act 1993 and Parramatta City Council* [2007] NSWLEC 623 (27 September 2007); *Parramatta City Council v R&R Fazzolari Pty Ltd*; *Parramatta City Council v Mac's Pty Ltd* [2008] NSWCA 132 (11 June 2008); and *R & R Fazzolari Pty Limited v Parramatta City Council, Mac's Pty Ltd v Parramatta City Council* [2009] HCA 12, 2 April 2009

the perceived need by the state government to acquire land for urban consolidation to accommodate rapidly growing urban populations, councils attempting to acquire land for infrastructure development, and the lack of mechanisms in strata title law to enable the redevelopment of apartment blocks with multiple owners. Even though serving the public interest is not specifically mentioned as a requirement for such acquisitions under the current NSW legislation, it is raised in the press, for example “The NSW Greens say compulsory land acquisition should be solely for the purpose of the public interest and not for private profit” (Sydney Morning Herald, 12 March 2010).

This may represent a conflation of the concepts of public interest and public purpose or public use (which are the terms used in some USA eminent domain legislation and legal challenges such as *Kelo v City of New London, Connecticut* 162 L Ed 2d 439 (2005)) but the legal principles are similar. The main issues in NSW relate to whether a state-authorised body can compulsorily acquire land where that body is acting as a private developer or to on-sell it to a private developer in a public private partnership. What is a public-purpose project? Should a commercial project of a public authority be viewed as a private interest or a public interest? These questions are key to this emerging issue and to the operationalisation of the public interest, not only in NSW but in many countries (Gray 2007).

### **1.3.2 Poor practices associated with invoking the public interest**

Perhaps the best justification for this research is the state of current practices. While there are some well-argued claims about the public interest (where well-argued means making values explicit, exposing issues and options, and illuminating the ethical choices embedded with them (Grant 2005, p49)), many fall well short of these standards.

With respect to exposing issues and options, common problems include claims about the public interest that are simply statements that the preferred option creates one or more public benefits. They are silent about the detriments of that option, or how they compare with other options, or how they impact on other,



unmentioned section of the public. For example the car driver advocating the installation of features to improve traffic flow (such as more car lanes) claims it is in the public interest to have improved traffic flow, without considering the other options (say, wider foot paths and more pedestrian refuges) that are also in the public interest for a different sector of the public. Other claims consider only the benefits of the preferred option and only the detriments of other options. For example, an advocate for improved traffic flow claims that it is in the public interest to prohibit cyclists from highways because this would improve traffic flow and because the highway is an unsafe environment to cyclists. This claim is silent on the benefits for the cyclist of using the highway, and the detriments of such a prohibition. This might be because the person making the claim feels no obligation to be more even handed, or because they are attempting to misrepresent the situation.

With respect to making values explicit, common problems include claims that take private interests into consideration without establishing that those are also interests of the public. The claimants often assume that they are member of the public so their interest must therefore be a public interest, and should influence judgements about *the* public interest. A common example of this problem in planning is the value of the profitability of the property development sector to the public. Another example is the value of national economic growth to the public, which is now regularly challenged on environmental and social grounds.

With respect to illuminating ethical choices embedded in claims about the public interest, problems occur when claims attempt to conceal or misrepresent the factors that were actually considered. A claim may imply that interests were taken into account when they were not (for example, property tax reforms that are claimed to be helping the disadvantaged, which are actually giving greater benefits to high income earners). Alternatively, values that were influential in decision making (such as racism) might be concealed from more tolerant sections of the audience by use of 'dog whistle politics' (Fear 2007) and language that uses stock words or phrases to send a message of support to those who share those values.



Standards for invoking the public interest that address the need for making values explicit, exposing issues and options, and illuminating the ethical choices are long overdue.

### **1.3.3 The need for an ideologically sensitive procedure**

As described in section 3.1 this research was motivated by the difficulties that practitioners have in knowing how to determine the substance of the public interest, and what procedures for doing so might be acceptable to their colleagues, employers and other stakeholders with whom they work. The available procedural definitions tend to be associated with particular ideologies. For example, Utilitarianism, discussed in section 2.5, uses procedures for aggregating individual interests that are historically and ideologically associated with Libertarian philosophies (Nozick 1974) that emphasise the rights of the individual. The dialogical and collaborative approaches, discussed in section 2.3.2, which argue that the public interest emerges from public dialogue, are ideologically associated with the Communitarian philosophies (Etzioni 2004) that emphasise the importance of the responsibilities of the individual towards the wider community. When dealing with elected officials, colleagues and stakeholders of varying ideological persuasions, planners need an operational meaning of the public interest that bridges these differences, otherwise the debate becomes stuck on the definition of the concept instead of dealing with the substance of the public interest in the context in question.

Without a procedural definition of the public interest that makes some attempt to respect the range of ideological positions likely to be held by stakeholders, planners will continue to encounter difficulties. Determinations of the public interest will be hard to reach, claims will be difficult to defend and challenges will be difficult to mount. If, on the other hand, there is a definition that does not assault the ideological sensitivities of participants, then the real business of evaluating planning options with respect to the public interest might be able to proceed.

The only method identified that deliberately accommodates different ideological positions is that developed by Pal and Maxwell (2004), described in section 2.6. Its strength is that it incorporates competing approaches to understanding the public interest and requires that several concerns (fair process, majority

opinion, individual and enterprise interests, the common good and shared values) be considered in a determination of the public interest. This could be interpreted as requiring engagement with the ideologies of:

- Collaborative theorists (who stress the importance of inclusive procedures, fair representation, transparency, due process etc.);
- Populists (who seek recognition of majority opinion);
- Utilitarians (who advocate the use of individual interests of those involved, including business interest);
- Communitarians (who focus on collective interests and public goods);
- Public values theorists (who seek the recognition of the rights and obligations of citizens and the principles on which governments and policies should be based (Bozeman 2007, p 13)).

The possible weaknesses of the Public Interest Accountability Framework is that it uncritically includes all these approaches and data gathering techniques and offers little by way of a rationale for selecting some approaches over others..

#### **1.3.4 Research gaps**

Apart from the lack of a procedural definition of the public interest that is sensitive to the range of stakeholder ideologies, there is also a lack of research supporting the development of the components of such a procedure.

In particular there is a lack of attention given to conceptions of the public interest that combine collective and private interests. This reflects an ambiguity in the discipline of planning itself. Is planning meant to serve the public interest or to balance private and public interests? Does serving the public interest require protecting private interests? If so, are all private interests to be protected or only some?

If the public interest is fundamentally a collective and shared interest while private interests that are not a collective interest should be excluded from the determination of the public interest, then this is a neglected aspect of the *meaning* of the public interest. The influence of the utilitarian meaning of the public interest (which is focused on private views of utility) has resulted in the notion of excluding some, or all, private interests being controversial in some ideological contexts. This problem is addressed in this research by seeking a method of identifying interests that are exclusively private. The term 'exclusively private' is used in preference to the term 'merely private' as the latter has a pejorative connotation that is ideologically insensitive. This problem is addressed in this research in two of the research issues namely the restriction of public interest criteria (especially section 8.4) and the status of private interests (especially section 8.6).

Other components of an ideologically sensitive procedure would be a method of including multiple public interest considerations without making unreasonable commensurability assumptions; and an approach to incorporating public participation and dialogue without making the procedure too time consuming and expensive.

#### **1.4 METHODOLOGY**

Different research methods are employed at different stages of the research, therefore the discussion of methodology is split over two chapters.

The first methodological problem, discussed in Chapter 4, is how to identify different perspectives on the concept of the public interest in a way that facilitates (that is, gives positive assistance to) the identification of specific areas where the different views are in agreement. Several methods are available that might satisfy the first requirement (the identification of different perspectives) including case studies, practitioner interviews and discourse analysis, but not all of them positively assist the second (the identification of specific areas of agreement). Case studies and interviews help the researcher to explore situational meaning, but this can hamper comparison of participant views. Critical discourse analysis can produce useful accounts of divergent views, but requires that a sufficient volume of material be available for analysis,



which was not the case with respect to practitioner views about the public interest. One form of discourse analysis that does satisfy both requirements and is feasible within this research is Q methodology.

As described in Section 4.4, Q Method explores attitudes that influence a person's perception of an issue and hence the discourse about that issue with which they are most likely to feel affinity. Participants are asked to sort statements (or other stimulus materials) about an issue into categories ranging from 'most like my own view' (or strong agreement) to 'least like my own view' (or strong disagreement) and the results are statistically analysed to reveal the range of perspectives or discourses within that group of participants. The process focuses on the areas of agreement and disagreement, making it especially suitable for research that seeks to use those in the development of policies or procedures (described in section 4.3.2).

The second methodological problem, discussed in Chapter 7, is how to go about developing an operational meaning of a concept based on these areas of practitioner agreement. For the purpose of this research, the term 'operational meaning of the public interest' is defined as "the meaning that is derived from understanding the process by which a statement about the public interest was arrived at". Therefore the development of an operational meaning requires the development of a process or procedures, or perhaps a test or criterion.

The methodology that has most influenced this stage of the research is 'Research and Development' (described in section 7.2.1) which involves the definition of a need, and the development and refinement of a product to meet that need. The need in this case is for a method of determining the public interest that fits practitioner understanding of the concept, is ideologically sensitive, and is feasible to implement. The development process draws on theory, areas of discourse agreement, and current practice. The refinement process involves some preliminary trials of the process (described in section 7.2.3) and the engagement of a group of people, who are experienced in making determinations of the public interest, in a Delphi process to evaluate the proposed procedure. The selection of the Delphi approach, and details of the method and its implementation are described in section 7.3.

## **1.5 OUTLINE OF THE THESIS**

The chapter structure follows the sequence of steps by which the research problem was analysed then solved. In this process the research issues are addressed four times, namely in Chapters 3, 6, 8, and 9. Section 1.5.1 outlines the thesis in terms of the research process, and explains the focus of each chapter. Section 1.5.2 outlines the thesis in terms of the examination and resolution of each of the research issues.

### **1.5.1 Outline of the thesis by chapter**

The review of relevant literature is presented in Chapters 2 and 3. Chapter 2 presents the historically important themes in the development of the concept of the public interest. Unitary theories and common interest theories are canvassed, as are the plural interest theories based on group interests and individual interests. Attention then turns to approaches that combine common and private interests that may be appropriate in the context of planning. Chapter 3 reviews the literature associated with the six persistent ambiguities (the research issues) that need to be addressed in order to define an operational meaning of the public interest.

Chapter 4 presents and discusses the methods used to explore the views of practitioners in NSW. Methods used by other researchers to examine the perceptions of planning practitioners are outlined (section 4.2), as are approaches to overcoming differences of perception and the reasons for selecting Q Method (section 4.3). Q methodology is described in detail (section 4.4) and the application of Q Method in this research is explained (section 4.5).

Chapters 5 and 6 present the findings of the Q Method research. Chapter 5 uses the Q data to identify discourses about the public interest found among practitioners working on planning and property development in NSW during 2007. The Q procedure was conducted twice, on two different groups using slightly different instruments. The results of each run were different in

predictable ways. Each run resulted in the identification of three distinct discourses. Chapter 6 uses the same data to identify areas where the discourses agree with respect to the each of the persistent ambiguities (research issues).

Chapters 7 to 9 describe the application of the areas of agreement to the development of guidelines for determining the public interest.

Chapter 7 presents the methodology used to develop and evaluate the guidelines. Section 7.2 describes the criteria that were used when developing the guidelines and how a 'research and development' approach was applied. Section 7.3 describes why a Delphi process was used to evaluate the guidelines and how it was conducted.

Chapter 8 presents the substance of the development process. For each of the persistent ambiguities (section 8.2 to 8.7), practices that are compatible with these areas of agreement are discussed and a preferred approach identified. This is then expressed in one or more proposed guidelines. Section 8.8 presents the proposed operational meaning of the public interest.

Chapter 9 presents the results of the evaluation. The input of the Delphi process participants is used to refine the guidelines.

Chapter 10 is the concluding chapter, and reviews the contributions and limitations of the thesis and the implications for theory, policy and practice, methodology and further research.

### **1.5.2 Outline of the thesis by research issue**

Six persistent ambiguities about the public interest were identified during the researcher's work as an adviser and trainer in public sector ethics, and during presentations to planners on the public interest (section 3.1). They are research issues of the thesis. Each was resolved by the research as follows:

Is the public interest important? (Sections 3.2, 6.2, 8.2).

This issue is introduced in section 3.2 where it is argued that those theorists who reject the public interest do so because they are unable to find an



operational meaning of the concept (section 3.2.1), however a number of planning theorists have defended its importance (section 3.2.2). In section 6.2 it is found that the planning practitioners who participated in the Q Method research agreed that the public interest is important. Section 8.2.1 looks at NSW planning politics and questions whether planning practitioners believe that public interest is an important consideration given the cases of proven corruption in local government planning which might suggest otherwise. The 2008 case of corruption in the Wollongong City Council planning process is examined, and is found to support the argument that confusion about the concept of the public interest can be the cause of behaviour that appears incompatible with a belief in the importance of the public interest. Section 8.2.2 suggests a guideline to address this problem, namely that because of its importance the public interest it needs to be given careful consideration and claims that one sectional interest should routinely be given priority are unlikely to be adequate.

Are there multiple public interests or is that an oxymoron? (Sections 3.3, 6.3, 8.3, 9.3)

This issue is introduced in section 3.3 where several examples of public interest matters with multiple competing public interest considerations are described. One of these is the idea of 'triple bottom line' (TBL) sustainability. In section 6.3 it is found that the discourses about the public interest all display an acceptance of the logic of balancing the elements of the TBL, and would recognise multiple dimensions of the public interest. Section 8.3.1 explores language for discussing multiple public interests and three guidelines are developed. The first addresses the need to recognise multiple common interests because although different sections of the public value them differently, everybody benefits if they are safeguarded to some degree. The second guideline in this section proposes terminology for discussing multiple common interests and the third proposes definitions of 'a public interest', 'public interests' and '*the*' public interest. Section 8.3.2 describes ten tests of some standing that are associated with the public interest. Of the ten examined, four tests that identify, weight and balance conflicting decision considerations are judged to be suitable. A proposed guideline on the use of a balancing test addresses the problem that the process inevitably involves value judgements

and the result is inevitably contestable. Sections 9.3 and 9.6 describe how the evaluation process led to the refinement of these guidelines.

Can the public interest criteria be restricted? (Sections 3.4, 6.4, 8.4, 9.4).

Section 3.4 introduces the issue of restricting the criteria on which the public interest will be judged, for example by the specification of 'terms of reference' when calling for responses to planning proposals, or by setting criteria to be considered in a public interest test. Section 3.4.2 looks at explanations of this from organisation theory and section 3.4.3 describes explanations from collaborative planning theory. In section 6.4 it is found that the discourses agree on two statements, namely that advising the public on the criteria that will be used by decision makers is desirable, but in the case of public interest matters, the relevant criteria may not be fully understood by decision makers prior to consultation. Section 8.4.1 describes the statutory position in NSW with respect to the disclosure to the public of decision-making criteria and the position adopted by the courts. They are found to reflect competing principles (namely that the public must be informed of relevant criteria, and that the criteria should not be limited). Section 8.4.2 examines how this problem is dealt with in statutory public interest tests and section 8.4.3 concludes with a guideline on how to progress both principles. The contributions of the Delphi participants are described in section 9.4.

Whose interests matter – What is the relevant public? (Sections 3.5, 6.5, 8.5, 9.5).

In section 3.5.2 the issue of defining the relevant public is introduced by showing how the concept of the relevant public, as used in the determination of the public interest, differs from how the concept of stakeholders is used in stakeholder analysis. In section 3.5.3 spatial aspects of the relevant public are discussed, including the 'Not In My Back Yard' (NIMBY) concept and its derogatory use. The question of the stability of the substantive content of the public interest is then considered in section 3.5.4 with reference to inclusion of future generations in the relevant public. In section 6.5 it is found that the discourses agree that there are times when the needs and wants of local residents will conflict with the broader public interest, and that the needs of future generations must be considered. Therefore section 8.5.1 presents techniques for analysing the spatial scope of the wider or narrower public, and



section 8.5.2 presents techniques for including the needs of future generations. The proposed guideline for identifying the relevant public and their interests focuses on the use of a series of questions about the needs of various sections of the public, and the impact of the current generations on the options of future generations. The contribution of the Delphi participants to the improvement of that guideline is described in section 9.5.

What is the status of private interests? (Sections 3.6, 6.6, 8.6, 9.6).

This issue of the status of private interests is introduced in section 3.6 where it is described as having three parts, namely (1) whether private interests are to be included in the determination of the public interest; (2) the role of self interest and altruism motivating behaviour; and (3) whether serving the public interest requires the imposition of restrictions and penalties such as the payment of compensation to others. In section 6.6 it is established that all of the discourses see a place for private interests in the determination of the public interest and are likely to accept an operational meaning of the public interest that includes the consideration of both private interests and the collective interests. It is found that there is likely to be acceptance by all discourses of guidelines that require some, but not too much, altruistic concern for others. No areas of agreement are identified respect to the third part (commons problems, restrictions and penalties). Therefore section 8.6 focuses on how private interests should be incorporated into the public interest. Section 8.6.1 explains why a criterion is needed for including only some private interests. Section 8.6.2 examines three such criteria and the proposed guideline recommends one of these, namely that private interests can be included in the public interest only if their protection is itself a matter of collective interest (referred to here as the Wood-Robinson test). The use of this test by the Delphi participants is reported in section 9.6, and the value of this aspect of the research is evaluated in section 10.2.6.

Who knows best – What people and processes should be involved in the decision? (Sections 3.7, 6.7, 8.7, 9.7).

The last of the six issues is introduced in Section 3.7 where it is suggested that procedural preferences can be understood in terms of individual biases towards instrumental, strategic or communicative rationality. The main struggle is variously described as being between the discursively inclined and the instrumentally inclined; the need to communicate or calculate; or, alternatively,

in terms of the competing organisational needs for inclusiveness or decisiveness. Other factors that need to be considered in decisions about people and processes are also presented. Section 6.7 reveals that the struggle is very much alive between the discourses about the public interest, which agreed on only a few aspects of the issue of people and processes. Therefore in section 8.7 the development of (procedural) guidelines draws on previous sections (and the earlier (foundational) guidelines) and practitioner advice to develop a step-wise procedure for determining the public interest.

## 1.6 DEFINITIONS

The research problem, introduced in section 1.2, is to determine what operational meaning of the concept of the public interest might be compatible with the differing views about the concept that occur within the planning and property development sphere and to develop that operational meaning into procedural guidelines for invoking the public interest. The terms used in that statement are defined as follows.

The public interest is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals have in that same matter. To be 'in the public interest' means to be beneficial to the interests of the general public.

The concept of the public interest (as distinct from the substantive content of the public interest) is the meaning assigned to the term 'public interest', and the associated process that could be used to operationalise the term. On the other hand the substantive content of the public interest consists of the policies and practices that are determined to be in the public interest in a specific context.

The operational meaning of the public interest is defined as the meaning that is derived from understanding the process by which a statement about the public interest was arrived at. It can also mean a set of operating procedures.

Differing views about the concept of the public interest are defined as the discourses about the concept identified through the use of Q Method.



To be compatible with the differing views about the concept, a procedure needs to exclude practices that any of the views (discourses) strongly reject. One way of doing this is to find and use practices which the discourses all generally accept.

The planning and property development sphere is a term used to describe the networks and associations of people employed in those industries.

Procedural guidelines could include principles to guide action and/or specific recommendations about the process to be followed.

A full glossary is provided in Appendix 16.

## **1.7 DELIMITATIONS OF SCOPE AND KEY ASSUMPTIONS**

The above definitions of the terms used in the statement of the research problem constitute delimitations of the research. For example, to define “differing views” in terms of discourses identified by Q Method is to create a narrow definition of what is really a rich and diverse field.

Another delimitation of the scope of the research is that participants in the Q Method analysis were all drawn from within NSW. Therefore the findings with respect to discourses about the concept of the public interest and the areas of agreement among the discourses, as well as the guidelines developed on the basis of that research, will potentially need refinement to reflect the cultural and regulatory context of other states of Australia and other countries.

This research is also delimited by its focus on areas of agreement. The research issues outlined in Chapter 3 raised many interesting aspects about how the concept of the public interest is perceived, but only those aspects on which the discourses agree are explored in detail. Of the aspects represented in statements about the public interest used in the Q Method research, there was agreement on relatively few. This research does not seek to explore the



reasons for the disagreements among the discourses on the remaining statements.

The main assumption made in this research is that while there are limits to the precision with which the concept or substance of the public interest can be defined, and limits to the rigor with which any procedures can be constructed or followed, these constraints should not inhibit the attempt.

A second assumption is that planning practitioners are working for the betterment of society (that is, as a profession they are seeking to improve the environmental sustainability, social equity, economic well being of people and the amenity of the built and natural environment) and are not aiming to damage and exploit the environment, repress and marginalise minority groups, cause economic pain nor create hostile or unattractive built environments (although these features are sometimes attributed to the outcomes of their work).

## **1.8 CONCLUSION**

It has been suggested (Gunn 1989) that the concept of the public interest was often identified as a political expression whose demise would unclutter the mass of unresolved meanings that bedevil our language, but “we have now, no doubt, passed through the worst of the obsession with scouring political words in order to render them operational and so the danger of discarding ‘public interest’ because people used it in different senses is more likely now to seem quaint rather than threatening” (Gunn 1989, p194). The aim of this work is not to scour the concept of the public interest to render it operational, but to help busy practitioners to manage and benefit from its richness and complexity.

The first step towards understanding that richness is to understand the variety of theories that have taken a stance on the concept of the public interest. Chapter 2 reviews those that are most central to planning.

## CHAPTER 2

### THEORIES ABOUT THE PUBLIC INTEREST

#### 2.1 INTRODUCTION

Theories about the public interest have been reviewed in several disciplines including philosophy (for example by Held 1970), political studies (for example by Cochran 1974) and planning (for example by Howe 1992; Campbell and Marshall 2002a; Alexander 2002b; Allmendinger 2002, 2009).

The perspective taken by Allmendinger is somewhat different from the others. Within a review of planning theories he describes each theory's view of what is meant by the concept of the public interest. He suggests:

- Rational theories of planning assume the existence of a unified public with a unitary interest, and serving the public interest means maximising utility (Allmendinger 2009, p234),
- Marxist commentators on planning theory argue that rational planning might try to project an image of being a value-free public interest activity, but it actually supports class-based capitalist accumulation (Allmendinger 2002 pp85-86). In critical theory planners are represented as "dupes" to the real functioning of capitalism and social reproduction (Allmendinger 2002 p90). They use their public interest role to protect and promote the existing social order.
- Neo liberals and public choice theorists, arguing that the public interest "is largely coterminous with the market" (Allmendinger 2002, p86), would accept this view. Planning and the market should work collaboratively they suggest, and we should not expect the outcomes of planning to be significantly different from those of the market.
- Pragmatists such as John Dewey argue that truth about the public interest lies in practical experiences reported through "socially shared and democratic means" (Allmendinger 2002, p121). This is a forerunner of

collaborative planning that argues that the public interest has to be discovered through communicative action in the 'lifeworld' (Allmendinger 2002, p234).

- Advocacy planning theory (Davidoff 1965) argues that 'planning in the public interest' hides inequities and the interests of marginalised groups should explicitly be championed by advocacy planners (Allmendinger 2002 pp153-154). Hoch (1996) draws on the pragmatist and advocacy positions when he suggests that planners should identify with the powers of the weak and critically review the limits of bureaucratic command and adversarial democracy (Allmendinger, 2002, p123).
- Post modernist critics reject the existence of a unifying public interest and recognise only fragmented and atomistic interests (Allmendinger, 2009 p234). Sandercock (1998) argues for the replacement of the concept of the public interest with a more pluralist and open concept of 'civic culture'.

The following review uses a different approach in that it focuses on theories of the public interest rather than on planning theories. It is structured according to whether the theory suggests that the public interest can be defined in terms of unitary interests, common interests, group interests, individual interests or a combination of these. This categorisation is similar to those used in the reviews by Held (1970), Cochran (1974), Howe (1992), Campbell and Marshall (2002a) and Alexander (2002b), with the exception of the last category, namely combined approaches. This new category is developed here in response to the research problem. There is a possibility that a combined approach might be compatible with the differing views about the concept of the public interest that occur within the planning and property development sphere.

Specifically,

- Unitary interest theories, discussed in section 2.2, argue that there is a unitary scheme of moral judgement that define the public interest of the whole society, and that individual or group interests cannot justifiably conflict with the public interest. This reflects the usage of the term 'unitary' in Held's (1970) review, as distinct from that which uses the term to refer to or include



common interests (for example in the review by Alexander, 2002b). Taylor (1994) suggests a useful explanation of the differences between common interest conceptions and unitary (holistic) conceptions.

- Common interest theories, discussed in section 2.3, contend that the public interest consists of those interests that all or most members of a society have in common, but where other individual or group interests can conflict with common interests.
- Group interest theories, presented in section 2.4, view the public interest as the outcome of the political contest among competing group interests.
- Individual interest theories, presented in section 2.5, argue that the public interest is found in the aggregation of individual interests.
- Approaches that advocate the use a combination of these elements when determining the public interest, for example, a combination of common and individual interests, are addressed in section 2.6.

In some cases the term 'theory' is used, somewhat generously, to describe formulations that are less formal than would be expected of a theory.

Within each section two additional matters discussed are:

1. Whether interests can or should be subjectively known (expressed by the holder of the interest) or objectively known (expressed by another party who may have a better understanding of that interest). Howe (1992, p223) suggests that one reason for the existence of multiple ideas of the public interest is that interests can be defined either subjectively or objectively. She explains that under a subjective view of interest, an individual cannot be mistaken about his or her interest, as interests are identified with preferences, and individuals are the only and final judges of their own preferences. On the other hand, under an objective idea of individual interest, it is quite possible to argue that a person can be wrong about what he or she defines as his or her interest, and a person may say that something is in someone else's interest even if that person disagrees. A

third possibility, inter-subjective knowledge, is constructed through social interaction and debate (Healey 2006, pp52-53).

2. What procedures could and should be applied to the task of understanding interests and resolving divergent interests to reach a conclusion about the policies or actions that best serve the public. It is suggested in this thesis that the common interest, group interest and individual interest conceptions (but not unitary conceptions that do not recognise divergent interests) are each associated with procedures for resolving conflicting claims about the public interest. This is different from the approach used in the reviews listed above. For example Cochran (1974) defines a category of 'process theories'; Campbell and Marshall (2002a) base their categorisation on the distinction between outcomes focused (consequentialist) conceptions and procedurally focused (deontological) conceptions; and Alexander (2002b) distinguishes between concepts of the public interest with a 'substantive' focus and those with a 'procedural' focus. However, as noted by Campbell and Marshall (1999, p468) there is considerable overlap between consequentialist and deontological approaches and the differences are not always clear. Furthermore they suggest that the considerable emphasis given by recent planning theory to the matter of providing social justice through just processes has tended to obscure sensitivity towards the achievement of just outcomes (Campbell & Marshall 1999, p476). Therefore this research as a whole, starting with the review of public interest theories in this chapter, attempts to integrate rather than separate issues relating to outcomes (such as outcomes for whom) and issues relating to the procedure for judging those outcomes.

The conclusion in section 2.7 addresses the relevance of these conceptions of the public interest to the research problem.

## **2.2 UNITARY INTEREST THEORIES**

The term 'unitary theories of the public interest' is sometimes used to include common interest theories (for example by Campbell & Marshall 2002a; Alexander 2002b) and sometime it excludes common interest theories (for



example by Held 1970; Taylor 1994). This review uses the latter approach, where unitary interest theories are identified as those that argue that a society has a unitary scheme of moral principles that guide every individual, and morally valid unitary interests rule out the possibility of conflicting individual interests (Held 1970, p45). Common interest theories, on the other hand, allow for valid individual interests that are not common interests, and might conflict with a common interest (for example where an individual has a common interest in the development of community infrastructure and an individual interest in profiting from the process of building that infrastructure).

Unitary conceptions of the public interest assert a normative position where the relevant norm is the good of the 'whole society'. This is likely to be construed as a regional, state or national interest.

Plato's conception of the common good is in this category (Held 1970, p136). Plato contended that what is in the interest of the society is also in the interest of all members of that society. Describing an ideal society in the *Republic* he says, "Our citizens, then, are devoted to a common interest, which they call their own" and the interests of citizens are identical and in accordance with the greatest good of their society (Plato [380 BCE] 1955 edition, pp463-464). Although such a society is intended for ideal men, given Plato's assumption that all (real) men do seek the good, and that it is their true interests to do so, then the solution to problems of conflicting interests will be to apply "correct philosophical conceptions" (Held 1970, p140). Both Plato and Aristotle describe political action as seeking moral perfection. Both argue that if a judgement about what is in the public interest is valid, then a judgement about an individual interest cannot validly conflict with it (Held 1970, p143).

Some unitary theories are based on the converse of this argument. That is, they claim that if something is in the interest of the individuals who make up a society, then a policy that contradicts that interest cannot be in the public interest. Held (1970, pp143-144) draws on examples from the medieval doctrine (that a populace may rightfully rebel against a government that flagrantly violates 'universal law') and similar themes in the works of Aquinas and Hegel. Taylor (1994, pp106-107) refers to unitary conceptions as "Hegelian holistic conceptions", based on Hegelian philosophy that identifies the public



interest of a particular nation or society with some overall ideal, which is claimed to be good for that society as a whole.

Held (1970, pp152-154) classifies Flathman (1966) as a unitary theorist for reasons including Flathman's focus on the normative aspects of the public interest and his use of moral rules to determine that norm. Held acknowledges some difficulty reconciling this classification with Flathman's position on the need for giving good reasons for a claim about the public interest (discussed in section 2.3.1 below) and on the consideration of individual interests when determining the public interest (discussed in section 2.6 below). In contrast, I suggest that these features of Flathman's work indicate that he is not describing a unitary system, where a society has a unitary scheme of moral principles. If good reasons must be given to justify a position, and individual interests can differ from that position, then Flathman's position is better classified as a common interest theory. Therefore it is further described in section 2.3.

Unitary theories advocate an objective view (Howe 1992, p234). There is no need to consult individuals to obtain their perceptions of their interests as these are assumed to be consistent and universally understood. Furthermore, if an individual believes that their self-interest is not served by what is deemed to be the interest of the whole society, then that conflicting claim will be regarded as invalid. Therefore unitary theories do not need to propose procedures for resolving conflicting claims about the public interest.

Unitary theories of the public interest have been criticised for failing to recognise social divisions and diversity (Sandercock 1998, 2003) and the "fractured public interest" that can occur as a result of deep divisions in society (Bollens 2002; Watson 2006). Sandercock (1998, p197) argues that unitary theory and the long-standing planning ideal of a unified public interest are based on "a myth of unity and sameness, of homogeneity". She argues that a radical, post-modern planning practice must "deconstruct both 'the public interest' and 'community' recognizing that each tends to exclude difference. We must acknowledge that there are multiple publics and that planning in this new multicultural arena requires new kinds of multicultural literacy" (Sandercock 2003, p34).

Putting this another way, Taylor (1994, pp106-109) criticises the 'sweeping judgements' that are made when a unitary public interest is assumed, as the assumption means that consideration of who might be disadvantaged by the judgement is not deemed necessary. These judgements, he suggests, are "too holistic".

Unitary theories can also be criticised for allowing a perceived interest of the whole society (for example the 'national interest') to over-rule the interests of its members. This dissociation between the public interest and the interests of those who make up the public has been a catalyst for the development of alternative theories of the public interest. As described in the following sections, planning theory has moved towards the recognition of diversity of interests and a focus on balancing, accommodating or arbitrating among those interests.

## **2.3 COMMON INTEREST THEORIES**

Common interest theories focus on the interests that individuals have in common. Unlike unitary theories, they do not maintain that shared interests form the totality of all justifiable interests (Held 1970, p44; Cochran 1974, p347). They allow for valid individual interests that are not common interests.

Barry (1967) and Held (1970) base their view on the work of Rousseau (1762). In *The Social Contract* Rousseau distinguishes between the "will of all", an aggregation of self-interests, and the "general will", a single policy that is equally in the interests of all members of a group (Barry 1967, p120). Rousseau defined the general will as the rule of justice agreed upon by assemblies of free people whose interest is only to serve the welfare of the society and of each person in it (Wilson 1998, p15). The public interest, according to Rousseau, derives its authority from unanimity, and a claim about the public interest cannot be valid if there is a legitimate individual interest that is in conflict with it (Rousseau [1762] 1968 edition, p75; Held 1970, p106).

Others place less emphasis on the requirement (that a common interest cannot contradict an individual interest) and suggest instead that the public interest does not require unanimity as long as "the interests of all, that is, the public,



outweigh those of individuals or groups who might be opposed" (Howe 1992, p237).

Other common interest theorists have expressed "the interests of all" in different ways, including:

- "the interest of no one special" (Benn 1960, p134) meaning that a person does not need to have a special interest or belong to a special group to have this interest;
- "the interest of anyone who is a member of the public" (Benditt 1973, p301);
- the interest of "non-assignable individuals" (Barry 1965, p192); and
- "those interests which people have in common qua members of the public" (Barry 1965, p192).

Another approach to relaxing the requirement that a common interest must be an interest of everybody, is to argue that whilst it is true that everybody might benefit from something at some time in their life, (for example, pre-schools, aged care, boat ramps or regulations controlling construction) they might not all value that thing at any one point in time. This line of argument concludes that to be in the public interest something must be *potentially* in the interest of everybody, rather than *literally* in the interest of everybody (Taylor 1994, pp96-97).

Part of the reason for not requiring unanimity is that interests that people have in common might not be recognised or enunciated by individuals, possibly because of their less-than-comprehensive awareness of the issues that affect their well being. This is likely to occur if the interest relates to an emerging risk or recently developed technology. Less-than comprehensive awareness is also likely to be the case with systemic common interests because they can only be possessed (or lacked) by a community or a group and cannot be derived from or reduced to the characteristics of individuals or groups that make up society (Klosterman 1980, p327; Howe 1992, p237). Examples of systemic interests given by Klosterman include social cohesion, a diversified economic base, and



government structures or processes that are capable of identifying and dealing with problems. These systemic common interests are important, he argues, because they provide the conditions that support individual action.

Therefore, common interest theories acknowledge that while people's preferences are important, the public interest may need to be imputed or reasoned by others (for example, law makers, technical experts, planners, courts and others engaged in debating the collective interests of society), and are therefore objectively known rather than subjectively known. Howe (1992, p234) points out that the more an idea of the public interest is based on objective knowledge of interests, the more likely it is that the values thrown up in the use of that approach will be different from the "ordinary moral values" of the population. She describes procedures used by common interest theories for resolving conflicting claims that also address this potential problem:

- the use of the 'good-reasons' approach and the referencing of 'ordinary moral values' in that reasoning;
- the emphasis on dialogue and other discursive methods that produce an inter-subjective rather than objective understanding of interests (as defined above in section 2.1) and may therefore be more like (less differentiated from) the values of the public than would emerge from reasoning alone; and,
- the protection of collective interests through rights, laws, regulations, ethical principles so that they cannot be overlooked.

Each of these is described in more detail below.

### **2.3.1 Provision and assessment of good reasons**

The 'good-reasons' approach argues that ethical conduct is justified if the actor has good reasons for that conduct (Toulmin 1950; Nielsen 1959). It grew out of a critique of positivism's position that moral terms only have emotive meaning, and suggests that normative judgements can be rationally justified. The good-reasons approach requires arguments to have logical consistency and to

reference facts. In the context of the public interest, good reasons might also included references to 'ordinary moral values of the population'.

Several common interest theorists suggest the requirement that a person, particularly a politician or public official, who makes a claim about the public interest, should be able to give reasons for their claim (Downs 1962; Flathman 1966; Howe 1992). Flathman (1966, p70) argues that decisions about the public interest must take into account the full range of the effects of those actions within the specific context of the decision so that the best option can be identified. The reasons for that choice should be made clear. The selection of one policy over another will need to be justified by reasoned argument (p73). However the descriptive meaning of the public interest cannot be determined on the basis of facts alone. On the contrary, it is because a policy serves a value or set of values that it is justifiable or not (p72 footnote). The descriptive meaning is properly found through reasoned discourse, which relates the anticipated effects of a policy to community values and tests that relation by formal principles (p82). Flathman proposes that the test of whether a proposed action is in the public interest is whether the action would serve the relevant moral rules and this is judged through consideration of:

- the consequences of the action, noting that actions with undesirable consequences should not be taken without a reason or justification (p106-111), and
- the generalisability of the action, so that all people are treated in the same way unless there are differences that justify different treatments (p111-122).

Other common interest theorists, including Sagoff (1988), also view the public interest as "a normative judgement, arrived at by a process in which various interests assert and justify claims that their alternatives would serve the interests of the public" (Howe 1992, p239). Therefore the 'good-reasons approach' is a key element within the methods used by common interest theories for resolving conflicting claims about the public interest while grounding decisions in ordinary moral values of the population.

### **2.3.2 Dialogical approaches**

The cluster of approaches that are variously described as dialogical, deliberative, or discursive, also provide methods of increasing the probability that objective views of the public interest will be based on ordinary moral values of the population.

Many dialogical approaches are influenced by the work of Habermas (1984) on communicative rationality, whereby rationality is an outcome of successful communication. Habermas describes a condition, or procedural standard, where all actors are equally competent communicators and their social interactions can be free from domination, strategizing and deception. Under these conditions the only remaining authority is that of good argument. Forester (1985, p209-210) applies these precepts of ideal speech to planning when he argues that contributions to planning should be comprehensible, sincere, legitimate, appropriate to context and truthful (Dryzek, 1990, p86).

The application of communicative rationality can make the political process more meaningful and foster participatory democracy. Participatory democracy allows differences of opinion to be revised and resolved through collective discussion and debate.

Sagoff (1988) suggests that the role of politics is to foster deliberation on the nature of collective values and interests. Gutmann and Thompson (2004) argue that not only do claims by citizens and their representatives need to be justified with good reasons, but these parties should also respond to the reasons given in return, with the aim of generating mutually acceptable reasons.

This emphasis on the ongoing and responsive nature of deliberation is central to collaborative planning (described by Healey (2006, p312) as a process where planners use strategies aimed at inserting stakeholder viewpoints into governance processes). In her outline of a systematic institutional design for collaborative planning, Healey includes a requirement that other views be acknowledged and suggests criteria to encourage an "inclusionary argumentative approach" (Healey 2006, p305). The first two are:



- All claims for attention by members of political communities and stakeholders should recognise the existence of other claims, to encourage a sharing of concerns, rather than adversarial advocacy; and
- All decisions by those in governance roles should be justified in terms of impacts on the various members of political communities and other stakeholders, and the interrelations between them.

Dialogical approaches are different from consultation. Ongoing dialogue, debate or discussion among citizens is said to help participants *form a shared view* of their common interests. On the other hand, consultation taps into *existing views*. Such forming of inter-subjective views has been described by Healey (2006, p297) who suggests, “the public interest has to reflect the diversity of our interests and be discovered discursively”. March (2005, p2) similarly argues, “planning must directly concern itself with the inclusive development of collective knowledge and conviction at various levels of governance” and that democratic knowledge development is what planning must address.

These dialogical approaches are particularly applicable to the task of identifying common interests, understanding those interests and appreciating the conditions needed for them to thrive.

### **2.3.3 Rights-based approaches**

A third approach to grounding objective views of the public interest in the ordinary moral values of the population is through reference to the rights, laws, regulations and ethical principles created by society. Approaches to determining the public interest that focus on the rights and responsibilities of citizens have been described by Anderson (1987), Rawls (1971), Howe (1994), and Campbell and Marshall (2002a).

In the area of planning the relevant rights include:

- property rights such as the right to own property, use property, earn income from property and transfer the property to others, which are articulated and modified in regulations such as environmental laws, zoning laws and safety standards (Alchian & Demsetz 1973; Carroll 2004; and Needham 2006);

- planning rights, that is, those rights held by parties affected by plans and planning decisions (Alexander 2007, p113), or perhaps more narrowly, the right to develop land in accordance with the relevant instruments of statutory planning control;
- rights to voice, influence, information and challenge (Healey 2006, p297); and
- appeal rights (Ellis 2004, 2006).

Rights have been described as strategies that allow individuals, groups or organisations to invoke government power on their behalf (Stone 2002, p262). They establish relationships between people (or between people and organisations) that governments will uphold. With rights come obligations and restrictions. For example, owners of private property have a right to undertake socially acceptable uses, and a duty to refrain from socially unacceptable uses. Others (those who do not own that property) have a duty to refrain from preventing socially acceptable uses and a right to expect that only socially acceptable uses will occur (Needham 2006, p42).

The relevance of rights and responsibilities to the problem of assigning interests to others is two-fold. Firstly, these arrangements reduce the risk of those values being ignored, traded off in the quest for other objectives, lost in utilitarian calculations or otherwise overlooked. Secondly, it is in the common interest for the rights of individuals to be upheld and the responsibilities of individuals to be enforced. Rules are valued as the best means of “achieving consistent, universal and impartial decisions and therefore of protecting individual rights” (Campbell and Marshall 2002a, p178).

Of particular interest in this research is the tension between rights and utility. March (2003, p264) writes of “the tension in any form of governance between maintaining rights and achieving the overall utility or the ‘public interest’. Rights and utility are both desirable, even though they may ‘pull’ in different directions”.



As described in section 2.1, some classifications of public interest theories have separated rights-based (and other procedurally focused) approaches to determining the public interest from utility-based (consequential) approaches. This reflects debate in the field of ethics, and while it has been a useful device for explaining the difference in focus, it has not assisted in resolving the practical problems facing the planning practitioner who need to achieve utility (good outcomes) while also respecting due process and individual rights (right actions). Campbell and Marshall (1999, p468) note that there is considerable overlap between these frameworks, especially when attention is focused on everyday practice. For example March (2003, p273) demonstrates that a property owner's right to an outward view from a property can be justified according to principles of utility (or at least according to the principles of minimum standards and rights that are found in planning regulations that address the need for view-sharing between existing and new properties). He demonstrates how rights and utility need not pull in different directions. In doing so he also demonstrates how the protection of individual rights can sit comfortably within a common-interest concept of the public interest, as there is a collective interest in developing regulatory mechanisms that resolve the tension between individual rights and collective utility.

#### **2.3.4 Conclusions about common interest theories**

These three approaches (provision of good reasons, emphasis on dialogue and focus on rights) go some way to addressing the problems associated with attributing common interests to other, especially the risk of those being divorced from the values of the general population. They also address some of the other criticisms of common interest theories, including:

- Positivist concerns that the resulting claims about the public interest are 'mere opinion'. Howe (1992, p239) notes that positivism restricts the value-neutral planner to making recommendations on the means that could achieve politically determined ends. The good-reasons approach, however, enables the planner to make and defend recommendations about ends as well as means.
- Concern that in seeking to identify common interests too much emphasis is given to similarities and insufficient attention is given to differences. This



concern could be alleviated if dialogue were to involve diverse groups with divergent interests; and if an emphasis were placed on respecting the rights of minority groups when determining the public interest.

In the next section attention turns from collective interests to private interests, be they group or individual.

## **2.4 GROUP INTEREST THEORIES**

Group interest theories form one type of preponderance theory (the other type being the individual interest theories described in section 2.5). The term 'preponderance theories' is used by Held (1970, p43) who defines 'preponderance' as a magnitude of some kind, for example a degree of force, greater amount of sentiment, stronger level of opinion or greater quantity of utility (p49). Preponderance theories include the utilitarian and aggregationist conceptions of the public interest, which argue, "the public interest, if the term has any meaning at all, cannot be in conflict with the preponderance or sum of individual interests" (p43). (Held uses the term individual to refer to individuals or groups (p19).) The theories vary in terms of what is to be summed (individual or group interests) and how the preponderance is to be calculated (for example by the votes of individuals, or through the power and influence of contending interest groups).

Group and individual interest theories are also described as 'pluralist', which highlights the diversity of opinions that exist and the need to determine if and where preponderance exists among that diversity. Howe (1992, p235) suggests that pluralist interest theories were the only ones with any 'currency' during the period when political science was dominated by positivism (and its tools for measuring preponderance). These theories take a subjective view where preferences need to be the expression of the individual or group, although others who act as spokespersons or advocates can represent them, in which case they are expressing an objective or inter-subjective view.

In the case of group interest theories, the focus is on the lobby groups and interest groups that compete for political influence. Cochran's (1974, p331)

review of public interest theories concludes that the idea that grounds these theories is politics and hence the public interest (if it exists) is the conflict and accommodation of interests.

The key characteristics of group interest theories are:

- The competitive nature of adversary democracy - Mansbridge (1990) uses the term 'adversary democracy' to describe theories (founded on a belief in the individual's pursuit of self interest) where voters, individually or in groups, make demands on the political system while elected representatives pursue their own personal interests by seeking out policies that will satisfy as many and alienate as few interests (and hence potential voters) as possible.
- The important role of politics and politicians - Those who advocate the importance of group interests view the conflict between various interests as the foundation of the democratic political process, and argue that the public interest is determined by political process. Competing views of the public interest are judged and validated (or not) through the political system (Held 1970, p176) and politicians determine what best serves the public interest.
- Defending pre-defined positions - Adversaries come to the bargaining arena with articulated positions that they seek to defend, restricting the exploration of new possibilities, meanings and values (Healey 2006, pp222-224).
- The mediation and accommodation of conflicting interests – Politics mediates the struggle among self-interested groups for scarce resources by aggregating popular preferences and accommodating conflicting interests (O'Mara 2004). Forester (1989, pp183-184) reports a teaching session in which Larry Susskind described how the process of accommodating conflicting interests involves the parties and/or the mediators exploiting the differences in how people value things. Each party concedes on something they value and in return is granted something of importance to them. By trying to maximise the outcome for each party, the political process tries to ensure the commitment of the parties to the agreement (see also Altshuler, 1965).



The above analysis of group interest theories highlights that the interests of those who are not represented are not included in the accommodation process. The theories are descriptive rather than normative, and no attempt is made by these theories to address this problem. While the exclusion of other groups and minority interests might be an accurate description of the bargaining processes that occur, it results in a theory that describes the serving of private interests rather than the public interest. Davidoff (1965) attempted to address this shortcoming by suggesting that advocacy planners promote the needs and visions of marginalised groups, so that their ideas could compete with those of powerful interest groups. Although he suggested several types of organisations that might undertake this role (political parties, special interest groups and *ad hoc* protest associations), the resource imbalance is unlikely to allow a quality of representation equal to that attainable by the powerful interest groups.

Because of this failure of group interest theories to include adequate consideration of the interests of those not represented in the bargaining process, it is suggested that these theories are not an appropriate basis for determining the public interest, especially in planning.

## **2.5 INDIVIDUAL INTEREST THEORIES**

Individual interest theories are the second type of preponderance theory. They argue that what is advantageous for the preponderance of individuals is in the public interest. Their importance in western society stems from mid seventeenth century England, when the 'founding contracts' of society were being developed around the principle of the preservation of property, which is "a comparatively self-interested and individual good" (Mansbridge 1990, p4).

The idea that the public interest is the sum of individual interests is consistent with the assumption that individuals are significantly, but perhaps not only, motivated by self interest (Hobbes 1651; Smith 1776; Bentham 1789) and that through the working of the "invisible hand" the interaction of these separate individual interests will serve our best economic and political interests as a society (Howe 1992, p235).



The most influential individual interest theory is Utilitarianism, which views the public interest in terms of the aggregation of individual interests, in particular, the utility or benefit that accrues to individuals. This component of Utilitarianism is known as welfarism (Sen & Williams 1982, p3) The most widespread application of this theory has been through cost benefit analysis, and variations such as Lichfield's Planning Balance Sheet Analysis and Community Impact Evaluation. These techniques aggregate the costs and benefits accruing to individuals and groups without consideration of whether the interests involved are common interests or private interests (Taylor 1994, p104).

Modern approaches to aggregating individual interest include the use of voting data, opinion polls, market data or other preference data, and welfare economics that attempts to define and measure the 'welfare' of society as a whole though the aggregation of individual utility measures.

Individual interest theories are descriptive rather than normative as they argue that actual preferences of individuals comprise the public interest. Therefore they see the subjective viewpoint as ideal. In practice an objective view is likely to be used, as the preferences of individuals are likely to be imputed by someone who is assigned the role of making a judgement about the common good on behalf of others. Campbell and Marshall (2002a, p175) refer to this as 'modified Utilitarianism', involving the trading off one person's utility against another's on the basis of an ethical judgement. Banfield (1955, p325) notes that while Utilitarianism considers everyone's utility to be of equal worth, in what he calls 'quasi Utilitarianism' a greater value is attached to some people's utility than to the utility of others.

One of the problems with individual interest theories is the requirement that individual interests be aggregated so that the public interest can be identified. Early attempts by Bentham (1789) to develop procedures for aggregating the 'pains' and 'pleasures' of individuals encountered various logical difficulties, both in terms of the varying quality of these characteristics and in finding a metric for measurement. Alexander (2002b, p230) summarises the problems with these attempts as "reductionism, unitary scale of valuation, oblivion to distributional consequences, and translation (for practical purposes) into

monetary values". He goes on to highlight another problem, namely that private interests can conflict with the aggregated measure.

These approaches assume (rightly or wrongly) that the vote or opinion largely reflects the self-interest of the person, although some people may be referencing common interests when they vote or give their opinion. If the assumptions are right, and the individuals are indeed only reflecting their self-interests when expressing their preferences, then these techniques have limited applicability for determining the public interest in a planning context, where common interest and the externalities of individual behaviour play a pivotal role in the logic of the discipline.

## **2.6 APPROACHES THAT INCLUDE COMMON AND PRIVATE INTERESTS**

While pluralist conceptions of the public interest have little time for discussions of unitary or common interests, and unitary conceptions deny the validity of individual interests that do not accord with unitary interests, some common interest conceptions do attempt to take into account both individual and group interests.

Several writers have suggested criteria for blending private interests and common interests when determining the public interest. These are addressed in turn below:

**Banfield (1955)** notes that 'Communalists' attach more weight to common ends than to unshared ones. Ends that are shared are more valuable by virtue of being shared (p323). He also introduces a third type of Utilitarianism which he calls the qualified individualistic (p326). Here the public interest consists of 'ends' selected by individuals, but only those ends that meet certain criteria are considered. Various principles may be employed to decide which ends are to be included. Banfield suggests that 'the most familiar pattern in our society' includes ends that:

- are community-regarding rather than self-regarding,

- are stable rather than transitory,
- are general rather than particular,
- pertain to the role of citizen rather than to some private role,
- are common or statistically frequent rather than idiosyncratic or infrequent, and
- are logically or morally justified rather than (as with mere whims) expressively justified or not justified at all.

**Flathman (1966)** suggests that it would be a mistake to hold that subjectively defined self-interest has no legitimate place in the descriptive meaning of public interest (p36). "It is true that self-interest has a legitimate place in the public interest, but deciding whose self-interest and to what extent requires the utilization of values and principles which transcend such interests" (p38). The principles that he suggests, the Principle of Consequences and the Principle of Generalisability are described above in section 2.3.1.

**Klosterman (1980)** also proposes a public interest criterion that combines common and pluralist interests. He suggests that when someone claims that something is in the public interest it should be taken to mean that it provides an appropriate balance between "the furtherance of the shared concerns of the community as a whole and the advancement (and hindrance) of the particular concerns of the various individuals who make up that community" (p328). Claims about the public interest should be evaluated not only with respect to the policy's effect on the individuals, but also with respect to its impacts on the systemic characteristics of the community (defined above in section 2.3) and the shared concerns of individuals (p328). Application of this criterion would require a determination of whether the collective and individual benefits ... outweigh the common and particular disbenefits (p329).

**Pal and Maxwell 2004** also propose a blended approach. They propose a Public Interest Accountability Framework to guide those who need to demonstrate that they have taken the public interest into account when



designing regulations. The framework consists of “two mutually reinforcing stages” (p17). First they suggest that in order to engage with each of the dimensions of the public interest with respect to the issue, and to demonstrate that this has occurred, a statement of the evidence gathered and considered should be prepared which shows that:

- due process has been followed, relevant stakeholders have been given access to the process, all interests have been fairly represented, and transparency has been provided;
- public opinion and majority opinion have been considered;
- specific (individual and sectoral) interests have been identified, their views and the distribution of costs and benefits among them have been considered, attempts have been made to balance different interests, and attempts have been made to produce a solution that is acceptable to all parties;
- common interests have been identified and the balance of these common interests has been sought; and,
- shared values and normative guidelines have been taken into account.

The second stage of Pal and Maxwell’s framework involves making trade offs among equally legitimate and important values or objectives. These are specific to the issue. For example, in the case of economic regulation, the interests of enterprises and markets might be balanced against the interests of the consumers. In the case of environmental regulation, the interests of current generations might be balanced against the interests of future generations. “In all regulatory decision-making the public interest is arrived at by balancing the interests/rights of individuals (as consumers/citizens), of enterprises (the economy) and of society (social values). That balance of course shifts over time due to changing context (especially economic) and changing public values” (Pal & Maxwell 2004, p17).

Pal and Maxwell recommend seeking a substantive definition of the public interest appropriate for a specific time, through an explicit examination of the trade-offs between individual, enterprise and social interests (p18). In practice regulatory agencies implicitly define the public interest through the trade-offs and choices that they make. Pal and Maxwell recommend that those agencies be more systematic and explicit (p15).

In summary, the four approaches described above suggest the following method for combining plural interests with common interests:

- Assign common and private interests the same importance - for example, in Klosterman's (1980) suggestion that we ask whether "the collective and individual benefits outweigh the common and particular disbenefits" it appears that the common and the private interests are to have the same weight. The approach developed by Pal and Maxwell (2004), could also assign the same importance to common and private interests.
- Give greater importance to the common over the private – for example, in Banfield's (1955) suggestion that "ends that are shared are more valuable", and might be given more weight.
- Consider only those private interests that also serve a wider common interest – for example, in Flathman's (1966) suggestion that principles or moral rules that transcend self-interest be used, such use would check that it is in the common interest to uphold the private interest.

Combined approaches have not attracted much attention or critical appraisal in the literature. Similarly there is little attention being given to the issue of how to incorporate the consideration of private interests in a common interest conception of the public interest, and evaluations of these alternative methods have not been identified in the literature.

## 2.7 CONCLUSIONS FROM A PLANNING PERSPECTIVE

These differing perspectives of the public interest have been significant in the history of planning. For example, Howe (1992, p244) suggests “Meyerson and Banfield’s 1955 critique of planning turned on a comparison between the utilitarian/aggregative idea of the public interest used by machine politicians and the collective concept used by public housing authority planners”. Planners work in environments where private interests are given great importance (for example, by elected politicians and their constituents, and by the development industry) and where collective interests are also given importance by those in society who see their well-being as based in the common good.

The New Charter of Athens of the European Council of Spatial Planners states planning is “part of a political process aiming to balance all relevant interests – public and private – so as to solve conflicting demands on space and development programmes” (European Council of Spatial Planners 2003, section B2). If planning is required to balance all relevant interests, be they public or private, then a model of the public interest that addresses the question of how common and private interests can be combined may be more useful than:

- unitary interest theories that do not address the possibility of conflicting interests,
- group interest theories that fail to consider the interests of those sections of the public that are not represented in the group bargaining process and so do not provide an appropriate basis for determining the public interest,
- individual interest theories that fail to include any notion of our shared interests and are not applicable to planning, or
- common interest theories if they do not allow for and guide the consideration of private interests.

One of the main advantages of a conception of the public interest that combines or blends collective and plural interests is that it fits with the role of



planners. "Taken together, pluralist aggregation and the idea of the common interest represent two important threads of planning – responding to the expressed wishes of the public but also representing collective interests that may be short-changed in pluralist politics" (Howe 1992, p245).

This chapter has analysed theories about the public interest to provide a basis for understanding the ambiguities surrounding the notion. The next chapter will identify certain persistent ambiguities that could be barriers to the development of an operational meaning of the public interest.

## CHAPTER 3

### RESEARCH ISSUES:

### PERSISTENT AMBIGUITIES ABOUT THE PUBLIC INTEREST

#### 3.1 INTRODUCTION

The research problem, outlined in section 1.2, is to identify an operational meaning of the concept of the public interest that might be compatible with the differing views about the concept that occur within the planning and property development sphere and to develop that operational meaning into procedural guidelines for invoking the public interest.

The purpose of this chapter is to elaborate those aspects of the concept of the public interest that create most uncertainty and are therefore likely to be areas of disagreement among those differing views. By focusing on ambiguities about the public interest, areas of uncertainty and disagreement are likely to become more apparent.

These ambiguities about the public interest first came to the attention of the researcher when working as an ethics advisor and trainer in the NSW public sector during the period 1990 to 2001, and later when presenting papers specifically on the nature of the public interest in planning at planning profession seminars and conferences between 2006 and 2008. In both circumstances the participants or audience members were required by their code of conduct to serve the public interest but were struggling to find a definition of the public interest that they could use and defend. The researcher formulated the following set of ambiguities before commencing this research, and then further refined the list during the early stage of this research.

- The first persistent ambiguity (Is the public interest important?) was judged by the researcher to be the underlying issue in questions such as:
  - *Why do we bother about the public interest when politicians blatantly serve sectoral interests?*
  - *How can the public interest be important if we don't have an agreed method of determining what best serves it?*

- The second persistent ambiguity (Are there multiple public interests?) was identified by the researcher as the question that could untangle the confusion evident in comments such as:
  - *If someone argues that wind turbines are in the public interest, aren't they just saying that they have some benefits?*
  - *Lobby groups each have their own opinion about the public interest, and those differences will never be resolved, so the public interest cannot exist.*
- The third persistent ambiguity (Can the public interest criteria be restricted?) was identified in comments such as:
  - *How can we keep the process manageable but still be open to issues we might have overlooked?*
  - *I'm expected to control the public debate and the best way of doing that is to specify the terms of reference.*
- The fourth persistent ambiguity (Whose interests matter – what is the relevant public?) was evident in comments such as:
  - *We must address the impact of a development on the local environment, but don't we also need to be mindful of the global impact?*
  - *How can we have the voices of future generations be heard in the consultation process?*
- The fifth persistent ambiguity (What is the status of private interests?) sometimes appeared in comments such as:
  - *If the public interest is about aggregating individual utility, why are we even considering common interests?*
  - *At work we are told to survey the local public to find out about the public interest, but how do we know if the locals are promoting the public interest or their private interests?*
  - *How can we respond when a developer claims that it is in the public interest for his business to be profitable because society needs more housing?*



- The sixth and last persistent ambiguity (Who knows best – which people and processes should be involved?) often presented in comments such as:
  - *I don't have time to do public consultation on every little decision I make.*
  - *How can I get people to see that their actions impact on others?*
  - *Isn't the role of the planner to balance public and private interests?*
  - *How can we weigh up interests accurately?*
  - *What is the difference between net benefit testing and cost benefit analysis?*
  - *Isn't it crazy to admit that a decision serves some people better than others?*

Each of these issues is introduced in more detail below. Each section begins with a summary of what the theories about the public interest say about the issue, and then introduces other literature that is specific to the issue. The discussion of each issue continues in Chapters 6 and 8.

### **3.2 AMBIGUITY #1: IS THE PUBLIC INTEREST IMPORTANT?**

In section 1.3.1, in the justification of this research, it was shown that evidence of the continuing importance of the concept of the public interest could be found in its place in public service ethics and accountability, the ethics of the planning profession and its place in NSW government legislation and regulation. In section 3.2.1 the views of public interest theorists on this issue are reviewed, and in section 3.2.2 the views of other planning theorists are reviewed.

#### **3.2.1 What the public interest theories say about this issue**

The theories of the public interest that were reviewed in Chapter 2 indicated, either explicitly or implicitly, that the public interest was important. Those theories also argued that the public interest was a concept that could be defined, and a procedure for determining the substantive content of the public interest could be identified. However, other public interest theorists reject the

concept of the public interest on the basis that it cannot be defined. Rejectionist arguments include:

- The public interest does not exist because there is no unified public with a shared view of their common interest. For example, Cochran's (1974, p338) 'abolitionist' category includes those, including Schubert (1960) and Sorauf (1962), who argue that "there can be no public interest, because there is no public or community to possess a single interest; there are only groups possessing diverse interests"
- The public interest is a phantom or only refers to an aggregation of individual interests. For example, Lucy (1988, p147) comments, "The most prominent opinion among political theorists seems to be that 'the public interest' is a phantom, unless the phrase means only an accumulation of individual wants, the merits of which others have no public right to judge".

If the public interest does not exist, if it is a phantom, then it cannot be important. It is significant to this thesis that these claims are based on the perceived lack of an acceptable operational meaning of the concept.

Moroni (2006, pp56-63) identifies three rejectionist arguments:

1. The public interest does not exist as a fact in complex modern societies because of the diversity of individual group interests and desires. There is no one solution to a problem that serves everyone's interests.
2. The public interest does not exist as an extra-individual value. Only individuals and the values held by individuals matter, and attempts to detect common values or to aggregate individual values lose sight of individuals.
3. The public interest does not exist as an always-overriding value. It is impossible to accept and defend any value as being strictly preferable to any other.

Moroni (2006, p66) accepts the first two of these arguments, but rejects the third on the grounds "that we can fruitfully use our practical ... rationality even if

we can never attain absolute certainty". He prefaces the chapter with the quote "The fact that governments include values in their decision-making, and make ordinal comparisons of value, is certainly true" (Lichfield 1996, p184).

Moroni (2006, pp64-65) describes the rejection of the third argument by Lichfield in his work in planning evaluation, including his development of Planning Balance Sheet Analysis (Lichfield 1964, 1968, 1971, 1988) and the method of Community Impact Evaluation (Lichfield 1994,1996). Moroni argues that Lichfield recognises that choices in the public interest must be made, and that "people are not homogeneous but must be seen as sectors with conflicting interests in any project or plan; the sectors cannot all be beneficiaries, since some must lose" (Lichfield 1994, pp66-67). Whilst there are aspect of Lichfield's approach that will be contested later (especially the inclusion of stakeholders' private interests in the determination of the public interest (see section 8.6), and the focus on sectors in conflict), at this stage his work is introduced in order to agree with and endorse his commitment to planners and governments making ordinal comparisons of value in order to make planning decisions in the public interest.

The rejectionist positions described by Cochran (1974) and Lucy (1988) each reject the concept of the public interest on the grounds that they cannot see an operational meaning of the concept. Therefore they cannot embrace the importance of the public interest. Where an operational meaning of the public interest is identified (for example within each of the approaches presented in Chapter 2), the concept is acknowledged as important.

Unlike Moroni or Lichfield, those who reject the concept, and therefore the importance, of the public interest appear to be unwilling to acknowledge the legitimacy of planners and others who would prioritise competing values and interests. It was partly to address such thinking that the good-reasons approach, which argues that normative judgements can be rationally justified using logical consistency and reference to fact, has been introduced into debate about the public interest by theorists such as Downs (1962), Flathman (1966) and Howe (1992).



Furthermore, Flathman (1966, p13) argues that as the public interest is a normative standard, the difficulties with the concept are difficulties with morals and politics. They are never solved with any finality. He notes that we are free to abandon the concept of the public interest, but we would then have to deal with these problems of morals and politics under some other heading.

### **3.2.2 Views of other planning theorists**

Among planning theorists the concept of the public interest underpins much of planning theory. Planning has used the public interest as its "principal criterion of action" (Moroni 2006, p55) and its "*raison d'être*" (Hague & McCourt 1974, p153), for example, when theorising the implications of externalities of private actions and the tensions between public spaces and private spaces. Campbell and Fainstein (1996, p11) have suggested that one of the main tasks of planning theory today is to rethink the public interest, that is, to re-evaluate planning options in a changing environment. This is an ongoing process, focused on the substantive content of the public interest, the identification of the outcomes that would be most valued and the ways of achieving them.

In the 1950's the notion of the public interest was treated as unproblematic. There was assumed to be a consensus on the social goals of a democratic society confirmed by Parliament, and planning was assumed to lead progress towards these (Healey 1991, p15). The dominant idea of the public interest within planning was a unitary conception that assumed the existence of a homogenous society with one religion, one ethnicity, one identity and one set of planning ideals that applied universally.

This conception has since been challenged, in many parts of the world, by the recognition that the dominant culture is not the only legitimate culture. The idea of cultural pluralism, which gained popularity with post WWII migration, reinforced ideas of racial equality and "the admission to the lawful political arena, on equal terms, of parties representing potentially irreconcilable views" (Fernandez-Armesto 2004, p390). Since the 1960s this has resulted in a diminished confidence among planners that the public interest could be identified. The 1980s and 90s saw the rise of neo-liberalism and a shift in political arenas whereby "the public interest became defined as the creation of

wealth by the private sector”, and the word planning was replaced in some government documents with the words ‘facilitation’ or ‘coordination’ (Sandercock & Dovey 2002, p157) which indicate a role in overseeing the accommodation of group interests.

In urban planning there have been numerous calls for the further theoretical and procedural development of the concept of public interest. Sandercock and Dovey (2002) have called for a resurrection of the concept, Campbell and Marshall (2002a, 2002b) for the resuscitation of the idea, and Moroni (2004) for its rehabilitation. More balanced approaches to public interest testing have been sought by Hess and Adams (1999) and Johnstone & Wimbush (2002).

### **3.2.3 Conclusion to section 3.2**

Whether the public interest is important in the NSW planning and property development sphere (and the relationship of its perceived importance to the perceived clarity of its operational meaning) is an issue for this research.

If there is agreement among practitioners that the public interest is important then the guidelines can assume that it is a motivator of behaviour rather than having to establish that it should be.

## **3.3 AMBIGUITY #2: ARE THERE MULTIPLE PUBLIC INTERESTS OR IS THAT AN OXYMORON?**

### **3.3.1 What the public interest theories say about this issue**

In Chapter 2 the theories about the public interest were classified by the breadth of the interest being considered (from as broad as the whole of society to as narrow as the individual). It was noted that the term ‘plural interests’ is used to refer to individual interests and group interests. It is not surprising therefore, that a reference to ‘multiple public interests’ tends to be interpreted as a reference to plural individual or group interests. For example, a paper sent by the researcher to a political science journal for publication used the term ‘multiple public interests’ to describe the possibility that there are numerous public interest objectives recognised in any community, which are in tension, and about which there is disagreement over their marginal importance. It was



an attempt to shift the frame of reference from groups in conflict to public interest objectives in competition. An anonymous reviewer remarked, "the notion of multiple public interests is an oxymoron, since by definition if they are multiple, these interests must be particular or sectoral, and not common interests of the whole public at large or agreed-on interests of the entire community" (Anon 2008).

An oxymoron uses apparently contradictory terms to suggest something that is surprisingly true. In this case the expression 'multiple public interests' was used by the researcher to make the surprisingly true point that despite constant use of '*the* public interest', members of a society have many common interests which can be in tension, sometimes requiring that one be traded off against another.

Hess and Adams (1999, p2) contend that the issue of "whether any given polity may encompass numerous public interests" needs to be addressed. Wheeler (2006a, p18) supports the argument for numerous public interests when he writes about the importance of identifying and assessing the "public interests" that are relevant to a particular issue or decision. Similarly a publication from the office of the NSW Ombudsman (2005, p1) advises that "conflicting public interest considerations need to be balanced" and that "where such conflicts exist, ... it may be necessary to choose one option at the expense of another".

The common examples of 'multiple public interests' are described below.

### **3.3.2 Triple Bottom Line**

A contemporary example of multiple public interests is the 'Triple Bottom Line' (TBL), which is used in accounting to describe the economic, social and environmental outcomes of a business in an accounting period. TBL is also applied in planning and property development to describe the economic, social and environmental sustainability of a plan, proposal or development. Prior to the introduction of the TBL concept by Elkington (1997), the economic goals of profitability, the social goals of justice and the environmental goals of ecological protection were usually depicted as the conflicting interests of separate groups, namely large corporations, welfare groups and environmentalists. That view can still be found, but it has been influenced by the rise of the concept of



'sustainability' and the argument that sustainability requires attention to all three dimensions.

The TBL model suggests that in so far as sustainability is an example of the substantive content of the public interest, the public interest is multi-dimensional, and that there are multiple public interest considerations, namely a public interest in economic wellbeing, social justice and ecological protection. Like the three-legged stool, sustainability represents the intersection of the three domains (Vanclay 2004, p270). Furthermore, it is suggested that sustainability requires that these three considerations be balanced, that sustainability is a 'balancing act' (Foran *et al.* 2005).

This does not deny that the TBL model is paid lip service by some who believe in the importance of only one of the three dimensions, and who use TBL logic to argue their case and advance their own interests. However to the extent that the TBL framework is used in planning and property development, it is an indication of a familiarity with a framework that suggests that there are multiple public interests. It is interesting that particular issues can shift from being described in terms of the interests of conflicting groups to being described as being competing common interests.

### **3.3.3 Other examples of multiple common interests in competition**

Other examples of multiple common interests in competition include:

- Locating health facilities to maximise accessibility, service quality and value for money – for example in public hospital provision where the objective of providing accessible (decentralised) services closer to where the patients live is in tension with the objective of providing more specialized and higher quality (centralised) services that entail more travel for patients and their families; meanwhile, the objective of getting value for public money is a third competing public interest consideration.
- Bushfire safety, property rights and bushland conservation – for example where Australian bushfire protection regulations require that the land surrounding new houses be cleared of vegetation to promote our common interest in public safety, but in so doing they hinder the common interest of

protecting the natural environment. In locations of extremely high bushfire risk, where there have been multiple fatalities on one or more occasions, the question arises whether property owners should be permitted to rebuild, if development rights should be withdrawn by planning officials or if rebuilding should only be permitted after extensive removal of vegetation (Cowan 2010). The competing public interest considerations therefore include the public safety (of residents, visitors and other emergency workers), the public interest in the rights of property owners, and the public interest in environmental protection.

- Planning for sea level rise – where options (including removing building rights from at-risk land, building defensive structures such as sea walls, or allowing developments which will eventually be abandoned) create tensions among several public interest considerations including the property rights of land owners, environmental integrity that would be well served by allowing the landward migration of ecosystems, public accessibility to beaches, public safety issues created by flooded buildings and infrastructure, and the legacy left to future generations.

These examples raise issues that are both private interests of individuals or groups (eg the patient, the fire-fighter or the coastal land-owner), but also common interests of the general public as they each have consequences for the wider society. Solving these planning problems require a balancing of competing public interests, just as a TBL sustainability outcome requires a 'balancing act'.

### **3.3.4 Conclusion to section 3.3**

Does this ambiguity about whether there can be multiple public interests, that is, multiple common interests with respect to a matter, contribute to the problem of finding an operational meaning of the public interest? This is a research issue for this thesis.

If there is an acceptance among the practitioners of the idea of balancing competing public interests (such as economic, social and environmental sustainability) then the guidelines can assume a level of familiarity and focus on applying this idea to the task of determining the public interest. That is, it

would open the way for a shift in the frame of reference from 'private interests in conflict' to 'multiple common interests in competition'. Acceptance of the notion of balancing competing public interest also allows for the guidelines to use a balancing test of some sort when determining the public interest.

If no such acceptance is found, then an alternative approach will need to be developed.

### **3.4 AMBIGUITY #3: CAN THE PUBLIC INTEREST CRITERIA BE RESTRICTED?**

The third area of ambiguity is whether it is acceptable for the criteria being considered in the determination of the public interest to be 'closed' or restricted by the decision makers. This occurs, for example, when terms of reference are issued for a consultation process, or a public interest test sets out the matters that are to be considered in a test. The practice of restricting the matters to be included is likely to create friction within segments of the relevant public who perceive that their concerns are being sidelined.

#### **3.4.1 What the public interest theories say about this issue**

Drawing on the review of public interest theories in Chapter 2, the following suggestions are made.

- The unitary theories described in section 2.2 would not need to define the matters to be used in determining the public interest as they assume that the nature of the public interest is readily known.
- Common interest theories would confirm the use of exploratory procedures such as dialogue to identify common interests. Therefore the restriction of criteria or the exclusion of matters from the exploratory process is not compatible with these theories.
- Group interest theories would see that the criteria would be limited to matters that are relevant and acceptable to the interests of the more powerful and vocal groups.



- Individual interest theories, while believing in the need to capture all individual interests, would be faced with practical difficulties and would need to define the matters that are to be polled, aggregated or used in economic analysis. This is likely to involve some degree of restriction.
- Combined approaches would need to deal with these contradictory stances.

Turning now to other relevant areas of theory, section 3.4.2 seeks to explain the behaviour of an agency that limits the matters to be considered when determining the public interest. This can be understood through explanations describing relatively benign use of social controls or through explanations of more oppressive uses that seek to marginalise or exclude certain views.

Section 3.4.3 describes the case for not limiting the criteria as presented by advocates of collaborative policy dialogue.

### **3.4.2 Explanations of criteria restriction from management theory**

There may be simple explanations of why an agency would seek to limit the matters to be considered, such as to focus debate and manage the scope, time and cost of the process. Another explanation is organisational narcissism (Brown 1997).

Brown's theory of organisational narcissism is based on Tajfel and Turner's (1986) social identity theory, which suggests that people identify with groups that offer identity (they tell us who we are) and self-esteem (they make us feel good about ourselves). Organisational self-esteem is built through the shared narratives of the group. These narratives evolve over time as leaders attempt to control processes of organisational identity formation and legitimise their individual, group and organisational behaviour (Brown 1997; Humphreys and Brown 2002).

The concept of organisational narcissism suggests that just as individuals display behaviours that are used in the regulation of their self-esteem, groups and organisations do likewise. Such behaviours include ego defences to stave off anxiety about their legitimacy, including:

- denial of facts,
- rationalisations that justify actions,
- self-aggrandisement through narratives that endow the organisation with rightness, uniqueness or prestige,
- attributional egoism that assigns the cause of organisational failure to external factors, and
- sense of entitlement, for example entitlement to continued success (Brown 1997, pp 652-664).

Therefore the reasons for an agency restricting the public interest criteria might be based on the need to maintain group and organisational self-esteem through behaviours such as:

- denial of the relevance of the excluded factors,
- rationalisations through a narrative claiming that those who are seeking the inclusion of wider criteria are self-serving,
- self-aggrandisement for example in expressions of the belief that only their organisation has the expertise to judge what should be considered,
- attributional egoism such as blaming others for their own inflexible policies and procedures, and
- sense of entitlement, especially with respect to the right to determine what is to be considered relevant and what will be discussed.

These behaviours cause the calls for widening the range of criteria to “fall on deaf ears” (Peirce *et al.* 1998). The alternative course of action, namely heeding the calls for wider criteria, could be damaging to the organisation and its reputation.

Less benign explanations (for example, Flyvbjerg 1996) note that planning is an arm of the state and can function as a form of deliberate social control and oppression exercised by elites over weaker groups (Yiftachel 1998, p397). Of Yiftachel's dimensions of planning control (territorial, procedural, socio-economic and cultural), it is the procedural controls used to determine the formal relationship between authorities and the public (pp401-403) that are relevant here. By defining the matters to be considered, the agency is framing the debate and setting the political agenda. It is excluding certain issues from consideration and thereby declaring certain interests to be of no significance. Those whose interests are excluded in this way might see this as incompetence or as a conspiracy between the agency and its powerful backers.

#### **3.4.3 Explanations of criteria restriction from collaborative planning theory**

Advocates of dialogical approaches (discussed in 2.3.2), particularly collaborative participation (Healey 2006; Innes & Booher 2003, 2004; Wondolleck & Yaffee 2000), have developed arguments about the benefits and challenges of involving diverse and interdependent stakeholders in the policy development process.

They describe collaboration as involving the sharing of information about interests, learning about each other's needs, sharing meaning and seeking mutual gain solutions (Innes & Booher 2003, p37). The benefits include the building of understanding about the problem/policy area, the building of support for the decisions made, and the building of capacity within the organisations involved (Wondolleck & Yaffee 2000, Chapter 2). At a more fundamental level, collaboration is required if the public interest is to be known. The state cannot determine the public interest alone, as the public interest "has to reflect the diversity of our interests and be established discursively" (Healey 2006, pp296-97).

The challenges of collaboration arise from the mismatch between the cultures of government policy agencies and the collaboration process:



- agencies tend to be hierarchically structured while the collaboration processes work best with members forming a flat structure (Innes & Booher 2003, p50);
- agencies rarely empower staff to make decisions during negotiations, while the collaboration process needs participants to be able to make commitments (Wondolleck & Yaffee 2000, p54);
- agencies invite public comment on carefully developed proposals, while in a collaborative process the participants are equally involved in the development of proposals (Innes & Booher 2003);
- agency staff are expected to give priority to reinforcing the organisation's values, policies and procedures, while in collaboration situations priority is given to identifying the values, policies and procedures that will lead to strategies that will be effective for all parties involved (Innes & Booher 2003);
- agency staff need to operate within their agency's mandate, but the collaborative process will raise issues that cut across organisational boundaries (Innes & Booher 2003).

Therefore, the collaborative approach, which will lead an agency to be open to suggestions and less likely to restrict the criteria to be used in the determination of the public interest, is unlikely to suit many organisations, especially government agencies. However, a collaborative approach is likely to lead to a more thorough identification of the relevant public interest matters.

#### **3.4.4 Conclusion to section 3.4**

There are explanations for the restriction of criteria, but are they acceptable? How do practitioners view the tension between advantages of controlling the debate and the advantages of encouraging unhindered exploration? How clarification of this issue would assist the development of an operational meaning of the public interest is an issue for this research.

If any of the discourses about the public interest found in the planning and property development sphere were to show a strong attachment to the practice of limiting the criteria then it would preclude procedures that encouraged the identification and inclusion of other public interest matters.

### **3.5 AMBIGUITY #4: WHOSE INTERESTS MATTER – WHAT IS THE RELEVANT PUBLIC?**

The fourth area of ambiguity relates to the question of the 'relevant public', which is defined as the public whose interests are to be considered in making the decision about the public interest (Wheeler 2006a, 18). That is, how far does the public extend and if interests of subgroups of society are to be considered, which subgroups should be included?

#### **3.5.1 What the public interest theories say about this issue**

The unitary theories deny that this is a valid question. As described in section 2.2, unitary theories argue that the public interest consists of morally valid unitary interests that rule out conflicting individual or group interests. Therefore there cannot be subgroups of society with interests that are different from the interests of the whole society. Furthermore, those morally valid unitary interests are consistent over time, so what serves the public interest of one generation will be true for all generations.

For the common interest theories this question is valid. A planning matter might impact on the common interests of the public that has proximity to the matter, but the stake or interest in the matter will diminish or change in character over time and space. Therefore the common interests of local residents might be different from the common interests of the wider population; and the common interests of current generations might be different from future generations. As common interest theories allow for interests to be known objectively (by persons other than the holder of the interest), the interests of the wider public and the future public should be considered.

The group and individual interest theories, described in sections 2.4 and 2.5, might argue the relevance of the question. On the one hand they contend that

everyone's interests matter; that the interests of individuals and groups are exactly what do matter and therefore no one's interests are excluded. On the other hand these theories recognise ways by which some people's interests are different from others, and some people's interests matter more than others. For example, group interest theories observe that the interests of the more powerful will dominate. As the subjective knowledge of the interest by the individuals concerned is paramount in these theories, only the current generation can express those interests, and while the interests of future generation might differ, they cannot be known in advance.

Lastly, the approaches that combine common and plural interests (described in section 2.6) would accept this as a legitimate question that informs decisions about which individual or group interests should be combined with common interests.

### **3.5.2 Relevant public compared to stakeholder analysis**

To clarify the procedure of identifying the relevant public, Table 3.1 compares it with the better-known procedure of stakeholder analysis. The stakeholder approach to understanding the firm in its environment was developed by Freeman & Reed (1983), and Freeman (1984, 1994). It has been "a powerful heuristic device" that has helped organisations to recognise their broader responsibilities to parties other than shareholders and those with contractual arrangements with the organisation (Mitchell *et al.* 1997). Stakeholder analysis views the problem of "who or what really counts" (Freeman 1994) from the perspective of the organisation. Broadly defined, a stakeholder in an organisation is any group or individual who can affect or is affected by the achievement of the organisation's objectives (Freeman 1984, 46).

Table 3.1 shows that stakeholder analysis and the identification of the relevant public are similar in terms of the sub-sections of the population they scan in search of relevant interests. They have a similar focus on the question 'who or what really counts' but in addressing the question they employ different criteria. In particular, they differ in terms of:

- whether they include interests that are not of a public nature (such as the private financial interests of individuals and firms);



- whether the purpose is to progress the implementation of a proposal or to determine if the proposal should be implemented; and,
- whether or not there is an intention to influence the parties, and
- the relevance of a party's attitude and level of influence.

Stakeholder analysis includes stakeholders with only private interests and can be used to manage the implementation process and to influence stakeholders, especially if their having a more positive attitude would assist the project. On the other hand, the inclusion of private interests in a determination of the public interest is contested (see section 3.6.2). Under some models of the public interest, interests that are exclusively private are excluded from consideration. When they are considered in the determination of the public interest there is no intention of influencing the holders of the interests. A person's inclusion in the 'relevant public' is independent of his or her attitude towards the proposal and their ability to influence the implementation of the proposal.

Two important questions that need to be addressed when identifying the relevant public in planning and development matters relate to its spatial and temporal extent. These will be addressed in sections 3.5.3 and 3.5.4 respectively.

### **3.5.3 Spatial extent of the relevant public**

How far should the relevant public extend in terms of space from the local to the global? The spatial extent of the relevant public will be specific to the matter being decided, as it is "reasonable to define the public more or less widely for different purposes" (Taylor 1994, p98). However, there are several ways of approaching the decision. One is to consider only the public located within the spatial jurisdiction of the authority responsible for the matter, bounded by a local council boundary or state boundary (Wheeler 2006a, p16 and p22). That is, the spatial extent of the relevant public might be influenced by the location of

**Table 3.1 Comparison of stakeholder analysis and the identification of the relevant public.**

	<b>Stakeholder analysis</b>	<b>Identification of the relevant public</b>
<b>Similarities</b>		
Parties to be considered	<p>Both approaches consider multiple groups including those:</p> <ul style="list-style-type: none"> <li>○ who will be directly affected, either positively or negatively</li> <li>○ who will be indirectly affected</li> <li>○ whose rights or interests might be impacted</li> <li>○ who are local and those who are more distant</li> <li>○ who live in the past, present or future</li> <li>○ who are voiceless.</li> </ul>	
<b>Differences</b>		
Public nature of the interest	<p>The interests of a stakeholder can be, and often are, private or corporate interests that are not shared by others, and not of a public nature.</p> <p>Elected and appointed public officials are included as stakeholders, as are 3<sup>rd</sup> parties with private financial interests (eg businesses, contractors and consultants).</p>	<p>The inclusion of private interests in the determination of the public interest is contested.</p> <p>Public officials and 3<sup>rd</sup> parties with financial interests are generally not included in the relevant public.</p>
Purpose of the analysis	Stakeholder analysis is typically conducted to develop implementation strategies for a proposal that is already determined or largely determined.	Identifying the relevant public is part of the process of determining whether a proposal should be implemented.
Intention to influence the parties	Stakeholder analysis is used to identify and manage stakeholders. Stakeholders with greater influence need to be brought on side or neutralised.	There is no suggestion that any attempt should be made to influence the opinions of members of the relevant public or to bring them on side or neutralise them. The aim is to understand their interests and to judge their relevance.
Relevance of the party's attitude and level of influence	The relevance of a person or groups is, in part, determined by their attitude towards the proposal being implemented and their level of influence or ability to help or prevent the implementation of the proposal.	The relevance of a person or group is independent of their attitude or level of influence.

Sources: Compiled by the researcher for this work, adapted from:  
 Stakeholder analysis: Mitchell *et al.* (1997), IIED (2005)  
 Relevant Public: Wheeler (2006a), Roseth (2009)

the decision maker, centralised or decentralised, or their position within the relevant geo-political hierarchy. Alternatively, consideration could be given to the consumer 'catchment area' of the facility being proposed, or environmental boundaries might be more relevant as in the case of matters relating to natural systems such as water catchments and the built features that impact on them.

However, there has been an increasing awareness in recent years of the wider impacts of local developments. The slogans that remind us that we have only one planet (for example, "think global, act local") are intended to increase awareness that the outputs of development and its impact on behaviour (for example, driving) are trapped within the earth's atmosphere and will impact on the whole planet.

As well as this concern with the wider impacts of local developments, there has been a concern with local objections to what are proposed as important developments for the wider society. Writing about the implementation of the Sydney Metropolitan Strategy (which covers many local council areas) the President of the Planning Institute of Australia said, "the big challenge comes when local Councils representing local interests resist local changes which are warranted in the metropolitan interest" (PIA 2005, p2).

This assumed conflict between local and wider interests has given rise to the now largely discredited not-in-my-back-yard (NIMBY) concept and its derogatory use. Freudenberg and Pastor (1992) suggest that the term is used to convey one of the following:

- an ignorant and irrational response, where the risk assessment by the local objectors is 'wrong' and the response should be to educate them or overrule them;
- a selfish response, where the risk assessment and response are rational but place the interests of locals above the interest of the wider community;
- or,



- a prudent response, where the views of the objectors are well grounded as they are able to see the siting problem in wider terms than the planning experts.

However, the term NIMBY has come to be synonymous with limited, selfish or irrational responses (Burningham 2000, p56). It can be used to discredit the objections of locals without giving fair consideration to those objections, repress minority opinion (Wolsink 2006), undermine efforts to empower communities (Lake 1993) and fuel ongoing conflict (Ellis *et al.* 2007). Research by Ellis *et al.* (2007, p531) into the nature of objections by local residents to proposed wind farm developments showed that rather than displaying ignorance and contradiction, the views were internally consistent and reflected wider ideological positions and worldviews.

Attitudes to the NIMBY concept are possibly a source of disagreement about the concept of the public interest, and are an issue for this research. Similarly, views about the appropriate spatial scale of the relevant public, and the tensions between local interests and wider interests (be they the wider impacts of local developments or the local impacts of what are proposed as important developments for the wider society) are also issues for this research.

### **3.5.4 Temporal extent of the relevant public**

How far should the relevant public extend in time, from the present to the future? What is the relative importance of the interests of current generations compared with those of future generations? Can the interests of future generations be sufficiently understood to warrant their inclusion in current-day considerations of the public interest?

This dimension is of importance because the outcomes of planning and property development tend to be, literally, set in concrete, persist for generations, and use resources that would otherwise be available for future generations. Intergenerational equity was a relatively obscure concept until the Brundtland Commission defined sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED, 1987).

Whether the interests of future generations differ from the interests of current generations will depend on whether the public interest is stable over time. Friedmann argues against such stability, "The public interest cannot be but a constantly shifting composite and balance between the values that direct a particular society at a given time" (Friedmann 1962, p84). "The public interest constantly needs redefining and reassessment in a never-ending readjustment proceeding through many channels: public discussion in universities, press, and other media of public communication leading in due course to legislative change." (Friedmann 1962, pp85-86) The Canadian Public Policy Forum describes the public interest as a 'moving target'. As one participant in the forum commented, "I am concerned about the tendency to expect the public interest to be stable or some kind of holy grail. It is incredibly fluid and institutions have been rather poor at adapting to that" (Public Policy Forum 1998, p8).

Also relevant is the concept of 'prevailing community standards' in regulations that control behaviour, which suggests that community values change over time. For example Friedmann (1962, p86-87) describes the need for judges in the (Australian) courts to reflect society's current thinking in their judgements of the public interest (as distinct from outdated views or pioneering perspectives that are not yet accepted). Also changing is our understanding of risks and the causal mechanisms creating those risks. For example, as scientific and popular understanding of the impact of fossil fuel use on the climate has changed over recent decades, so our recognition and assessment of the public interest with respect to energy generation and use has also changed, and will presumably continue to change.

If it is the case that public values and public interests change, and that we do not have a good understanding of the causes or outcomes of those changes, what is the likely accuracy of judgements about the interests of future generations? Should such limits to understanding limit our inclusion of future generations in deliberations about the public interest? Of particular interest is whether determinations of the public interest that do attempt to consider the interests of future generations are judged to be less valuable than those that do not.



### **3.5.5 Conclusion to section 3.5**

Therefore the ambiguity concerning the definition of the relevant public includes how far the 'relevant public' should extend in space and time. How this ambiguity contributes to the problem of establishing an operational meaning of the public interest, and how clarification of the issue could contribute to a solution, are issues for this research.

If the research finds that there is agreement among practitioners that multiple spatial and time scales should be considered when determining the public interest, then the guidelines can focus on providing suggestions and 'stimulus material' for those considerations.

## **3.6 AMBIGUITY #5: WHAT IS THE STATUS OF PRIVATE INTERESTS?**

The fifth area of ambiguity relates to whether private interests can be part of the public interest, and if so, are there any conditions that need to be met before they are included.

### **3.6.1 What the public interest theories say about this issue**

Sections 2.4 and 2.5 described how group interest and individual interest theories of the public interest view private interests as valid components of the public interest. They largely reject the notion of unitary interests and some also argue that there are no common interests. On the other hand, sections 2.2 and 2.3 describe theorists who give little importance to private interests when determining the public interest. This might be because they hold unitary views and reject the validity of any private interest that contradicts a morally valid common interest, or because they believe that common interests are central to the concept.

Between these extreme positions are the approaches that propose a blending of common interests with individual or group interests (described in section 2.6).

These differences are at the core of the dispute about the definition of the public interest. Does the term refer to our collective interests, or to the aggregation of our individual interests (as revealed through opinion polls or



market data), or to some combination of both? How do participants in the planning and property development sphere view these competing definitions of the public interest, and are there elements of agreement that could be used to progress the operational meaning of the concept? These are issues for this research. More specifically, the problem can be divided into three parts, namely:

- whether private interests can be included when determining the public interest, and if so, under what conditions (discussed in section 3.6.2)
- whether behaviour is motivated by self interest and/or by altruism, (discussed in section 3.6.3), and
- whether private interests and freedoms need to be curtailed in order to serve the public interest (discussed in section 3.6.4).

### **3.6.2 Inclusion of private interests in the public interest**

The first part of the ambiguity relates to if, and under what conditions, a private interest can be included in deliberations about the public interest.

Holders of private interests tend to see those interests as also being public interests. For example, developers might see their work as benefiting the general public, and so argue that their financial interests are also in the collective interest of the public. However, it is not sufficient for the holder of the interest to believe that their private interest is also a collective interest. They must also convince other parties (such as other sections of the public, public officials, politicians or judges) of the merits of their argument. This might involve the use of criteria such as those suggested by Banfield (1955) or Flathman (1966) (see section 2.6). Where cases in the NSW Land and Environment Court depend on the determination of the public interest, this issue tends to be dealt with in some detail, and analysis of these cases are also a source of potential criteria.

If planning practitioners indicate that private interests can be legitimately considered in a determination of the public interest, then attention will need to

be given to the formulation of a set of criteria that that practitioners will find convincing.

Therefore, clarification of the ambiguity about the inclusion of private interests in the public interest would assist the development of an operational meaning of the public interest and is an issue for this research.

### **3.6.3 Self interest, altruism and questions of motivation**

A second part of this ambiguity relates to motivation. Does a concern for the public interest require altruism, and is altruism a motivator of human behaviour?

Mansbridge (1990) argues that the rise of rational choice school in the second half of the 20<sup>th</sup> century, and its belief that individuals were motivated only by self-interest, provoked researchers in several disciplines (including political science, economics, sociology and psychology) to challenge the accuracy of the theory through experimental and descriptive research. Mansbridge argues that political action is motivated by both self-interest and concern for the common good, and that these motives can and should occur together within organisations, groups and individuals.

There are, however, persistent disagreements about altruism with respect to the public interest. Are private interests necessarily sacrificed when common interests are pursued? Need a concern for the public interest be altruistic or is it possible that private interests and the public interest are aligned, for example where individuals see that their personal well-being depends on communal well-being, or when they are in a position to benefit personally from serving what has been declared (for example, by a planning consent authority) to be in the public interest? On the other hand, do some people see inequality as inevitable, and is this a rationalisation for a lack of altruistic behaviour?

How different perceptions of the public interest view altruism, and whether it is needed in an operational definition of the public interest, are issues for this research.

### **3.6.4 Commons problems, restrictions, penalties and compensation**

A third part of the ambiguity relates to whether planning needs to curtail private interests and individual freedoms in order to serve the public interest.

Hardin (1968) wrote of the tragedy (by which he meant “the remorseless working of things”, the inevitability of events played out in dramatic tragedies) of freedom in the commons. It is, he argued, the freedom to pursue individual benefits that leads to the inevitable loss or destruction of the quality of what is communally owned. For example our food and fuel gathering can destroy the plants and trees that provide the food and fuel, our fishing can cause the collapse of the fish populations. These freedoms, he argued, need to be curtailed not just by appeals to conscience, but also by coercion through rules and penalties.

Stone (2002, pp22-23) also argues that the polis (political society) is characterised by the problem of how to combine self-interest and public interest, or how to have private benefits as well as collective benefits. Situations where self-interest and public interest work against each other are known as commons problems. In these situations actions with private benefits entail social costs (eg disposal of industrial waste into a river) and social benefits necessitate private sacrifice (a clean river requires investment in non-polluting waste disposal).

A major dilemma of social policy is how to get people to give attention to the broader consequences on their actions on the commons when making choices. Policy mechanisms include:

- influence by reason and the provision of information that suggests that the individual benefits if the community benefits;
- incentives or inducements that cause actions that are good for the community to also be good for the individual taking the action;
- rules restricting development;



- penalties for negative externalities, which make actions that are costly for the community also costly for the individual creating the negative externality (examples include betterment levies to fund the compensation of those who are adversely affected (Taylor 1994, p101; Fensham & Gleeson 2003, p105; Searle 2004b, p14); and,
- rights (eg rights to participate in the planning process or third party appeal rights) that empower those who object to actions that have social disbenefits (negative externalities).

What aspect of regulation, if any, should be included in the operational meaning of the public interest? Should the relationship between individual rights and the public interest be explicitly mentioned? If so, should the restricting of rights in the public interest, or payment of compensation to those affected by negative externalities be included?

### **3.6.5 Conclusion to section 3.6**

The ambiguity about common and private interests has three aspects, specifically with respect to:

- the definition of the public interest and in particular whether private interests should be included in the public interest, and if so under what conditions;
- the role of altruism; and,
- the need to restrict private interests or compensate those who are negatively affected by the exercise of private interests.

If and how the clarification of these ambiguities will assist in the identification of an operational meaning of the public interest are issues for this research.

Which of these, if any, will planning practitioners agree on? This might be one of the most controversial areas with respect to the public interest in the planning and property development sphere. Do developers think that only private interests matter while planners think that private interests don't count? Will the

research find any agreement on the controversial matters of altruism and compensation?

This persistent ambiguity of the status of private interests is, to this researcher, the key to developing an operational meaning of the public interest that might be acceptable to actors in the planning and property development sphere. Property developers, because of their private sector activities, must focus on their own, private interests, while planners, because of their use of power that are provided by the state (Campbell & Marshall 2005, p205 and pp209-210) must focus on the broad public interest, and common interests in particular. How can their views of the public interest overlap? How can the guidelines provide a way forward for these seemingly conflicting interests?

### **3.7 AMBIGUITY #6: WHO KNOWS BEST – WHAT PEOPLE AND PROCESSES SHOULD BE INVOLVED IN THE DECISION?**

The sixth area of ambiguity relates to the issue of which people are in the best position to determine the substantive content of the public interests and what processes they should employ. The selection of procedures for determining the public interest has implications for the selection of people to be involved in decision-making. The inter-relatedness of people and process requires that these two aspects be discussed together.

#### **3.7.1 What the public interest theories say about this issue**

In Chapter 2 the theories of the public interest were described in terms of whether the public interest should be subjectively or objectively known, together with methods of resolving divergent interests.

Unitary interest theories describe an objective point of view in that a statesman, ethicist or other leader speaks on behalf of a unified society, in which divergent views are not valid. A method for resolving divergent views is therefore not needed in this context.

Common interest theories advocate either an objective point of view (where those with authority make recommendations or decisions on behalf of the

public, including the management of their rights and responsibilities), or an inter-subjective point of view (where an understanding of the public interest evolves through a dialogic process). Methods for resolving divergent views include the provision of good-reasons, the regulation of rights and obligations (including fair processes), and dialogical methods that allow perceptions of common interests to be shaped through debate.

Group interest theories are based on an inter-subjective point of view as the group develops a position with respect to the group's interest (or if this does not occur, a person claiming to be a spokesperson or advocate expresses an objective or inter-subjective view on their behalf). Group interest theories suggest that divergent views about the public interest are resolved through inter-group competition and the lobbying of politicians who weigh and accommodate group interests.

Individual interest theories advocate that a subjective point of view is necessary. They require that the interests of individuals be expressed through their actions (voting, buying etc.), through opinion polls, or via their own pronouncements. Divergent individual views are resolved by aggregation (such as the use of market data, opinion polls or voting) or by economic analysis such as cost/benefit analysis. It is noted that sometimes these methods of resolving conflicts use imputed (objective) interests.

Theories that combine common and private interests might draw on any of the above methods, but they also need a means of combining the common interests with private interests. In other words, combined interest theories assume that private interests should be included in the public interest and they propose methods for doing so. The methods suggested include assigning common and private interests the same importance; granting greater importance to the common over the private; and considering only those private interests that also serve wider common interests.

### **3.7.2 Theories of rationality and process choice**

A person's preference for one process for determining the public interest over another is influenced by the person's preferred type of logic and reasoning, or rationality. This is reflected among rationality theorists and planning theorists:



- Weber (1905) sees bureaucracies dominated by instrumental, means-ends rationality, which favours the marshalling and analysis of facts, as do planning theorists such as Hill (1968) and Lichfield *et al.* (1975);
- Habermas (1981) focuses on the rationality that is an outcome of successful communication, as do the planning theorists associated with communicative and collaborative planning (Innes 1995; Forester 1999; Healey 2006); while
- Others such as Flyvbjerg (1998) and Alexander (2000, 2001) see the strategic rationality of political manoeuvring as important.

Similarly, those in the planning and property development sphere who need to determine the public interest might favour:

- instrumental rationality, being inclined towards aggregative methods and economic analysis methods;
- strategic rationality, preferring processes that involve the accommodation of group interests; or,
- communicative rationality, as public participation and consensus building are their preferred choice of process.

However, particular types of rationality, which are only ever theoretical constructs, are usually found in combinations. A theorist or practitioner favouring one type in a particular context or time is able to draw on other types in different circumstances. For example, Forester (1989) has written extensively not only about communicative rationality but also about strategic rationality (1989, Chapters 3 and 6). He has also argued that planners need to be politically sophisticated and socially as well as technically competent (1989, Chapter 5).

Similarly, Fischler's (2000) review of the classic and modern case studies of planning practice (for details see section 4.2) found a common theme – that the skilful use of instrumental rationality was not enough as the planner also

needed to demonstrate political skills and an ability to communicate persuasively. His own research (interviews with planners reported in the same paper) shows that planners need and use not only technical rationality and technical skills but also emotional, moral and political intelligence, as well as communication skills.

Perhaps the process for determining the public interest in planning matters should draw on the same range of skills, and be based on a similarly broad use of rationality, although there is perhaps good reason to downplay strategic rationality in order to avoid politically convenient formulations of the public interest. The main struggle appears to be between, on the one hand, practitioners who are inclined towards an instrumental rationality and see few problems with assumptions of commensurability but who find less value in discussion and debate, and on the other hand, the discursively inclined practitioners who object to what they regard as oversimplified numerical analogies such as measuring or weighing, and seek instead the nuances to be found in the layered meanings that emerge through discussion. This friction has been described by MacCallum (2008) as a 'translation problem' that occurs when participatory planning meets means-ends rationality; and by Forester (2009) in terms of what can be learnt from the 'process versus outcomes debates' about working together.

Another perspective on this struggle is that of March and Low (2004, p46). Who characterise it in terms of the competing organisational needs for inclusiveness (which is time consuming) and for decisiveness (which favours rapid closure and limits to inclusion). Many organisations view both of these as valuable, and therefore cannot afford to move too far in either direction. This is not incompatible with explanations based on rationality preference.

### **3.7.3 Other factors affecting the selection of people and processes**

There are several other factors to be considered in decisions about which people and processes should be involved in determining the public interest, including:

- What processes are required by regulation (for example for public consultation or obtaining expert opinion), and will the application of due process be sufficient to ensure that the public interest will be identified?
- What processes are required by professional codes of conduct? For example, the Professional Code of Conduct of the Planning Institute of Australia requires stakeholders have opportunities for meaningful participation, and the full disclosure of relevant information (PIA 2002, clause 3.1.3).
- Which categories of potential participants (politicians, planners, technical experts, local residents, consumers etc.) have relevant knowledge?
- What forms of consultation or debate would be most effective?
- What form of data, and reporting of data (for example quantitative or narrative) would be most useful?
- Would some form of public interest testing (involving the evaluation of proposals or options against some set of criteria, probably conducted by experts) be helpful?
- How should differences of opinion be resolved; is consensus required, will majority opinion suffice, can it be left to those in authority?
- If both common interests and private interests are to be considered, how are they to be combined?

The integration of these factors with preferences for types of rationality typically creates organisational tension.

#### **3.7.4 Conclusion to section 3.7**

The identification of areas of agreement about the people and processes for determining the public interest would assist the development of an operational meaning of the public interest and is an issue for this research.



Such agreement is unlikely given the diversity of interests engaged in the planning a property development sphere. One would expect planners, elected officials and those engaged in property development to bring different preferences and expectations to the negotiating table. Will they overlap sufficiently to enable the development of guidelines based on agreement?

### **3.8 CONCLUSION: RESEARCH ISSUES**

The research problem that is addressed in this thesis is “to determine what operational meaning of the concept of the public interest might be compatible with the differing views about the concept that occur within the planning and property development sphere, and to develop that operational meaning into procedural guidelines for invoking the public interest”. The survey of persistent ambiguities about the public interest presented in this chapter has defined a number of specific research issues that are relevant to the quest. These are:

1. Whether the clarification of the following areas of ambiguity would assist in the determination of an operational meaning of the public interest.
  - The importance of the public interest.
  - Whether there might be multiple competing common interests.
  - The practice of limiting the range of issues to be considered when determining the public interest.
  - How far the ‘relevant public’ should extend in space and time.
  - The inclusion of both private and common interests in the operational meaning of the public interest; the relevance of self interest and altruism; and the need to curtail private interests in order to serve the public interest.
  - The people and processes that should be involved in resolving differences of opinion about the public interest.
2. Are there areas of agreement on these issues among the differing views about the concept of the public interest held by practitioners in the planning and property development sphere?

3. Can an operational meaning of the public interest be based on these areas of agreement and, if so, what principles or procedural standards for invoking the public interest do they suggest?

The next chapter explores the research design appropriate to investigating and addressing these differing perspectives.

## CHAPTER 4

### METHODOLOGY I:

#### RESEARCHING AND ADDRESSING DIFFERING PERSPECTIVES

#### 4.1 INTRODUCTION

The review of theories in Chapter 2 suggests that among the stakeholders in the planning and property development sphere (such as elected officials, planners, property developers, architects, members of the public and community group leaders), there are likely to be differing views about the concept of the public interest and how its substantive content can be determined. Methods used to research differing perspectives are described in section 4.2.

The existence of differing views does not mean that an attempt to develop a generally acceptable operational meaning of the concept would be futile. There are several approaches to overcoming differences of beliefs about how something should be done, including the use of a *modus vivendi* (that is an agreement between those who differ, which bypasses areas of difficulty for the sake of a contingency – see section 4.3.1) or the use of discourse analysis to find common ground among contending perspectives. These methods are outlined in section 4.3, and the reasons for using a form of discourse analysis, Q Method, in this research are given.

Q Method uses a form of statistical factor analysis to explore each person's perspective on an issue and to identify the discourse about that issue to which they contribute. It is different from the more commonly used critical discourse analysis in that it does not rely on the examination of extant texts or records of discussion, but creates the data used to identify the divergent discourses. Q Method is widely used across a number of disciplines where discourses about an issue need to be identified and examined. However, it is an oft overlooked procedure in a planning context, so section 4.4 describes Q Method procedures in some detail, covering its main requirements in terms of the number and type of participants needed; the stimulus material used to generate data; how the data can be collected; how the discourses are identified; and how the discourses can be compared and contrasted.



Section 4.5 describes the application of Q Method in this study using the same structure.

## **4.2 METHODS OF RESEARCHING DIFFERING PERSPECTIVES**

Research into the perspectives of actors in the planning and property development sphere has tended to use either case studies (discussed in section 4.2.1) or interviews (section 4.2.2). Discourse analysis has more recently been applied to the problem of understanding how different views are structured and evolve (see section 4.2.3).

### **4.2.1 Case studies**

The case study approach examines a contemporary phenomenon within its real-life context. It is useful where the phenomenon being studied (for example, planning practice) is likely to be 'entangled' with the context, and to understand the phenomenon the researcher needs to also understand the interplay between the phenomenon and the context (Yin 2002, p13). In such circumstances a case study can focus on each of the contextual factors. The researcher has more flexibility to examine unexpected issues than would be possible with surveys or interviews alone.

Fischler reviews what he calls "the classic case studies of planning practice"<sup>1</sup> as well as more recent case studies<sup>2</sup>. He notes that for most of the authors, a desire to study the dynamic relationship between rationality and power in planning, and the desire to tell a story that would elicit critical thinking, meant that the planning practice of a location needed to be examined in its political context and an analysis undertaken of the "interplay of actors on the political stage" (Fischler 2000, p186).

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<sup>1</sup> Meyerson and Banfield's (1955) *Politics, Planning and the Public Interest*, Altschuler's (1965) *The City Planning Process*, Jacob's (1980) *Making City Planning Work*, and Krumholtz and Forester's (1990) *Making Equity Planning Work*

<sup>2</sup> Grant's (1994) *The Drama of Democracy* and Flyvbjerg's (1998) *Rationality and Power*

The focus of these studies is on the planners and the factors that create tension in their work. The result is a more detailed understanding of the planners' perspectives than those of the other players. That is, as intended, the case study method produces a description of planners' working in their political context.

#### **4.2.2 Practitioner interviews**

Studies using interview techniques have tended to interview planners and ask them about their relations with other actors (as distinct from also interviewing the other actors). They tend to be semi-structured, and designed to obtain an account of the planners' experiences and reflections. The result is a description of how planners see their own role or their interaction with other players.

For example, Howe's (1994) study (that looks at how planners saw their work in relation to the public interest) found that:

- some planners emphasized their indirect responsibility to the public through their loyalty to elected officials who determined the substance of the public interest;
- some saw themselves as more independent actors who were committed to the implementation of their own perception of the public interest; while
- others were centrally concerned about the fairness and openness of the process that allowed citizens to have input (Howe 1994, pp6-7).

Note that here the viewpoint is that of the planner. Often the other parties with whom the planners interact are not interviewed in such studies.

Other studies of planners' perspectives using interviews include Forester, (1989); Hoch (1992, 1994); Campbell and Marshall (1998, 2002b); Hillier (2002, Chap 10) and Cook & Sarkissian (2000).

#### 4.2.3 Discourse analysis as a method of identifying differing perspectives

The principal traditions of discourse studies, which evolved from or can trace connections to linguistics, are described by Jaworski and Coupland (2006). The approaches that are used in the social sciences include interactional sociolinguistics (which is associated with the work of the sociologist Erving Goffman (1974), who used the term 'frames' to describe the interpretive means and contextual clues by which participants understand utterances) and critical discourse analysis (which examines connections between language, power and ideology (Fairclough 2001), including how language is used to re-frame issues to serve the interests of the powerful). Critical discourse analysis is currently the type of discourse analysis most commonly encountered in the social sciences.

One approach to critical discourse analysis is to identify several different, perhaps conflicting perspectives. For example, in a study of discourses about the public interest, Williams and Matheny (1995) identify three discourses that have evolved in the USA for discussing and debating social regulatory policies, namely the managerial, pluralist and communitarian languages. Each language displays vocabulary, assumptions, values and logic that reflect an ideological position, as can be seen in the following summarised descriptions of the three languages:

- Managerial language emphasises the technical aspects of policy and identifies the need for expertise as both a structural barrier to and substitute for democratic participation. Experts located within bureaucratic organisations are seen as committed to the discovery of an objective public interest. The rhetoric holds that scientific expertise can produce policies in the public interest and overcome the inadequacies of democratic decision-making. It assumes the existence of neutral, scientific criteria for judging public policy, and tends to equate the public interest with economic efficiency, and centralised goal setting and decision making by those in authority (Williams & Matheny 1995, pp11-15).
- Pluralist language draws heavily on the arguments of mainstream academic theorising on the relationship between private markets and democracy, and is therefore familiar to political scientists. It sees the public interest emerging from competing forces in an open political process, and the main



challenge being to design a policy-making process that will balance contending group interests. The public interest is defined not as a specific outcome (in substantive terms) but in procedural terms, as a set of fair and open decision-making processes. A pluralist assumption is that absence of participation indicates agreement, but this is made problematic by inequality in the capacity to participate, and is a departure point for the communitarian discourse (Williams & Matheny 1995, pp19-24).

- Communitarian language, the language of challenge, emphasises returning government to the citizenry and often exhibits hostility towards reliance on experts or the centralisation of political authority as these features tend to distance government from the people and stand in the way of perfecting democracy and citizenship. It suggests that conflicts among the polity are illusory, and a common public interest can be discovered if an enlightened citizenry governs directly on its own behalf. This language rarely appears in elite debates in academic literature and its neglect by officials is part of American political ideology, but is effective in challenging the legitimacy of existing institutions because of its deep roots in American political thought (Williams & Matheny 1995, pp24-30).

The perspectives are given equal attention, as are the social groups who are commonly associated with those perspectives. Each language is described using the terms and concepts that are used within the language. In this example the researchers found little if any agreement among the three perspectives.

A different approach (or a different description of the same approach) involves identifying the different 'storylines' that make up a dominant discourse (Hajer 1995; Low *et al.* 2003).

Other examples of critical discourse analysis relevant to planning are:

- The study of environmental discourses, for example by Dryzek (1997), Dryzek and Schlosberg (1998); and Whittaker and Mercer (2004) who examined discourses about the 2002-03 Victorian bush fires and the politics of blame.

- The study of policy discourses by, for example, Marston (2004) who examined Queensland housing policy; and Swaffield (1998) who examined resource policy in the New Zealand high country.
- Examination of planning discourses such as those on metropolitan planning in Sydney by Searle (2004a); transport planning in Melbourne (Victoria) and Sydney (NSW) by Low *et al.* (2003); and city plans in Canada by Tett and Wolfe (1991).
- Examination of public perception and the manipulation of image, for example the study of the public perception of health risks from polluted coastal bathing waters in the UK by Langford *et al.* (2000); and the study of the changing image of high-rise living in Melbourne ("from prisons to penthouses") by Costello (2005).

To some extent the techniques used in critical discourse analysis are selected or developed to address the problem at hand, although some key characteristics are common. Fairclough (2003) suggests that these common characteristics include identification of the speaker's orientation to different views, analysis of the way social events are represented and of the way language and metaphors are used to persuade the reader.

Critical discourse analysis involves the study of written material such as plans, press releases, articles, submissions and policy documents, and in some cases verbal material such as speeches, radio interviews and the like. With respect to some research topics there is insufficient written or verbal material to support this type of discourse analysis. In these cases an alternative approach, Q Method, is available. Q Method allows the researcher to augment extant statements about the topic with material that is created for the purpose of the research (for example by conducting interviews to generate statements or by allowing the researcher to write new statements). The researcher then asks people from a wide diversity of views to rate each statement. Factor analysis is then used to identify those people whose ratings share a pattern and each pattern is interpreted as a discourse. Factor analysis is a data reduction technique used to reduce a large number of observed variables (in this case,



participants' views on each statement) into a smaller number of variables (the factors which are interpreted as discourses) and to understand the structure among those variables (StatSoft undated).

Studies using Q Method in planning include an exploration of 'discourses of objection', the factors that stimulate claims by third-parties about planning rights, and how such claims are related to issues such as citizenship, the public interest and property rights (Ellis, 2004); and a study of discourses in support of or objection to wind farm proposals (Ellis *et al.* 2007).

Further examples of Q Method studies in planning (that also address the problem of overcoming differing perspectives) are provided below in section 4.3.2.

It would seem that critical discourse analysis has some advantages for this research, as it is well suited to the task of identifying differing perspectives. However, as there is little recorded material revealing the views about the *concept* of the public interest (as distinct from the substance) among actors such as property developers and the public, Q Method might be more appropriate than critical discourse analysis. Further comment on its suitability is reserved until the end of section 4.3.

#### **4.3 APPROACHES TO OVERCOMING DIFFERING PERSPECTIVES**

In this research the differing perspectives are to be analysed with a view to finding or creating an operational meaning of the public interest that allows the people with different views to focus on the task of identifying the public interest rather than being distracted by the definition of the concept. An approach that is relevant to this is the use of a *modus vivendi* or agreement that bypasses areas in dispute, and this is discussed below in section 4.3.1. A complementary approach is found within research that uses Q Method to distinguish between areas that are in dispute and areas where there is agreement so that policies and procedures can be developed based on the areas of agreement. The use of Q Method data in this way will be described in section 4.3.2.



#### 4.3.1 Use of a *modus vivendi*

The term '*modus vivendi*' translates as a 'way of living'. In the language of international treaties, a *modus vivendi* is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification (United Nations undated).

In common usage the term *modus vivendi* describes an arrangement which allows people who have different attitudes to live or work together or more specifically a compromise or practical arrangement that allows conflicting people, groups, or ideas to coexist. It is defined here as an agreement between those who differ, which bypasses areas of difficulty for the sake of a contingency. In the case of this research, the agreement would be about a process for determining the public interest, and the contingency would be progressing their claims about the public interest.

Lippman (1955, pp104-105) explains that people's interest in a problem

is limited to this: that there shall be rules, which means that the rules prevail and shall be enforced, and that the unreasonable rules shall be changed according to a settled rule ... The public is interested in law, not in the laws; in the method of the law, not in substance; in the sanctity of contract, not in a particular contract; in understanding based on custom, not in this custom or that. It is concerned in these things to the end that men in their active affairs will find a *modus vivendi*; its interest is in the workable rule which will define and predict the behaviour of men so that they can make their adjustments.

Such a workable rule, which helps the parties to predict the behaviour of others so that they can make their adjustments, is less than agreement or consensus. If agreement existed on all aspects then a *modus vivendi* would not be needed. Such a rule is needed where there are factors that would otherwise prevent the parties from operating together, including disagreement about the nature of the concept to be debated, or the nature of the process that could produce a valid conclusion.

The formulation of a *modus vivendi* for debating the public interest in planning would be made easier by understanding the compelling narratives about the

public interest that players bring to disputes about planning and property development. Once these narratives are understood, the areas on which they are likely to agree, on which a *modus vivendi* can be constructed, can be identified.

#### **4.3.2 Discourse analysis as a method of identifying areas of agreement**

If competing discourses do overlap and agreements do occur, it might be possible to develop workable rules based on those areas of convergence. Several studies using Q Method aim to find common ground among contending perspectives and apply that knowledge to improve the manageability of intractable problems, that is, overcome differing perspectives. For example:

- Barry and Proops (1999, p344) identify sustainability discourses to assist in the constructions of socially and politically acceptable environmental policies.
- Webler *et al.* (2001, p448) suggest that analysis of perspectives on what is a good public participation process might assist in the design and development of public participation processes. They also suggest that people who believe the process is good are more likely to accept and endorse its outcomes.
- Focht and Lawler (2000, p115) suggest the examination of conflicting discourses in disputes in order to identify potentially mutually satisfying solutions so that parties can be encouraged to explore those areas.
- Dayton (2000, pp95-96) suggests that frame discordance (identifiable in conflicting discourses) contributes to intractability by allowing stakeholders to enter the debate at different intellectual locations, use key terms and concepts in different ways and apply incompatible goals and decision-making methods. He discusses how an understanding of discourses can be used to reframe the language of a policy controversy. "Moving a policy issue from an intractable to a tractable state involves, in part, changing the way we understand that issue".

Q Method could be similarly applied in the current research to identify those aspects of the concept and operational meaning of the public interest on which discourses agree, or to establish that no such areas of agreement exist.

#### **4.3.3 Advantages of Q Method for this research**

Four possible methods have been described above, namely case studies, interviews, critical discourse analysis and Q Method. Table 4.1 compares these methods with respect to four features that would be desirable in the method engaged in this research.

The first feature is that the method assists in the identification of different conceptions of the public interest. This feature is not present in case study or interview methods which do not provide any positive assistance to the researcher. Critical Discourse Analysis is more helpful, but not as helpful as Q Method which uses factor analysis for this purpose.

The second desirable feature is that the method can be used where there is a scarcity of recorded material, and this feature is satisfied by all methods except critical discourse analysis.

The third feature, that the method provides assistance in identifying the areas of agreement and disagreement, is only found in Q Method.

The fourth feature, that the method provides an efficient way of collecting views about a complex issue, is not a feature of the case study method as several case studies would be needed, nor of interviews which would need to be lengthy to cover the range of issues. Critical discourse analysis might be efficient if sufficient recorded material were available, which is not the case with respect to this research. Q Method is efficient as participants can complete the task within 40 minutes, and simultaneously.

The above discussion (supported by Table 4.1) demonstrates that only Q Method has all four desirable features. For this reasons Q Method is adopted in this research to identify practitioner discourses about the public interest and to



identify areas of agreement among those discourses. The following sections provide a more detailed description of Q Methodology and how it is applied in this research.

While Q Method has been selected, in part, because of the assistance it provides in identifying discourses and areas of agreement, it would be wrong to suggest that Q Method eliminates or even minimises problems of researcher subjectivity and bias. Robbins and Krueger (2000) note that such claims have been made, and argue that they are “unfounded and epistemologically naïve”.

**Table 4.1 Comparison of possible research methods for identifying different perspectives**

METHODS	Case studies	Interviews	Critical Discourse Analysis	Q Method
DESIRABLE FEATURES				
1. Assists in identifying different conceptions	No positive assistance provided	No positive assistance provided	Yes, specific pointers are provided, but the researcher decides on the groupings	Yes, factor analysis assists in identifying the different views, including the groupings
2. Can be used where there is a scarcity of recorded material	Yes	Yes	No	Yes
3. Assists in identification of areas of agreement and disagreement	No positive assistance provided	No positive assistance provided	No positive assistance provided	Yes, Q Method reports these.
4. Efficient way of collecting views about a complex issue	No, several case studies would be needed	No, this would not be efficient for participants	Yes, if sufficient material available on the topic	Yes

Source: Developed by the researcher for use in this work

On the contrary, Q Method appears to require the researcher to make judgements and to interpret data at every step of the process. Just as researchers using critical discourse analysis have been criticised for selecting evidence that confirms their arguments and ignoring contrary data, overgeneralising and inferring too much from particular examples (Jacobs 2006, p47), so researchers using Q Method could face the same problems.

Eden *et al.* (2005) have suggested that users of Q Method see it not merely as a number-crunching exercise, but as a tool to be used creatively and reflexively and with full awareness of its interpretive dimensions.

#### **4.4 Q METHODOLOGY**

Q Method was developed by William Stephenson, a psychologist and physicist at the University of Oxford in the 1930s, to explore attitudes that influence a person's perception of an issue and hence the discourse about that issue with which they are most likely to feel affinity. Q Method asks participants to sort statements (or other stimulus materials) about an issue into categories ranging from 'most like my own view' (or strong agreement) to 'least like my own view' (or strong disagreement) and uses the statistical technique of factor analysis to systematically examine the range of perspectives or discourses within that group (Stephenson 1935, 1953; Brown 1980, 1986, 1993; McKeown & Thomas, 1988; Addams 2000; Webler *et al.* 2009).

Q Method analyses the opinions of subjects, making the structure and form of those opinions manifest for the purpose of observation and study (Brown 1986, p58). The structure is not assumed beforehand, and, unlike processes such as the construction of a psychometric scale, the attribution of meaning to the subjects' patterns of opinion only occurs when the data is analysed (McKeown & Thomas 1988, p22). Q Method is described as 'operant' because it is based on functional (rather than merely logical) distinctions (Addams, 2000; Brown, 1993, 2002) that are displayed when the participant sorts the statements.

Furthermore, when a participant in a Q study considers a set of statements to decide which ones express an opinion closest to their own view, they are 'self-referencing'. That is, they are interacting with their own views on the other statements. The statements that they select as closest or most distant from their own views are thought of as those that are most salient to them (Webler, 2009).

A key feature of Q Method is the 'inverted' use it makes of factor analysis (Webler *et al.* 2009, p7). In traditional factor analysis respondents are the subjects and questions are the variables. The researcher looks for patterns in responses across the variables for each respondent and asks, for example, if those respondents who are elected council officials believe that politicians are the best people to determine the public interest. Conversely, in Q research the subjects and variables are inverted, so that the statements are the subjects and the participants (or actually the saliency the participants assign to statements) are the variables. The researcher looks for patterns across the participants, and asks if the pattern of saliency exhibited by, for example, elected council officials is shared by others in the planning and property development sphere such as planners, developers or environmentalists. The identification of like-minded participants, who may or may not have the same role in the planning and property development process, enables the analysis of their views and eventually the description and labelling of a discourse with which they would identify, even though they may have never exchanged views.

Q studies typically identify a number of distinct discourses that combine different values, assumptions, arguments and storylines.

The term 'inverted factor analysis', while useful, is an oversimplification of the whole logic of Q methodology, particularly the importance of self-referencing.

In summary, Q Method does not study speaker interactions that are the subject matter of much of the linguistic tradition of discourse analysis. Nor does it study the connections between power, language and ideology manifested in discourses that are the subject matter of critical discourse analysis. Instead, it focuses on understanding each discourse as the context in which particular proposals are accepted or rejected.



It is important to note that while Q Method can identify perspectives on an issue within a group of people, it cannot shed light on how widely held those perspectives are in the general population. Determining the generalisability of the findings of a Q study would require the use of survey techniques and a properly structured random sample, which are not used in Q Method (Webler *et al.* 2009, p11).

The specific techniques that are used in Q Method are described below.

#### **4.4.1 Participants**

Q Method requires the selection of a number of participants who are not a sample of a wider population, but are chosen because of their special relevance to the goals of the study (McKeown & Thomas 1988, p36). This relevance might relate to their expertise, experience, position, or some other personal characteristic. The number of participants need not be large, typically no more than 40 (Brown 1980, p92) and can be much smaller. The number can be determined by pragmatic considerations such as availability (McKeown & Thomas 1988, p37) but the group should contain the widest possible diversity of views. This means designing the selection process to maximise the chance that the full range of views is represented among the participants.

Webler *et al.* (2009, p10) indicates that it is important that the number of participants be less than the number of stimulus items (see 4.4.2 below); he suggests that there should be twice as many stimulus items as participants.

#### **4.4.2 Stimulus items**

Q Method involves the development of a set of stimulus items about an issue. These are usually in the form of statements about the topic, but they could be in other forms such as pictures, video clips, or objects. The aim is to compile a set of items that represents the 'concourse' or gathering of all the ideas about a particular topic (Addams 2000, p15). Brown (1993, pp94-95) notes that the term 'concourse' (from the Latin *concursum*, meaning 'a running together', as when ideas run together in thought) refers to the flow of communicability surrounding any topic. "Concourse is the very stuff of life, from banter ... to the heady discussions of philosophers and scientists ...to private thoughts... From

concourse, new meanings arise, bright ideas are hatched, and discoveries are made ... and it is Q methodology's task to reveal the inherent structure of a concourse – the vectors of thought that sustain it and which, in turn, are sustained by it.”

Several methods of compiling statements that represent the concourse are available (McKeown & Thomas 1988, pp28-29), including the use of interviews of key players (often the same people who will participate in the later stage of the process), or the collection of statements about the topic from newspapers, official documents, talk-shows etc. Webler *et al.* (2009, p8) describes the features of good Q statements as being short, stand-alone sentences that are easy to read and understand. They can contain “excess meaning” (able to be interpreted in different ways by different participants), and they can have “double objects” (sometimes called being “double-barrelled”) because it is more important that they represent what is being said in the concourse.

Principles for guiding the selection of statements from those available include:

- balance, appropriateness, applicability to the issue, intelligibility, simplicity and comprehensiveness (Addams 2000, p20)
- use of a framework drawn from experimental design principles (Brown 1970)
- the identification of conceptual categories that summarise the concourse and which are represented in the set of statements selected (Webler *et al.* 2009, p9 and p15).

Problems arise when the statements that have been collected fail to provide good coverage of the categories or the points of view within the categories. Is it acceptable in such circumstances for the researcher to generate Q statements, to paraphrase or edit statements? Webler *et al.* (2009, p17) advises that arguments can be made to defend doing so, and a researcher's methodological judgements should be made transparent.

#### **4.4.3 Data collection**

Traditionally Q methodology requires each subject to sort the statements according to a condition of instruction such as *most agree* to *most disagree*, into a fixed or forced distribution. Typically this is a quasi-normal distribution



where the lowest frequencies are at each end of the scale and the highest frequency is in the neutral area at the middle of the scale, using a sorting grid and statements printed on separate cards. This practice is a device for encouraging subjects to consider the statements more systematically than they otherwise might (McKeown & Thomas 1988, p34), so that each statement is ranked with respect to the other statements to achieve self-referencing. However, the process can be difficult for some participants and is best conducted in the presence of the researcher.

Both Brown (1971,1985) and Cottle and McKeown (1980) have demonstrated that the shape of the distribution is inconsequential, and the latter suggest that the researcher might use a questionnaire format in order to facilitate data gathering (Cottle and McKeown 1980, p62). Subsequent research has reported Q subjects being asked to rate stimuli on a Likert scale (Kalof 2000; Martin & Steelman 2004) rather than sorting the items. The most popular Q Method software (*PQ Method*) accepts data in a non-normal distribution and where the distribution varies from one participant to the next.

Additional information about the reasoning behind the responses can be obtained by interviewing the participants after they have completed their task.

#### **4.4.4 Discourse identification**

The analysis of the data to identify discourses involves the calculation of a correlation matrix, the extraction and rotation of significant factors and the computation of factor scores. Software programs that serve the specific requirements of Q Method are available for these steps. The most often used and recommended software package for Q Method data analysis is *PQ Method*, Schmolck (2002)

*PQ Method* offers the researcher choices with respect to factor rotation. Rotation in factor analysis is undertaken to find simpler and more easily interpretable factors while keeping the number of factors and the communality of each factor fixed (Addams 2000, p28). The researcher determines how many rotated factors to extract and interpret. Addams (2000, p27) suggests that this decision can be based on statistical indicators such as:



- the number of 'defining sorts', that is the number of participants with a significant factor loading with respect to the factor (a factor is accepted if it has 2 or more Q sorts with a statistically significant loading); or
- the cumulative variance explained (a factor is accepted if it adds significantly to the amount of variance explained); or
- the eigenvalue of the unrotated factors (only factors with an unrotated eigenvalue greater than or equal to 1 check are accepted).

Addams (2000) also notes that a number of Q methodologists also recommend consideration of:

- the theoretical significance of factors when deciding how many factors to interpret (a statistically insignificant factor might be theoretically important for example if it indicates a discourse with an unexpected point of view, or statistically acceptable factors might add little theoretical value).

Webler *et al.* (2009, p31) suggest four criteria for deciding between different numbers of factors, namely:

- simplicity (the fewer the better, without losing important or interesting information);
- clarity (the best factor solution is one where each participant loads highly on one and only one factor so that the number of 'confounders' who load on multiple factors and the number of non-loaders are minimised);
- distinctness (avoid highly correlated factors unless they have important points of disagreement);
- stability (if certain groupings of participants are stable over a number of solutions using different numbers of factors, select a solution where these stable clusters are preserved).

These criteria are used in sections 5.2.1 and 5.3.1 to explain the decisions made in this research about the number of factors to extract for each group of participants.

The researcher assigns a label to each factor to describe the discourse it represents. The labels are chosen by considering the statements that distinguish among the factors. The data employed in this phase are factor scores. A factor score is "a score for a statement as a kind of average of the scores given (to) that statement by all of the Q sorts associated with the factor" (Brown 1993, p117). Therefore factor scores actually describe an 'ideal type' of the discourse.

Factor scores are used to identify the statements that are most salient to the participants who are associated with that factor (that is, the statements with the highest positive values with which they most strongly agree, or the lowest negative values with which they most strongly disagree). This assists in the process of interpreting each factor and describing the attitudes associated with the discourse. The goal is to uncover an explanation that tells a convincing narrative about the research topic (Webler *et al.* 2009, p32) and to label the discourse succinctly. Dryzek and Berejikian (1993, p52) warn, "any apparent internal inconsistencies require explanation, rather than just dismissal or criticism".

Factor scores can be expressed as:

- z scores, that is, in units of standard deviation from the mean of the scores of the sorts associated with that factor (Webler *et al.* 2009, p32), or
- equivalent factor scores (whole numbers), which are obtained by converting the z scores for the statements back into the frequency distribution for the Q sort (that is, usually a forced normal distribution) (Addams 2000, 30-31).

#### **4.4.5 Comparing and contrasting discourses**

The comparing and contrasting of perspectives to identify similarities and differences is the final step in a Q Method study. This process is grounded in the topic of the research, the issues raised in the concourse of statements, the

conceptual framework used to select statements, and the social context of the identified discourses.

In some studies, where conflict among the perspectives and their discourses is a focus of the research, this phase is sometimes referred to as 'conflict assessment' (for example, Focht & Lawler 2000). Studies which aim to identify areas of agreement use this step to examine statements on which there is consensus among the groups (not just those statements that distinguish among the discourses), bearing in mind that it is difficult to be sure that discourses agreeing with a particular statement are doing so for the same reason. The information gained from the participants at the time they completed the Q exercise can be useful in this step.

## **4.5 APPLICATION OF Q METHOD IN THIS RESEARCH**

### **4.5.1 Participants**

Research involving human subjects involves the consideration of a range of ethical issues. How these were managed in this research is described in Appendix 1.

Two groups of participants are used in this research. The first is a group of students enrolled in postgraduate planning or property development courses at the University of Technology, Sydney in 2007 who were also employed in the planning and property development industry. Student participants completed the Q exercise in class. Appendix 1 contains copies of the documentation provided to participants, including a Consent Form that enabled potential participants to give informed consent for their participation or to withdraw from the process.

The second group is drawn from leaders in the planning and property development sphere in New South Wales who were selected on the basis of their role in planning and property development. They were not necessarily the most senior people in their field but were in positions where they influenced the decision-making of their colleagues and staff. They were identified by a range of methods including their presentations at conferences, or being referenced in



papers, or being nominated by someone as being an important player in their field.

Leader participants completed the exercise on-line, using the facility of an on-line survey company (discussed in section 4.5.3). In order to comply with the anti-spam legislation in the USA where the on-line survey company was based, the researcher was required to contact each potential participant by telephone to obtain their consent to being included. They were then sent an email containing a link to a web-based instrument (see discussion of this approach in section 4.5.3 below). A preliminary screen of the on-line survey displayed the Consent Form that enabled them to give informed consent or to withdraw at that stage.

Participants in both groups were asked to select from the categories shown in Table 4.2 the option that best describes their role with respect to planning.

The task took 20 to 40 minutes to complete and no incentives were offered other than the opportunity to assist in research that was addressing the vexed issue of how to determine the public interest.

Of the 60 leaders who agreed to participate and were sent the link, 36 or 60% completed the survey. Many of the 24 who did not complete did start the task but failed to complete it and some explained that it was more onerous than they had expected. One problem with the on-line group was that leaders in the property industry (as distinct from leaders in planning, local government, interest groups or environmental agencies) were difficult to engage, and even after giving consent most of those employed in property development failed to complete the task. Although 10 were approached, and 5 agreed to participate, only 2 completed. Reasons for this drop out rate most likely included the nature of the topic, and realisation that this was research being conducted from a planning rather than property development perspective.

**Table 4.2 Number of student and leader participants in the Q Method research by role with respect to planning**

	Students in planning courses	Students in property courses	All students	Leaders
Planner	10	2	12	8
Property developer, builder or real estate agent	1	11	12	2
Politician (local, state or federal)	0	0	0	8
Public servant (other than planner or developer)	0	0	0	7
Interest group member or local action group member	0	2	2	2
University academic	0	1	1	0
Member of the public	1	3	4	1
Environmentalist	1	0	1	5
Technical specialist	4	7	11	3
<b>TOTAL</b>	17	26	43	36

Source: Developed by the researcher for this work

This dropout of participants engaged in property development was not a problem with the postgraduate student group as the task was completed in class time and results were obtained from 12 people with extensive experience in the property development industry. Given the need to collect data from people with contrasting views, it was decided that although the postgraduate student data was originally planned to be a pilot study, it was sufficiently rigorous to be used in the research. The implications of this decision are addressed in section 4.5.2 and 4.5.4.

Both the student group (43 participants) and the leader group (36 participants) satisfy the requirement of the number of participants for Q Method research (which is that the group is typically no more than 40 and can be much smaller, see section 4.4.1).

#### **4.5.2 Stimulus material**

Statements about the concept of the public interest and how it can be determined formed the stimulus material for this research. Those statements represented diverse opinions about the persistent ambiguities that were described in Chapter 3, and which became research issues. They were presented in the data collection instruments in 15 groupings (see Appendix 2 for data collection instruments). Appendix 3 shows these groupings, the statements and the relevance of each statement to the persistent ambiguities.

Statements were either taken from the literature and edited by the researcher, or constructed by the researcher. The aim was to enable participants to consider a wide range of views on each issue. Parallel statement formats were used where possible to encourage systematic comparison of the statements. This involved the researcher writing, editing or paraphrasing material to produce many of the statements, and this is set out in Appendix 3.

The statements selected for the postgraduate students were edited for use with the leader group (before it was realised that the student data would be used in its own right, and not only as a trial of the instrument). In this editing process 13 statements were deleted in order to shorten the instrument, and one was added (L54). Some items were edited to assist clarity, and one category was split into two. The wording shown in Appendix 3 is taken from the leader instrument if it appeared there, otherwise from the student instrument. Differences between the two instruments are described in the footnotes to Appendix 3. The shortening of the instrument meant that the statement numbering is different between the two instruments. Statement numbers from the students' instrument are prefaced with 'S', and those from the leaders' instrument are prefaced with 'L'.



There were 77 statements in the student instrument (and 43 student participants giving a ratio of 1.8:1, slightly less than the 2:1 suggested in some of the literature) and 65 statements in the leader instrument (and 36 leader participants also giving a ratio of 1.8:1).

One of the more significant pieces of editing was the deletion of statements S50 to S53 about public interest testing. This was done when it was found that participants were very unclear about what a 'public interest test' might look like. Under these circumstances the data produced by these statements would be unreliable.

#### **4.5.3 Data collection**

It was recognised from the beginning of the research that it would not be possible to collect the leader data face to face as is recommended in Q Method, because of their dispersed locations and the researcher's commitments as a carer. The leader group would need to respond electronically, and this became an opportunity to explore techniques for administering Q Method remotely.

Software designed for the administration of on-line Q sorting, WebQ, was reviewed. The sorting of statements by participants into the forced, quasi-normal distribution described in section 4.4.3 poses difficulties for some participants even when the researcher can assist, and WebQ appeared to make the task even more difficult. Therefore WebQ was rejected.

It was decided that, given the research described in section 4.4.3 indicating that the forced, quasi-normal distribution was not necessary for the successful application of Q Method, a regular survey format using a 5 point Likert scale would be employed. This meant that the instrument could be administered by an online survey agency, Zoomerang. (See <http://www.zoomerang.com/> for details).

Appendix 2 contains copies of both versions of the data collection instrument. In the first version (the paper-based version used with students) the scale ranges from 'Strongly Agree' to 'Strongly Disagree'. When the student data was first entered into the *PQ Method* software it needed to be reversed so that negative scores would indicate disagreement and positive scores would indicate

agreement. In the second instrument (the online version used with leaders) the scale was reversed to avoid the need for such reversal at the data entry stage.

Appendix 3 shows statement groupings, the statement wording and the relevance of each statement to the persistent ambiguities (research issues). The wording shown is that used in the online version with the leader group and where this differs from the earlier version those differences are explained in footnotes.

The purpose of the forced distribution is to encourage systematic comparison of the statements. To achieve this without using forced distribution, the statements in the paper-based version were organised so that a group of statements all appeared on one page, and the participants were instructed to read and consider all statements on each page before responding. To encourage the same systematic consideration of the statements in the on-line data collection each group of statements appeared on a separate screen and participants were instructed to read and consider all statements before responding. In addition, participants could not move from that screen until all responses were complete.

Both groups had the opportunity to enter comments. Some of the student participants also joined in discussions about the statements at the end of the process, and there were a small number of follow-up phone conversations with on-line participants. The comments were useful in understanding how the instrument was (or was not) working. However, these methods did not work well in replacing face-to-face interviews as a way of eliciting the reasoning behind the responses. When a researcher is with a single participant as they complete the sort (the traditional approach), the researcher can probe the participant on those responses that appear, to the researcher, to be anomalous or inconsistent. But when the researcher is with a group who are completing a paper-based instrument, or when the instrument is being completed online, this approach would require the participant to explain every response, which would be tedious and likely to result in lower completion rates.

In hindsight, the best way to elicit the reasoning behind the responses of the online group would have been to conduct a telephone interview with each



online participant as soon as possible after they submitted their data. There does not appear to be a means of collecting this information from participants completing the instrument in a group. Whether this is sufficient cause to recommend against group-based collection is unclear, as the researcher does not know how valuable the information would have been.

#### **4.5.4 Discourse identification**

This research identifies one set of discourses from the student data, and a separate set from the leader data. (See Chapter 5.) The 2 sets of data are not combined to produce one set of discourses. This is not possible as the 2 instruments were different, especially with respect to the number of items and the grouping of items. It is not possible to combine the data by editing items from one instrument, as this would destroy the self-referencing.

The two resulting sets of discourses would not be expected to be the same, not only because of their slightly different set of statements, but more importantly, because they describe the discourses in use in two quite different groups of people. The students, while employed in property development and planning, tend to be younger, in lower or middle management, some are intending to use the qualification to change the direction of their career, and all are willing to engage in further study. The leaders tend to be older, more established in their careers, and in the higher echelons of management. Furthermore, as shown in Table 4.1 above, the most common roles reported by the postgraduate students were:

- Planners (12 participants)
- Property developer, builder or real estate agent (12 participants)
- Technical specialist (11 participants)
- Member of the public (4 participants).

This contrasts with the most common roles reported by the leaders, which were:

- Planners (8 participants)
- Politicians (8 participants)
- Public servants (7 participants)
- Environmentalists (5 participants)



Given that Q Method is designed to identify discourses based on subjective opinion, the research would expect the different roles of the two groups of participants to be sufficient to produce different discourses. However, it is also expected that the differences in the discourses could be explained by reference to the different roles.

The *PQ Method* software was used to identify first the student discourses and then the leader discourses. It identifies those statements that distinguish each discourse from the others in the same group of participants. The researcher then used these distinguishing statements to describe the discourse and to label it.

One of the interesting implications of not forcing participants into a quasi-normal distribution of responses (where the lowest frequencies are at each end of the scale and the highest frequency is in the neutral area at the middle of the scale) relates to the interpretation of the z scores and factor scores. Factor scores are obtained by converting the z scores back into the frequency distribution for the Q sort, but if the distribution is not forced then participants each have a different distribution. That is, each participant uses the Likert scale differently. For example, some participants tend to avoid the extreme categories (Strongly agree and Strongly disagree), while others use the categories more often.

It was decided that z scores (rather than equivalent factor scores) would be used during this phase and the next because of the uncertainty surrounding factor scores when a forced, quasi-normal distribution is not employed. The z scores ranged from +2.11 to -2.70.

More details about the process used to identify discourses are provided in Chapter 5.

#### **4.5.5 Comparing and contrasting of discourses**

Following the identification of the discourses, those discourses are then used (in Chapter 6) to identify areas of agreement that could be used as the basis of a *modus vivendi*. For each of the six persistent ambiguities described in Chapter 3, the factor scores of the discourses on the relevant statements are compared.

For this stage of the analysis only those statements that appeared in both instruments are used. That is, if the statement appeared in only one of the instruments, then it could not be used to identify agreement across the discourses found in both groups of participants.

To assist in the identification of areas of agreement, the *PQ Method* software produces a list of statistically significant 'consensus statements' that do not distinguish between any pair of factors that are identified in a data set. As the student and leader discourses were identified in different data sets, there is no such computer-generated list of consensus statements across both the student and leader discourses. Where claims are made in Chapter 6 about agreement across all the discourses they are based on observations that all of the discourses either have a positive z score indicating that they agree to some extent with the statement, or they all have a negative z score indicating that they all disagree to some extent with the statement. While scores approaching zero do not indicate strong agreement or disagreement, they do indicate a degree of ambivalence, or tolerance of the view expressed in the statement (Mattson *et al.* 2006, p401).

To say that discourses are in agreement does not imply that all participants are in agreement, as the z scores are ideal profiles created by an averaging process. As well, some participants are not associated with any discourse. However, it is likely that if the main discourses do not object to an idea it is possible that it will be largely uncontested by people discussing that topic in the context where those discourses are heard.

#### **4.6 CONCLUSION**

The aim of the research is to see if it is possible to construct, on the areas of agreement about the concept of the public interest, a useful procedure for determining its substantive meaning. Healey (2006, 224) cautions, "In pluralist processes, the good decision is the one upon which everyone can agree, but the terrain of agreement is arrived at through elimination of all matters on which participants cannot agree". This is said in the context of an argument for giving

greater attention to increasing mutual understanding and consensus building and the note of caution is relevant.

The researcher's defence of this approach is two-fold. Firstly, it is not the substance of the public interest that is being decided on the basis of areas of agreement; it is only the procedure for arriving at the substance. Once the procedure is agreed, then the debate about the substance of the public interest can range over all areas of disagreement. Secondly, sometimes solutions based on areas of agreement are described as 'lowest common denominator' solutions where this is defined as "the least worthy of the goals, values and opinions etc., which are held in common by a group of people" (Macquarie Dictionary 2005). It is a term of derision, which seems to appeal to the users because of the emotive connotations of being low, common and on the bottom. Therefore it needs to be noted that a more appropriate mathematical analogy is actually the 'highest common factor' which in the context of this research, could be defined as the most useful of the goals, values or opinions, that are held in common by the discourses.

This Chapter has introduced the research design used to identify discourses and find areas of agreement. It covers the research described in Chapters 5 and 6. The second part of the research design is described in Chapter 7.

The next chapter turns to the process of identifying the discourses about the concept of the public interest.



## **CHAPTER 5**

### **DATA ANALYSIS I:**

#### **IDENTIFYING DISCOURSES ABOUT THE PUBLIC INTEREST**

##### **5.1 INTRODUCTION**

This chapter presents the Q Method data and the discourses identified through the Q analysis. Section 5.2 presents the student data and section 5.3 presents the leader data. In each case, the patterns that emerge when 2, 3 and more factors are rotated are described and the reasons are given for selecting a 3-factor solution in each case. Then for each factor, the statements that distinguish that discourse from the others from that (student or leader) group are examined, and the discourse is given a label. The extent to which the two sets of discourses are similar, and the nature of the differences, are described in section 5.4.

##### **5.2 STUDENT DISCOURSES**

###### **5.2.1 Number of factors extracted**

In order to determine the number of discourses that provides the clearest results, 2, 3, and 4 factors were rotated. Table 5.1 shows the statistical data for each with respect to the criteria described in section 4.4.4.

The 2-factor solution produced one factor describing an economic rationalist perspective and a second factor describing a more welfare-oriented approach. The 3-factor solution retained the former and split the latter into 2 groups. The 4-factor solution split the latter into 3 groups. In each case the economic rationalist perspective was virtually unchanged and the welfare-oriented position was becoming more differentiated.

The 3-factor solution was accepted over the 2-factor solution because of the 4% increase in cumulative variance explained, and the theoretical significance of the third factor (which although it had a 0.7 correlation with Factor 1, was theoretically useful). The 4-factor solution, although also providing a 4% increase in the amount of variance explained, did not add any explanatory value and was therefore rejected in order to streamline the analysis.

**Table 5.1 Statistical data on the rotation of student factors**

Statistical criteria	2 factors rotated	3 factors rotated	4 factors rotated
Number of 'defining sorts' (ie number of participants with a significant loading with respect to at least one factor)	43/43	36/43	35/43
Number of 'defining sorts' for each factor	F1 - 30 F2 - 13	F1 - 17 F2 - 8 F3 - 11	F1 - 14 F2 - 7 F3 - 7 F4 - 7
Number of participants not loaded on any factor	0	7	8
Number of participants loaded on 2 or more factors	0	0	0
Number of factors with unrotated eigenvalues > 1	2	3	4
Cumulative variance explained	39%	43%	47%
Correlations among factors	F1/2 - 0.5072	F1/2 - 0.3523 F1/3 - 0.7054 F2/3 - 0.2814	F1/2 - 0.3521 F1/3 - 0.6023 F1/4 - 0.7113 F2/3 - 0.1933 F2/4 - 0.3509 F3/4 - 0.5617

The interpretation of Q Method data involves judging if and how a factor describes a perspective (discourse) that is distinct from other perspectives (discourses) found within the same group of participants. This is done in two stages. The first stage (above) involves deciding which solution (in this case, the 2, 3 or 4 factor solution) provides the clearest set of distinct discourses to explain the variance among the participants. The second stage (below) involves interpreting the factors by examining those items on which one perspective differs from the other perspectives and making sense of the patterns. This is a subjective process, often involving several iterations, and the research must provide the reader with evidence that the items used in the interpretation process represent statistically significant differences among the factors. The reader should expect an evidence-based account of how the factor presents a discourse that is recognisable or, at least, believable.



**5.2.2 Student Discourse 1 – Balanced Approach**

Appendix 4 shows the full set of statements that distinguish Student Factor 1 from Student Factors 2 and 3. A subset of these statements, selected on the basis of statistical significance (see below) and saliency to the participants associated with this factor (as indicated by the absolute value of the z score), is shown in Table 5.2 below along with the z score for each student factor on each statement. Positive scores indicate agreement with the statement and negative scores indicate disagreement. One asterisk indicates statistical significance at the 0.05 level (that is there is a 5% risk that the difference between this factor and the other two factors is based on chance rather than on any real difference in the views of the participants associated with those factors) and 2 asterisks indicate significance at the 0.01 level (that is, the risk is only 1%). Statements are listed in order from highest positive score (strong agreement) on the part of the factor under consideration (printed in bold) to lowest negative score (strong disagreement) on the part of that factor.

The discourse described by Student Factor 1 is associated with the view that the public interest is found in the balancing of economic, environmental and social outcomes (S36) rather than in just implementing the best option or majority opinion (S61, S62). Those associated with this discourse advocate consideration of factors at all scales (local, state, national and global) (S14) and other relevant issues identified through having open-ended criteria (S57). They display inclusiveness, altruism and a welfare orientation (S27, S30), an optimism that we can identify the public interest despite the diversity of views in society and changing needs (S60, S54, S42) and a belief that differences of opinion can be resolved through public interest research and discussion (S63). Among the 3 student discourses this discourse displays the weakest rejection of the statement that politicians have best knowledge of the public interest (S5).

**This discourse is labelled the Balanced Approach because of its use of a multi-criteria, multi-method approach to determining the public interest and because of its focus on the need to balance economic, environmental and social issues. The 17 student participants with a significant loading on this factor were from both the planning courses and the property development courses. They were employed in those industries in a wide variety of roles.**



**Table 5.2 Most salient distinguishing statements for Student Factor 1 (Balanced Approach)**

No.	Statement	Factor 1	Factor 2	Factor 3
S36	The 'Triple Bottom Line' reminds us that too much emphasis on any one of the three might result in not enough emphasis on the others	<b>+1.68**</b>	+0.20	-0.56
S27	When planning our own resource use we must consider the resource needs of others in our society	<b>+1.42*</b>	+0.32	+0.55
S57	It is important that public interest criteria are open (not pre-set) so stakeholders can introduce their own concerns	<b>+1.24**</b>	-0.42	+0.72
S42	Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest	<b>+1.19**</b>	+0.35	+0.38
S14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	<b>+1.18*</b>	-0.55	+0.70
S63	Differences of opinion can be resolved through public interest research and discussion	<b>+0.84**</b>	+0.02	+0.18
S54	It is impossible to predict what public interest issue will arise in a particular development	<b>-0.92**</b>	+1.01	+0.36
S61	To serve the public interest we only need to implement the option that does most to promote important public interest objectives	<b>-1.07**</b>	+0.03	-0.25
S30	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	<b>-1.08**</b>	+0.14	-0.25
S62	If we satisfy majority opinion then we will serve the public interest	<b>-1.09**</b>	-0.23	+0.04
S5	Politicians have the best knowledge of the public interest	<b>-1.33**</b>	-2.13	-2.35
S60	The diversity of views in our society mean that the public interest is a phantom and cannot possibly be identified	<b>-1.52**</b>	+0.37	-0.62

Positive scores indicate agreement with the statement and negative scores indicate disagreement.

\* indicates significance at the 0.05 level and \*\* indicates significance at the 0.01 level.

### 5.2.3 Student Discourse 2 – Market Orientation

Appendix 5 shows the full set of statements that distinguish Student Factor 2 from Student Factors 1 and 3. A subset of these statements, selected on the basis of salience (the absolute value of the z score) is shown in Table 5.3 below along with the z score for each student factor on each statement.

The discourse described by Student Factor 2 is associated with a belief that people act in their self-interest rather than in the collective interest (S48, S39) and the related view that the public interest is defined in terms of aggregated individual interests, as shown in the belief that markets are the best indicator of the public interest (S9), and that the market serves the public interest (S41). This belief in the market is accompanied by a rejection of the importance of social justice and global environmental issues (S35, S13). This discourse displays a commitment to centralising power (S18, S15), a low opinion of public opinion and local interests (S72, S8, S21) and an inclination to label local objectors as NIMBYs (S16, S17). It conveys a strong disagreement with the statement that planners have the best knowledge of the public interest (S6), but indicates a respect for expert opinion and its capacity to improve the decision making of politicians (S73). It may contain arguments that public interest issues are hard to predict (S54) which possibly indicate a poor understanding of community opinion. It is associated with a weak welfare orientation (S31), less commitment to future generations than other perspectives (S22) and the weakest rejection of the idea that technology will fix the problems of the future (S26). The most salient issue for those associated with this discourse is the strong rejection of the implication that developers can buy permission to take actions that aren't in the public interest (S47).

**The discourse is labelled Market Orientation because it reflects the economic rationalist beliefs that people act in their self-interest rather than in the collective interest, and that the market serves the public interest and is the best indicator of the public interest. The 8 student participants with a significant loading on this factor were all working in the property development industry and engaged in property development studies.**



**Table 5.3 Most salient distinguishing statements for Student Factor 2 (Market Orientation)**

No.	Statement	Factor 1	Factor 2	Factor 3
S73	It's important that expert opinion be obtained before politicians make decisions	+1.36	<b>+1.84*</b>	+1.38
S72	Members of the public are not able to assess the technical details of a proposal	-0.59	<b>+1.67**</b>	-0.12
S31	Because land near smelly or noisy activities will be cheaper, some people will always live there	+0.09	<b>+1.40**</b>	+0.19
S17	When people support an activity in general but do not want it in their own neighbourhood, they are being unreasonable	+0.09	<b>+1.37**</b>	+0.07
S22	We must try to consider the needs of future generations	+2.11	<b>+1.26*</b>	+1.81
S9	Markets are the best indicator of the public interest because they show where people want to live and what they want to buy or rent	-0.33	<b>+1.25**</b>	+0.07
S18	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	+0.00	<b>+1.23**</b>	-1.82
S54	Things are so complex that it is impossible to predict what public interest issues will arise in a particular development	-0.92	<b>+1.02**</b>	+0.36
S48	People only act in their private interest, not in the collective interest	-0.83	<b>+0.98**</b>	-0.21
S39	People who make claims about the public interest are only using it as a smokescreen to push their own point of view	-0.80	<b>+0.84**</b>	-1.32
S35	Social justice issues are most important because we have no right to cause hardship to other people	-0.39	<b>-0.95**</b>	+0.01
S13	The global scale of public interest is the most important because we are all sharing one planet and we need to cooperate to survive	+0.48	<b>-1.24**</b>	+0.43
S16	Use of the NIMBY label is just a put down and a way of ignoring legitimate objections	-0.27	<b>-1.29**</b>	-0.23
S21	Unless local residents can block unwanted developments, politicians and bureaucrats will 'ride rough shod' over people's lives	-0.44	<b>-1.36**</b>	+1.18
S41	Because there are so many powerful commercial interests it is necessary to counter these by arguing for the public interest	+0.30	<b>-1.38**</b>	+0.34
S6	Planners have the best knowledge about the public interest	-0.16	<b>-1.62**</b>	+0.01
S8	The general public have the best knowledge about the public interest	-0.60	<b>-1.69**</b>	+1.05
S15	Public sector decision makers operate at a specific level (local, state, national etc) and should only consider issues relevant to that level of jurisdiction	-0.78	<b>-1.77**</b>	-1.13
S26	Technology will fix current problems so there is no need to worry about the future	-2.47	<b>-1.80**</b>	-2.70
S47	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.99	<b>-1.89**</b>	+0.62

Positive scores indicate agreement with the statement and negative scores indicate disagreement. \* indicates significance at the 0.05 level and \*\* indicates significance at the 0.01 level.



#### 5.2.4 Student Discourse 3 - Localism

Appendix 6 shows the full set of statements that distinguish Student Factor 3 from Student Factors 1 and 2. A subset of these statements, selected on the basis of statistical significance (low risk that the apparent difference is by chance) and saliency (the absolute value of the z score) is shown in Table 5.4 below along with the z score for each student factor on each statement.

The discourse described by Student Factor 3 demonstrates support for public participation (S65) on the grounds that the general public has the best knowledge of the public interest (S8), and a belief that, unless locals fight for their interests, politicians and bureaucrats will 'ride rough-shod' over people's lives (S21). Whilst those associated with this discourse acknowledge that there are times when the needs of local residents will conflict with the wider public interest (S19) the commitment to this is weaker than in the other student discourses.

Several themes in the discourse relate to the fight to defend local interests, including the argument that local matters should not be decided by central powers (S18), that expert input is valuable (S75), that due process is important (S2), that public interest testing is valuable (S51), that decision makers shouldn't set public interest criteria prior to consultation (S56) and stakeholders should be able to introduce additional concerns (S57). This discourse is associated with a belief that environmental interests are the most important (S34) and that the needs of future generations will be different (S24). This discourse reveals a belief that people are not motivated only by self-interest (S39, S23)

**This factor is labelled Localism because it conveys belief in the wisdom of the locals and their right to influence decisions in their area. The 11 student participants with a significant loading on this factor were from both the planning courses and the property development courses. They described themselves mostly as planners or technical specialists. In discussion some expressed the view that the role of the planner is to reflect local interests in decision making, and that they found due process and expert opinion to be valuable allies in this mission.**

**Table 5.4 Most salient distinguishing statements for Student Factor 3 (Localism)**

No.	Statement	Factor 1	Factor 2	Factor 3
S21	Unless local residents can block unwanted developments, politicians and bureaucrats will 'ride rough shod' over people's lives	-0.44	-1.36	<b>+1.18**</b>
S2	If decision makers follow due process, are fair and open, and allow for public participation, then the resulting decisions will be in the public interest	-0.04	-0.50	<b>+1.14**</b>
S8	The general public have the best knowledge about the public interest	-0.60	-1.69	<b>+1.05**</b>
S19	There are times when the needs and wants of local residents will conflict with the broader public interest	+1.41	+1.68	<b>+0.89**</b>
S57	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.24	-0.42	<b>+0.72**</b>
S14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	+1.18	-0.55	<b>+0.70*</b>
S34	Environmental interests are the most important because the environment provides the necessities of life	-0.34	-0.42	<b>+0.67**</b>
S65	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76	+0.74	<b>-1.17*</b>
S39	People who make claims about the public interest are only using it as a smokescreen to push their own point of view	-0.80	+0.84	<b>-1.32**</b>
S23	People who make emotive claims about children's futures are using them for their own purposes	-0.92	+0.54	<b>-1.45**</b>
S56	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	-0.36	-0.32	<b>-1.60**</b>
S18	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	0.00	+1.23	<b>-1.82**</b>
S51	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	-0.59	+0.02	<b>-2.04**</b>
S24	Future needs will be the same as current needs	-1.41	-1.47	<b>-2.16**</b>
S75	Consulting experts is often a waste of time because they usually disagree	-1.36	-1.24	<b>-2.22**</b>

Positive scores indicate agreement with the statement and negative scores indicate disagreement.

\* indicates significance at the 0.05 level and \*\* indicates significance of the 0.01 level.



5.3 LEADER DISCOURSES

5.3.1 Number of factors extracted

In order to decide on what number of discourses provides the clearest results, 2, 3, and 4 factors were rotated. Table 5.5 shows the statistical data for each with respect to the criteria described in section 4.4.4.

The 3-factor solution was preferred to the 2-factor solution because of the 5% increase in the amount of variance explained, and the theoretical significance of the third factor (which had a lower correlation with Factors 1 and 2 than Factors 1 and 2 had with each other). The 4-factor solution was rejected because only two thirds (24 out of 36) participants had a significant loading with respect to at least one factor (leaving 12 participants not contributing to any factor), and because when examined, the 4 factors provided less clarity and theoretical relevance than the 3-factor solution.

Table 5.5 Statistical data on the rotation of leader factors

Statistical criteria	2 factors rotated	3 factors rotated	4 factors rotated
Number of 'defining sorts' (ie number of participants with a significant loading with respect to at least one factor)	36/36	33/36	24/36
Number of 'defining sorts' for each factor	F1 - 20 F2 - 16	F1 - 11 F2 - 16 F3 - 6	F1 - 8 F2 - 5 F3 - 8 F4 - 3
Number of participants not loaded on any factor	0	3	12
Number of participants loaded on 2 or more factors	0	0	0
Number of factors with unrotated eigenvalues > 1	2	3	4
Cumulative variance explained	52%	57%	60%
Correlations among factors	0.784	F1/2 - 0.7821 F1/3 - 0.6067 F2/3 - 0.6707	F1/2 - 0.6043 F1/3 - 0.7327 F1/4 - 0.5583 F2/3 - 0.5566 F2/4 - 0.4097 F3/4 - 0.5591



### 5.3.2 Leader discourse 1 – Environmentalism

Appendix 7 shows the full set of statements that distinguish Leader Factor 1 from Leader Factors 2 and 3. A subset of these statements, selected on the basis of statistical significance (low risk that the apparent difference is by chance) and saliency (the absolute value of the z score) is shown in Table 5.6 below along with the z score for each factor on each statement.

The discourse described by Leader Factor 1 is associated with the view that environmental issues are the most important (L32), and it is not important to achieve all 3 aspects of the triple bottom line (L30), however it is the case that too much emphasis on one dimension of the triple bottom line might indicate neglect of the others (L34). It is also associated with the view that economic issues are not the most important (L31), markets are not the best indicator of the public interest (L9) and if development has a negative impact then compensation should be paid (L42).

This discourse conveys a belief that when determining the public interest we need to consider anyone at any scale who is impacted by an issue (L14), the interests of locals are always important (L10) (although this is stronger in Leader Factor 2) and the centralisation of power is not desirable (L17). Those associated with this discourse are strongly of the view that planners do not have the best knowledge of the public interest (L6), due process alone will not disclose the public interest (L2) and decision makers do not know the issues well enough to set criteria in advance (L47).

This discourse is also associated, but less strongly than the other Leader Factors, with a view that future needs will be different from current needs (L22) and that public interest refers to our collective needs (L3).

**This discourse is labelled Environmentalism because it conveys the view that environmental issues are the most important, that all spatial levels are important, and that compensation should be paid for negative externalities of development. The 11 participants with a significant loading on this factor included local government councillors, planners, environmentalists, action group members and members of the public.**

**Table 5.6 Most salient distinguishing statements for Leader Factor 1 (Environmentalism)**

No.	Statement	Factor 1	Factor 2	Factor 3
L14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	<b>+1.22**</b>	+0.14	-0.08
L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	<b>+0.87**</b>	-0.29	-1.23
L32	Environmental issues are the most important	<b>+0.82**</b>	-0.79	+0.13
L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	<b>+0.77*</b>	+1.21	+0.27
L3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	<b>+0.75*</b>	+1.16	+1.33
L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	<b>+0.68*</b>	+0.30	-0.26
L30	The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects	<b>-0.64**</b>	+0.84	+0.57
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	<b>-0.82**</b>	+0.29	+0.87
L47	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	<b>-1.04*</b>	-0.56	-0.16
L17	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	<b>-1.07**</b>	+0.16	+0.51
L22	Future needs will be the same as current needs	<b>-1.17*</b>	-1.82	-1.81
L6	Planners have the best knowledge of the public interest	<b>-1.48**</b>	-0.77	-0.43
L31	Economic issues are the most important	<b>-1.62**</b>	-1.10	-0.44
L9	Markets are the best indicator of the public interest	<b>-1.93**</b>	-1.14	+0.10

Positive scores indicate agreement with the statement and negative scores indicate disagreement.

\* indicates significance at the 0.05 level and \*\* indicates significance at the 0.01 level.



### 5.3.3 Leader discourse 2 – Executive perspective

Appendix 8 shows the full set of statements that distinguish Leader Factor 2 from Leader Factors 1 and 3. A subset of these statements, selected on the basis of statistical significance (low risk that the apparent difference is by chance) and saliency (the absolute value of the z score) is shown in Table 5.7 below along with the z score for each factor on each statement.

The discourse described by Leader Factor 2 is associated with the view that no one part of the triple bottom line is more important than the others (demonstrated by negative scores on each of the statements claiming that one dimension is the most important (L31, L32 and L33)) and too much of one is likely to mean the neglect of the others (L34). It is associated with arguments that markets are not the best indicator of the public interest (L9) and conveys only cautious agreement with the proposition that developers' compensation payments are a means of buying permission to take actions that are not in the public interest (L44).

It is the only discourse that associated with the view that differences of opinion should be resolved by those in authority (L55). Those associated with this discourse most strongly reject the need for consensus (L49) and are the only group that rejects the usefulness of public interest research (L53).

Whilst this discourse conveys acknowledgement that people use the public interest as a smokescreen to push their own point of view (L37), it also conveys strong rejection of the suggestion that private interests should be excluded when determining the public interest (L1). Finally it is associated with a view that local interests are always important (L10), and that public participation does not get in the way of decision-making (L56).

**This discourse is labelled Executive Perspective because of the focus on balancing conflicting points of view, and the belief that those in authority should resolve conflicts. The 16 participants with a significant loading on this factor included several senior public servants, local government councillors, a current mayor and a former mayor.**



**Table 5.7 Most salient distinguishing statements for Leader Factor 2 (Executive Perspective)**

No.	Statement	Factor 1	Factor 2	Factor 3
L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	+0.77	<b>+1.21*</b>	+0.27
L44	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.84	<b>+0.46*</b>	+1.03
L37	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.38	<b>+0.37**</b>	-0.25
L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+0.68	<b>+0.30*</b>	-0.26
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.82	<b>+0.29*</b>	+0.87
L55	Differences of opinion should be resolved by those in authority	-0.55	<b>+0.13**</b>	-2.15
L56	Public participation gets in the way of making decisions and taking action in a timely manner	-1.31	<b>-0.66*</b>	-1.21
L53	Differences of opinion can be resolved through public interest research that clarifies issues	+0.56	<b>-0.69**</b>	+0.51
L32	Environmental issues are the most important	+0.82	<b>-0.79**</b>	+0.13
L33	Social justice issues are the most important	+0.29	<b>-0.94**</b>	+0.01
L31	Economic issues are the most important	-1.62	<b>-1.10**</b>	-0.44
L9	Markets are the best indicator of the public interest	-1.93	<b>-1.14**</b>	+0.10
L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.14	<b>-1.22**</b>	+0.74
L1	The best way to define the public interest is to say it must exclude private interests	-0.44	<b>-1.33**</b>	-0.15

Positive scores indicate agreement with the statement and negative scores indicate disagreement.

\* indicates significance at the 0.05 level and \*\* indicates significance at the 0.01 level.

#### **5.3.4 Leader discourse 3 – Anti-Authoritarianism**

Appendix 9 shows the full set of statements that distinguish Leader Factor 3 from Leader Factors 1 and 2. A subset of these statements, selected on the basis of statistical significance (low risk that the apparent difference is by chance) and saliency (the absolute value of the z score) is shown in Table 5.8 below along with the z score for each factor on each statement.

The discourse described by Leader Factor 3 is distinguished by strong views that politicians do not have the best knowledge about the public interest (L5) and the general public does (L8). Similarly it is associated with arguments that differences of opinion should not be resolved by those in authority (L55) because consensus of opinion is needed to say what is in the public interest (L49).

Those associated with this discourse view the public interest as the sum of private interests (L4) but endorse the idea that commercial interests are not the same as the public interest (L39). They reject the use of compensation to counter the negative impact of development (L42) and reject the idea that NIMBY objections are legitimate (L15).

This discourse reflects the view that due process will produce decisions that are in the public interest (L2), consulting experts is worthwhile (L64), research can contribute to understanding (L63) and the public interest can be deciphered (L36). This discourse does not reflect a belief that technology will fix current problems (L24).

**This discourse is labelled Anti-Authoritarianism because of its association with very strong opinions that politicians do not have the best knowledge of the public interest and should not have the authority to resolve conflicts. The 6 participants with significant loadings on this factor were from a wide variety of roles including property developer, technical specialist, planner, public servant and action group member.**



**Table 5.8 Most salient distinguishing statements for Leader Factor 3 (Anti-Authoritarianism)**

No.	Statement	Factor 1	Factor 2	Factor 3
L8	The general public have the best knowledge of the public interest	-0.40	-0.07	<b>+1.01**</b>
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.82	+0.29	<b>+0.87*</b>
L39	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	+1.43	+1.53	<b>+0.86*</b>
L4	The best definition of the public interest is that it is the sum of the private interests of individuals	-0.84	-0.80	<b>+0.86**</b>
L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.14	-1.22	<b>+0.74**</b>
L63	Research can make an important contribution to understanding what is or isn't in the public interest	+1.20	+1.28	<b>+0.71*</b>
L36	The public interest is hard to decipher and is best down-played in decision making	-1.48	-1.45	<b>-0.80**</b>
L15	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	+0.51	+0.19	<b>-0.92**</b>
L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	+0.87	-0.29	<b>-1.23**</b>
L64	Consulting experts is often a waste of time because they usually disagree	-1.03	-1.24	<b>-1.74*</b>
L24	Technology will fix current problems	-1.48	-1.61	<b>-2.14**</b>
L55	Differences of opinion should be resolved by those in authority	-0.55	+0.13	<b>-2.15**</b>
L5	Politicians have the best knowledge of the public interest	-1.36	-1.07	<b>-2.53**</b>

Positive scores indicate agreement with the statement and negative scores indicate disagreement.

\* indicates significance at the 0.05 level and \*\* indicates significance at the 0.01 level.



## 5.4 CONCLUSION

A set of three student discourses and a set of three leader discourses have been identified and labelled. The student discourses are labelled:

- Balanced Approach to highlight a willingness to balance competing interests and to use a multi-criteria, multi-method approach;
- Market Orientation to highlight a beliefs that people are motivated by self interest and that the market serves the public interest and is the best indicator of the public interest; and
- Localism to highlight a belief in the wisdom of the locals and their right to influence decisions in their local area.

The leader discourses are labelled:

- Environmentalism to highlight the belief that environmental issues are the most important, all spatial levels are relevant and the support for the payment of compensation for negative externalities of development;
- Executive Perspective to highlight a focus on balancing conflicting points of view, and a belief that those in authority should resolve conflicts; and
- Anti-Authoritarianism to highlight the very strong opinion that politicians do not have the best knowledge of the public interest, that differences of opinion should not be resolved by those in authority and that the general public has the best understanding of the public interest.

The student and leader data were analysed separately because of differences in the instruments used. Therefore there is overlap between the student and leader discourses, which would not have been possible had the data been pooled and only one analysis performed. The student discourse labelled Balanced Approach has some similarity to the leader discourse labelled Executive Perspective. There is also some resemblance between the student discourse labelled Localism and the leader discourse labelled Anti-

Authoritarianism. (This suggests that if it had been possible to merge the data and perform only one Q analysis, the best explanation of the results might have identified a total of four discourses rather than six.)

The main difference between the two sets is the appearance of the student discourse labelled Market Orientation and the lack of a similar leader discourse (probably due to the low number of responses from leaders from the property development industry in the leader survey). The remaining leader discourse was labelled Environmentalism, and reflects the higher number of participants in the leader survey with an environmentalist perspective.

These discourses demonstrate that differing views about the concept of the public interest exist and that these views are associated with different approaches to operationalising the concept.

The next chapter will explore the common ground among these discourses.

## CHAPTER 6

### DATA ANALYSIS II:

#### WHAT THE DISCOURSES SAY ABOUT THE PUBLIC INTEREST

##### 6.1 INTRODUCTION

This chapter explores whether there is common ground among the discourses that could form the basis of a *modus vivendi* for debating the substance of the public interest. It does this by re-examining the Q Method data through the lens of persistent ambiguities about the public interest presented in Chapter 3. Those ambiguities are:

1. The importance of the public interest.
2. Whether there might be multiple competing common interests.
3. The practice of limiting the range of issues to be considered when determining the public interest.
4. How far the 'relevant public' should extend in space and time.
5. The status of private interests in the operational meaning of the public interest; the relevance of self-interest and altruism; and the need to curtail private interests in order to serve the public interest.
6. The people and processes that should be involved in resolving differences of opinion about the public interest.

As explained in section 4.5.5 the following analysis employs all of the statements that are relevant to the issues and that appear in both instruments. Any statement that appears in only one of the instruments cannot be used in this analysis. This permits the consideration of statements where all discourses reflect similar views, which is important in the identification of approaches that might gain acceptance across all discourses.

The process of identifying areas of agreement across the 6 discourses is largely one of checking whether the discourses all have a positive z score, indicating that they all 'agree with' (reflect acceptance of) the statement, or all have a negative z score, indicating they all 'disagree with' (reflect rejection of) the statement.

##### 6.2 WHAT THE DISCOURSES SAY ABOUT THE IMPORTANCE OF THE PUBLIC INTEREST



This research issue was introduced in section 3.2, where it was established that except for the rejectionists who dispute the validity of the concept of the public interest on procedural grounds, planning theorists accept its importance and seek its further development. The first step towards that development is to ascertain what the planning discourses identified in Chapter 5 say about the importance of the public interest.

Appendix 3 and Appendix 10 show that participants in the Q Method analysis were asked to consider 6 statements under the heading “Relative importance of the public interest”. Three of these statements (S39/L37, S40/L38 and S41/L39) addressed the issue via a comparison of public interest and private interest. Those statements will be considered in section 6.6.

The remaining statements about the importance of the public interest (S37/L35, S38/L36 and S42/L40) are shown in Table 6.1.

Table 6.1 shows that all of the discourses agree with statement S37/L35 that “The public interest is just one factor among many that planners need to consider”. This indicates that all the discourses agree that the public interest needs to be considered, and that it is not the only thing that needs to be considered. They also all disagreed with statement S38/L36 that “The public interest is hard to decipher and is best down-played in decision making”. This indicates that all the discourses either disagree that it is hard to decipher, or more likely, disagree that it should be down-played in decision making. Similarly, all of the discourses agree with the final statement in Table 6.1, that “Our priorities are changing rapidly, particularly due to global warming, so it’s more important than ever to understand what is or isn’t in the public interest.”

**Therefore it can be concluded that all of the discourses agree that the public interest is an important factor that needs to be considered.**

**Table 6.1 Statements relating to the importance of the public interest and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S37	L35	The public interest is just one factor among many that planners need to consider	+0.79	+1.57	+1.28	+0.54	+1.18	+1.27
S38	L36	The public interest is hard to decipher and is best down-played in decision making	-1.34	-0.94	-0.58	-1.48	-1.45	-0.80
S42	L40	Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest	+1.19	+0.35	+0.38	+1.13	+1.25	+0.86

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

### 6.3 WHAT THE DISCOURSES SAY ABOUT THE NUMBER OF PUBLIC INTERESTS

In section 3.3.2 it was suggested that the triple bottom line (TBL) framework suggests that there are multiple competing public interests (or competing 'public interest considerations').

If the TBL logic is accepted by each of the discourses, then it is arguably evidence of a belief in multiple public interests in the planning and property development sphere, or at least of the recognition of an opportunity for negotiation of the relative emphasis or weighting that should be placed on particular public interest objectives. That is, even if an advocate of one of the three TBL objectives does not afford the same level of consideration to the other two, they might willingly use the framework to advance their own interests.

If it can be demonstrated that the discourses about the public interest used by actors in the planning and property development sphere are compatible with TBL thinking, then opportunities open up to shift the language away from a 'conflicting parties' conception, towards a 'competing public objectives' conception. This then allows the consideration of the relative importance of each of the public interest objectives, and the extent to which they can or should be traded off against each other.

Table 6.2 shows the statements that are relevant to the issue of whether there is one public interest or many public interests and the z scores of each discourse with respect to each of these statements.

The five statements are about the TBL. Two of these statements (S32/L30 "The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects" and S36/L34 "The triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others") are statements about the balancing of the three dimensions of the TBL. The other three statements each suggest that one of the three dimensions is the most important.



**Table 6.2 Statements relating to the problem of one or many public interests, and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S32	L30	The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects	+1.00	+0.69	+0.77	-0.64	+0.84	+0.57
S33	L31	Economic issues are the most important	-0.84	+0.10	+0.18	-1.62	-1.10	-0.44
S34	L32	Environmental issues are the most important	-0.34	-0.42	+0.67	+0.82	-0.79	+0.13
S35	L33	Social justice issues are the most important	-0.39	-0.95	+0.01	+0.29	-0.94	+0.01
S36	L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+1.68	+0.20	-0.56	+0.68	+0.30	-0.26

Highlighting indicates that all of the discourses agreed with at least one of the two statements that indicated the need to balance the three dimension of the Triple Bottom Line.

The Balanced Approach and the Executive Perspective both agree with the 2 balancing statements and reject all 3 dimensions as being the most important. This is interpreted to mean that all are important and we must get the right balance.

The Market Orientation also agrees with both statements about the importance of balancing, but sees economic issues as being more important than environmental or social justice issues.

Each of the remaining 3 discourses agrees with one or other of the balancing statements, and shows preference for one or more of the issues. The Localism perspective favours environmental issues, Environmentalism and Anti-Authoritarianism favour environmental and social justice issues and reject the importance of economic issues.

That all 6 discourses agree with at least one of the two balancing statements (S32/L30 or S36/L34) indicates that they are familiar with the TBL notion that there is more than one dimension to the public interest, and that attending to multiple dimensions is important. Four of the discourses still want to argue that the current balance isn't right, and that the dimension that they favour should get more attention, but that is consistent with the balancing argument.

**Therefore it would appear that a description of the public interest in terms of its multiple dimensions, or the multiple public interest consideration that need to be addressed and balanced, would be understood and accepted as a framework by all of the identified discourses.**

## 6.4 WHAT THE DISCOURSES SAY ABOUT THE ISSUE OF LIMITING THE CRITERIA

This issue was introduced in section 3.4, where justifications and less benign explanations of this practice were discussed. Table 6.3 shows the four statements that are most relevant to this issue and the related z scores of each discourse.

The most striking feature of this data is that all of the discourses agreed with the proposition that “when people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker” (S55/L46), but they also all rejected the proposition that “decision makers know the issues well enough to be able to set the public interest criteria before calling for comments” (S56/L47). This might be because the former statement (S55/L46) uses the term ‘criteria’ while the latter (S56/L47) uses the term ‘public interest criteria’. The discourses apparently agree that identifying *public interest* criteria is difficult.

**The discourses agree that advising the public on the criteria that will be used by decision makers is desirable, but in the case of public interest matters, the relevant criteria may not be fully understood by decision makers prior to consultation.**



**Table 6.3 Statements relating to the problem of limited public interest criteria, and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S54	L45	It is impossible to predict what public interest issue will arise in a particular development	-0.92	+1.01	+0.36	-0.47	-0.79	+0.48
S55	L46	When people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker	+0.79	+0.96	+0.66	+1.15	+0.11	+1.51
S56	L47	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	-0.36	-0.32	-1.60	-1.04	-0.56	-0.16
S57	L48	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.24	-0.42	+0.72	+1.11	+1.13	+0.16

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

**6.5 WHAT THE DISCOURSES SAY ABOUT THE SPATIAL AND TEMPORAL  
EXTENT OF THE RELEVANT PUBLIC**

**6.5.1 Spatial extent of the relevant public**

This issue was introduced in Section 3.5.3 where matters such as the extent of the relevant public in space and the conflict between local and wider interests were discussed.

Table 6.4 shows the statements that are relevant to the issue of the spatial dimensions of the 'relevant public' and the z scores of each discourse with respect to each of these statements. The first 5 statements relate to a nominal spatial scale comprising local, state, national and global levels; the second 5 statements are concerned with one particular aspect of the spatial scale, namely the not-in-my-back-yard (NIMBY) phenomenon.

There is only one statement on which all six discourses agree, namely "There are times when the needs and wants of local residents will conflict with the broader public interest" (S19/L18). This is potentially useful, especially if it can be generalised to other levels of the scale, for example, to suggest that there are times when the interests of an individual state will conflict with the public interest at the national level, or the interests of a country will conflict with the broader public interest at the global level. However the pattern of responses to the other statements about the spatial dimension indicate a more complex scenario.

Three discourses have a relatively straightforward interest in safeguarding the interests of local stakeholders. The Executive Perspective and Anti-Authoritarianism, both agree that local interests are always important (S10/L10) and do not agree that state, federal or global interests challenge that position. Localism pursues a more complex argument, giving status to local, state and global interests (S10/L10, S11/L11 and S13/L13), and taking a strong localist position on statements relating to centralisation of power (S18/L17 and S21/L19).

**Table 6.4 Statements relating to the problem of defining the spatial dimensions of the ‘relevant public’, and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environ-mentalism	Executive Perspective	Anti-Authorit-arianism
S10	L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	+1.12	-0.70	+0.88	+0.77	+1.21	+0.27
S11	L11	Local planning decisions should always support state-wide plans and policies	-0.05	+1.09	+0.75	-0.36	-0.03	-0.56
S12	L12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	+0.14	-0.86	-0.32	-0.87	-0.23	-1.02
S13	L13	The global scale of the public interest is the most important	+0.48	-1.24	+0.43	-0.28	-0.82	-1.28
S14	L14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	+1.18	-0.55	+0.70	+1.22	+0.14	-0.08

Continued next page



Table 6.4 continued

S16	L15	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	-0.27	-1.29	-0.23	+0.51	+0.19	-0.92
S17	L16	When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable	+0.09	+1.37	+0.07	-0.59	-0.22	+0.53
S18	L17	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	0.00	+1.23	-1.82	-1.07	+0.16	+0.51
S19	L18	There are times when the needs and wants of local residents will conflict with the broader public interest	+1.41	+1.68	+0.89	+1.09	+1.63	+1.18
S21	L19	Unless local residents can block unwanted developments politicians and bureaucrats will ruin people's quality of life	-0.44	-1.36	+1.18	+0.40	-0.85	-0.50

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

This contrasts with the centralist perspective of the Market Orientation, which agrees that local decisions must align with state policies (S11/L11), and that higher levels of government should be able to overrule lower levels of government (S18/L17). It is the discourse showing the strongest disagreement with the suggestion that politicians and bureaucrats can ruin people's quality of life (S21/L19).

The perspective of the Balanced Approach is well captured in the view that we must consider the interests of anyone at any level who is affected by our decisions (S14/L14). This perspective sees local issues as important, it is the only one that agrees that the national interest is important, and it has the strongest view across the discourses that the global level is important.

The Environmentalism discourse is possibly the most difficult to decipher from this set of statements. Of the discourses it shows the strongest support for the argument that we should consider the needs of anyone at any level who is affected (S14/L14). It demonstrates the strongest agreement across the discourses for the idea that the NIMBY label is used as a way of ignoring legitimate objections (S16/L15) and the strongest disagreement with the claim that it is unreasonable to support an activity in general but not to want it in one's own neighbourhood (S17/L16). These attitudes are compatible with the strategy of protecting the land with the highest environmental values and locating environmentally damaging activities on land of lower environmental value. This strategy recasts the question of who is the 'relevant public', and asks what would be the least damaging location for a particular activity and who has an interest in that location.

Also, given the possible lack of public awareness of the environmental risks posed by developments, one might ask whether the notion of the 'relevant public' has much relevance to the environmentalism discourse. Perhaps the question for that discourse would be what are the relevant ecosystem services<sup>1</sup> that might be at risk and who understands these issues.

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<sup>1</sup> "Ecosystem services are the benefits people obtain from ecosystems. These include provisioning services such as food and water; regulating services such as flood and disease control; cultural services such as spiritual, recreational and cultural benefits; and supporting

The diversity of approaches to defining the spatial extent of the 'relevant public' casts light on the intractable nature of many disputes about the public interest. The Market Orientation is pitching to centralist authorities and their wider constituencies but localist perspectives are trying to focus on a more narrowly defined public, while the environmentalists are thinking not in terms of constituencies but in terms of ecosystems and environmental values. These discourses are literally "talking at cross purposes".

**All of the discourses agree with the statement "There are times when the needs and wants of local residents will conflict with the broader public interest" (S19/L18), although it is possible that discourses mean different things when they refer to "the broader public interest" – for example, market oriented discourses might be referring to a wider (perhaps national) economy, environmentally oriented discourses might be referring to a wider (perhaps global) ecosystem, and welfare oriented discourses might be referring to a wider (perhaps more inclusive) society. Nevertheless, it appears that a requirement to consider the interests of local residents as well as the interests of broader groups would be understood and accepted by all of the identified discourses.**

#### **6.5.2 Temporal extent of the relevant public**

This issue was introduced in Section 3.5.4, where matters such as the stability of the public interest over time and intergenerational equity were discussed.

Table 6.5 shows the statements that are relevant to the issue of the temporal dimensions of the 'relevant public' and the z scores of each discourse with respect to each of these statements. The 5 statements refer to the temporal dimension, change and future generations.

There is a high level of agreement in the responses to the statements about the temporal dimension. All discourses strongly agreed that "We must consider the

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services such as nutrient recycling, that maintain the conditions for life on earth." Millennium Ecosystem Assessment 2005, Ecosystems and Human Well-being: A framework for assessment. Accessed June 2008 at <http://www.millenniumassessment.org/en/index.aspx>



needs of future generations" (S22/L20), and strongly disagreed with statements that "Future needs will be the same as current needs" (S24/L22), that they are "changing too fast to predict" (S25/L23) or that "Technology will fix current problems" (S26/L24). Only the Market Orientation discourse tended towards the view that "People who make emotive claims about children's futures are using them for their own purposes" (S23/L21).

The only qualification to this apparent consensus is some doubt that all the discourses have the same time scale in mind when they refer to 'future generations'. For example, planners often refer to the medium term (for example a 50 year population prediction), and the longer term (for example a 100 year sea level rise prediction). The property development industry by the nature of its work tends to have a shorter time frame, for example referring to the next one or two generations of home buyers. Environmentalists tend to have a longer-term view of the future.

**Nevertheless, the growing awareness over recent decades of environmental problems and the need for solutions that are sustainable into the future means that there is acceptance across the discourses of the inclusion of the future public, rather than limiting the 'relevant public' to the current public. Furthermore, the strength of the acceptance is such that an analysis of the public interest that fails to include consideration of future generations would be regarded as inadequate.**

**Table 6.5 Statements relating to the problem of defining the temporal dimensions of the 'relevant public', and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S22	L20	We must consider the needs of future generations	+2.11	+1.26	+1.81	+1.89	+1.90	+1.85
S23	L21	People who make emotive claims about children's futures are using them for their own purposes	-0.92	+0.54	-1.45	-0.69	-0.17	-1.07
S24	L22	Future needs will be the same as current needs	-1.41	-1.47	-2.16	-1.17	-1.82	-1.81
S25	L23	The world is changing too fast to predict future needs	-1.26	-0.69	-1.11	-0.84	-1.06	-0.22
S26	L24	Technology will fix current problems	-2.47	-1.80	-2.70	-1.48	-1.61	-2.14

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

## **6.6 WHAT THE DISCOURSES SAY ABOUT THE STATUS OF PRIVATE INTERESTS**

This research issue was introduced in section 3.6 where it was described in three parts namely; inclusion of private interests in the public interest (3.6.2), self interest, altruism and questions of motivation (3.6.3), and commons problems, restrictions and penalties (3.6.4).

Table 6.6 shows the statements that are relevant to the issue of the relationship between private interests and the public interest and the z scores of each discourse with respect to each of these statements.

Statements S1/L1 to S4/L4 and S39/L37 to S41/L39 are about the inclusion of private interests in the public interest (for example S4/L4 “The best definition of the public interest is that it is the sum of the private interests of individuals”).

Statements S27/L25 to S31/29 refer to the issues of altruism and fairness to others (for example S27/L25 “When planning our own resource use we must consider the resource needs of others in our society”). Two of these statements present rationalisations for inequality. These are S30/L28 “The principle of ‘highest and best’ use of land means it is inevitable that cheap housing will be replaced with less affordable housing”, and S31/L29 “Because land near smelly or noisy activities will be cheaper, some people will always live there”. Agreement with either of these statements indicates the limit of altruistic beliefs, as agreement indicates that government intervention to prevent this inequality is not acceptable.

Finally statements S43/L41 to S62/L52 relate to commons problems, restrictions and penalties (particularly the payment of compensation for negative externalities, such as S46/L43 “Paying compensation to neighbours for the negative impact of a development is a form of bribery”).



**Table 6.6 Statements relating to the problem of private interests and collective interests, and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S1	L1	The best way to define the public interest is to say it must exclude private interests	-1.62	-1.76	-0.17	-0.44	-1.33	-0.15
S3	L3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	+1.00	-0.30	+0.88	+0.75	+1.16	+1.33
S4	L4	The best definition of the public interest is that it is the sum of the private interests of individuals	-0.80	+0.70	+0.56	-0.84	-0.80	+0.86
S27	L25	When planning our own resource use we must consider the resource needs of others in our society	+1.42	+0.32	+0.55	+1.23	+1.27	+1.01
S28	L26	People have to look out for themselves and act in their own best interests	-0.56	+0.49	-0.62	-0.73	-0.96	-0.92
S29	L27	When deciding planning issues it is important to consider the interests of the poor and the powerless in our society	+1.58	-0.17	+1.36	+0.99	+1.44	+1.13
S30	L28	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	-1.08	+0.14	-0.25	+0.43	-0.45	-0.37
S31	L29	Because land near smelly or noisy activities will be cheaper, some people will always live there	+0.09	+1.40	+0.19	+0.59	+0.37	+0.29

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

Continued next page

Table 6.6 continued

S39	L37	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.80	+0.84	-1.32	-0.38	+0.37	-0.25
S40	L38	It is important that public officials serve the public interest, rather than partisan or sectoral interests	+0.98	-0.12	+0.83	+1.33	+1.19	+0.84
S41	L39	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	+0.30	-1.38	+0.34	+1.43	+1.53	+0.86
S43	L41	It's good that people's rights to develop property are restricted by regulations that serve the public interest	+1.14	-0.17	+0.91	+1.19	+1.27	+0.74
S45	L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	-0.21	+0.32	-0.34	+0.87	-0.29	-1.23
S46	L43	Paying compensation to neighbours for the negative impact of a development is a form of bribery	+0.37	-0.54	-0.20	-0.63	-0.44	+0.24
S47	L44	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.99	-1.89	+0.62	+0.84	+0.46	+1.03

The views of each discourse with respect to this issue are summarised below.

The Balanced Approach conceptualises the public interest in terms of collective interests (S3/L3, S39/L37) rather than in terms of private interests (S4/L4, S28/L26, S41/L39). It does not exclude private interests from the public interest (S1/L1). It agrees that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38).

This perspective shows concern for others (S27/L25, S29/L27) and sees some social problems as capable of being addressed (S30/L28).

It displays support for the restriction of property rights (S43/L41) but shows a lack of commitment for or against the use of compensation for negative externalities (S45/L42) perhaps because they are concerned that compensation enables developers to take actions that aren't in the public interest (S46/L43, S47/L44).

The Market Orientation views the public interest in terms of private interests (S1/L1, S4/L4). Of all the discourses identified, this one has the strongest belief that all behaviour is motivated by self-interest (S28/L26, S39/L37). It does not agree that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38).

This is the only discourse that rejects the notion of collective interests (S3/L3). It displays little interest in altruism, and is the only discourse that rejects the importance of considering the needs of the poor and the powerless (S29/L27). It also has the highest level of acceptance of the inevitability of poor living conditions (S31/L29).

This perspective does not see commercial interests as different from the public interest (S41/L39) and does not accept that there is a need to restrict property rights (S43/L41). If negative externalities do occur, this perspective endorses the use of compensation (S45/L42) and does not view the use of compensation



as a form of bribery (S46/L43) or as a means of buying permission to circumvent the public interest (S47/L44).

The Localism perspective is one of two discourses that embrace both the private interest conception (S1/L1, S4/L4) and the collective interest conception (S3/L3) of the public interest (the other discourse to do so is the Anti-Authoritarian perspective).

Its commitment to the private interest conception is not as strong as that of the Market Orientation as it denies that people only act in their own self-interest (S28/L26, S39/L37). It also displays altruistic tendencies (S27/L25, S29/L27, S30/L28).

The Localism perspective agrees that commercial interests are not the same as the public interest (S41/L39), and that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38). It also agrees that property rights should be restricted (S43/L41). It does not advocate the use of compensation for negative externalities of development (S45/L42, S47/L44).

Turning now to the discourses that were identified among industry leaders (where there were fewer items in the instrument) the Environmentalism discourse rejects the private interest conception (S4/L4) and the suggestion that self-interest is the prime motivator of behaviour (S28/L26, S39/L37). It agrees that commercial interests do not equate with the public interest (S41/L39).

Instead it supports the collective conception (S3/L3), and agrees that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38). It advocates for the needs of others (S27/L25, S29/L27) although it sees limits to what can be done (S30/L28, S31/L29). In line with all of the discourses it rejects the notion that the public interest must exclude private interests (S1/L1).

With respect to the negative externalities of development, the Environmentalism discourse endorses the use of regulation to restrict property rights (S43/L41) and the use of compensation for negative externalities (S45/L42). It agrees that compensation can be a means of circumventing the public interest (S47/L44), but doesn't go so far to call it bribery (S46/L43).

The Executive Perspective favours the collective conception of the private interest (S3/L3), and argues for the needs of others who are less powerful (S27/L25, S29/L27, S30/L28). It agrees that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38).

It opposes the idea that the public interest is the summation of private interests (S4/L4) and that all behaviour is self-serving (S28/L26). However it does not seek to exclude private interests from the determination of the public interest (S1/L1), and it recognises that claims about the public interest are used as a smokescreen by people pushing their own point of view (S39/L37)

The Executive Perspective is the discourse that most strongly claims that commercial interests are not the same as the public interest (S41/L39) and most strongly supports the use of regulations restricting property rights (S43/L41). It does not advocate the use of compensation for negative externalities (S45/L42)

Anti-Authoritarianism is the second discourse that embraces both the private interest conception and the collective conception of the public interest. In fact it provides the highest score supporting the explicit statement of the collective conception (S3/L3) and the highest scores supporting the explicit statement of the private interest conception (S4/L4). It also accepts the use of market data (S9/L9.) It agrees that public officials should serve the public interest rather than partisan or sectoral interests (S40/L38).

The anti-Authoritarian perspective advocates caring for others who are less powerful (S27/L25, S29/L27, S30/L28) rather than only being self-interested (S28/L26, S39/L37).

This discourse supports the restriction of property rights (S43/L41), but expresses strong opposition to the use of compensation for negative externalities (S45/L42) and agrees that compensation enables actions that aren't in the public interest (S47/L44).

The overall finding on this issue is that:

- One discourse (Market Orientation) conceptualises the public interest in terms of the summation of private interests and argues that behaviour is motivated by self-interest. It is the only discourse that rejects the argument that public officials should serve the public interest rather than partisan or sectoral interests.
- Three discourses (Balanced Approach, Environmentalism and Executive Perspective) base their concept of the public interest on collective interests and altruistic behaviour, but leave open the door for the consideration of private interests (that is, they do not exclude private interests from the public interest (S1/L1)).
- Two discourses (Localism and Anti-Authoritarianism) embrace both conceptions.

All six discourses reject the statement that the best way to define the public interest is to exclude private interests. Five of the six discourses agree that the public interest refers to our collective interest. **Five of the discourses accept the inclusion of both collective and individual interests, and the remainder, the Market Orientation, whilst rejecting the collective interest definition, would most likely be accepting of a definition of the public interest that includes private interests. Therefore, the most profitable approach to operationalising the concept of the public interest would be to allow common interests and private interests to be considered.**

Although one discourse (Market Orientation) believes that behaviour is motivated by self-interest, all discourses displayed at least a modest level of



altruistic values (that is, they agreed that when planning our own resource use we must consider the resource needs of others in our society). There was agreement on only one of the two statements expressing rationalisations for inequality. Therefore, **there is likely to be acceptance by all discourses of guidelines that require some, but not too much, altruistic concern for others.**

With respect to the matter of compensation, **there are no areas of agreement, which suggests that it would be better to avoid compensation in the guidelines.**

## **6.7 WHAT THE DISCOURSES SAY ABOUT PEOPLE AND PROCESSES**

This issue was introduced in section 3.7. It is concerned with which people are in the best position to determine the substantive content of the public interest and what processes should be employed by them to do so.

Table 6.7 shows the statements that are relevant to the issue of which processes and people should be involved when determining the public interest and the z scores of each discourse with respect to each of these statements. The first statement (S2/L2) is about due process. It is followed by statements (S5/L5 to S9/L9) about who has the best knowledge about the public interest (for example S8/L8 “The general public have the best knowledge of the public interest”). Statements S58/L49 to S64/L55 are about the level of agreement needed to resolve differences of opinion (for example S58/L49 “Before you can say what is in the public interest there needs to be consensus of opinion”). Statements S65/L56 to S71/L60 are about public consultation and statements S72/L61 to S77/L65 are about the use of experts.

The Balanced Approach does not view due process as sufficient (S2/L2) and does not endorse any source of information as the ‘best’ (S5/L5 to S9/L9). It supports the use of research to resolve differences of opinion (S63/L53), public

participation (S65/L56 to S72/L61) and the involvement of experts (S73/L62 to S77/L65).

The Market Orientation does not see due process as sufficient (S2/L2), but of the possible information sources (S5/L5 to S9/L9) sees markets as the best indicator of the public interest. It is inclined towards the position that consensus is required for statements about the public interest to be made (S58/L49), is neutral on public interest research (S63/L53) and does not endorse the resolution of differences by those in authority (S64/L55). It agrees that public participation can reduce the risk of unjust decisions (S71/L60) but is otherwise dismissive of public participation (S65/L56 to S72/L61). This discourse supports the involvement of experts (S73/L62 to S77/L65).

The Localism discourse agrees that due process is sufficient (S2/L2) and values all sources of information except politicians (S5/L5 to S9/L9). It sees consensus as being a requirement for determining the public interest (S58/L49), and differences of opinion being resolved by majority opinion (S62/L52) and research (S53/L63). It is strongly in favour of public participation (S65/L56 to S72/L61) and supports the involvement of experts (S73/L62 to S77/L65).

The Environmentalism discourse does not believe that due process is sufficient (S2/L2). It does not endorse any group as having the best knowledge about the public interest (S5/L5 to S9/L9). It agrees that we serve the public interest if we implement the option that does most to promote important public interest objectives (S61/L51), and it sees research as being the best method of resolving differences of opinion (S63/L53). It is mostly positive towards public participation (S65/L56 to S72/L61), and supports the involvement of experts (S73/L62 to S77/L65).

The Executive Perspective values due process and believes it will produce results that are in the public interest (S2/L2). It does not endorse any group as having the best knowledge about the public interest (S5/L5 to S9/L9). It is the discourse that agrees most strongly that that we serve the public interest if we implement the option that does most to promote important public interest

objectives (S61/L51). It is also the discourse that most strongly rejects the idea that consensus is needed before one can say what is in the public interest (S58/L49). Of the methods for resolving differences of opinion (S62/L52 to S64/L55) it favours resolution by those in authority. It is positive towards public participation (S65/L56 to S72/L61) and supports the involvement of experts (S73/L62 to S77/L65).

Anti-Authoritarianism also values due process and believes it will reveal the public interest (S2/L2). It sees the public as having the best knowledge of the public interest (S5/L5 to S9/L9). This is the discourse that has the strongest belief that consensus is needed before one can say what is in the public interest (S58/L49). Acceptable methods of resolving differences of opinion include majority opinion and research, but not by the decision of those in authority (S62/L52 to S64/L55). It supports public participation in determining the public interest (S65/L56 to S72/L61) and it supports the involvement of experts in the process (S73/L62 to S77/L65).



**Table 6.7 Statements relating to the problem of selecting processes and participants, and the associated z scores of each discourse.**

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
S2	L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.04	-0.50	+1.14	-0.82	+0.29	+0.87
S5	L5	Politicians have the best knowledge of the public interest	-1.33	-2.13	-2.35	-1.36	-1.07	-2.53
S6	L6	Planners have the best knowledge of the public interest	-0.16	-1.62	+0.01	-1.48	-0.77	-0.43
S7	L7	Technical experts have the best knowledge of the public interest	-0.96	-1.19	+0.04	-1.40	-1.21	-1.56
S8	L8	The general public have the best knowledge of the public interest	-0.60	-1.69	+1.05	-0.40	-0.07	+1.01
S9	L9	Markets are the best indicator of the public interest	-0.33	+1.25	+0.07	-1.93	-1.14	+0.10

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)

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Table 6.7 continued

S58	L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.62	+0.36	+0.43	-0.14	-1.22	+0.74
S60	L50	The diversity of views in our society means that the public interest is a phantom and cannot be identified	-1.52	+0.37	-0.62	-0.74	-0.54	-0.67
S61	L51	We serve the public interest if we implement the option that does most to promote important public interest objectives	-1.07	+0.03	-0.25	+0.55	+0.81	-0.53
S62	L52	If we satisfy majority opinion then we will serve the public interest	-1.09	-0.23	+0.04	-0.81	-0.80	+0.21
S63	L53	Differences of opinion can be resolved through public interest research that clarifies issues	+0.84	+0.02	+0.18	+0.56	-0.69	+0.51
S64	L55	Differences of opinion should be resolved by those in authority	-1.13	-0.83	-0.76	-0.55	+0.13	-2.15
S65	L56	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76	+0.74	-1.17	-1.31	-0.66	-1.21
S68	L57	Unless public consultation occurs the final decision will lack legitimacy and will not be accepted by the community	+0.72	+0.31	+0.32	-0.10	+0.93	+0.86
S69	L58	Meaningful public participation takes time but it's worthwhile because it can result in better decisions that have wider support	+1.15	-0.26	+1.33	+1.23	+1.56	+0.86

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Table 6.7 continued

S70	L59	Public participation in decision making creates more heat than light	-0.86	+0.18	-1.15	-1.02	-0.75	-0.82
S71	L60	Public consultation, if taken seriously, can reduce the probability of making decisions that are unjust	+0.87	+1.15	+0.85	+1.24	+1.20	+0.86
S72	L61	Members of the public are not able to assess the technical details of a proposal	-0.59	+1.67	-0.12	-0.50	-0.85	-0.17
S73	L62	It's important that expert opinion be obtained before politicians make decisions	+1.36	+1.84	+1.38	+1.01	+1.32	+1.13
S74	L63	Research can make an important contribution to understanding what is or isn't in the public interest	+1.01	+0.90	+1.04	+1.20	+1.28	+0.71
S75	L64	Consulting experts is often a waste of time because they usually disagree	-1.36	-1.24	-2.22	-1.03	-1.24	-1.74
S77	L65	Expert knowledge can be enhanced by the addition of local knowledge	+1.29	+1.34	+1.22	+1.68	+1.54	+1.33

Highlighting indicates that all of the discourses are in agreement on this statement (that is, they are all positive or all negative scores)



Therefore on matters relating to the people and processes that should be used when determining the public interest there are four areas of agreement among the discourses:

- Rejection of the statement that politicians have the best knowledge of the public interest (S5/L5).
- Agreement that public consultation can reduce the probability of making decisions that are unjust (S71/L60). This, however, is only one of seven statements about the role of the public, and there was disagreement with respect to the other six (listed below). This is an example of where the area of disagreement might be characterised a 'lowest common denominator'. Statements about public consultation giving legitimacy to decisions (S68/L57 and S69/L58) each came close to being areas of agreement, with only one discourse in each case showing mild disagreement or ambivalence, or tolerance of the view expressed in the statement (Mattson *et al.*, 2006, p401).
- Agreement that research can make an important contribution to understanding what is or isn't in the public interest (S74/L63).
- Agreement on the benefits of using experts, namely that it is important for expert opinion to be obtained before politicians make decisions (S73/L62); that it is not true that consulting experts is a waste of time because they usually disagree (S75/L64) and the expert knowledge can be enhanced by the addition of local knowledge (S77/L65).

Notable areas of disagreement are:

- The value of public participation – apart from the agreement with respect to statement S71/L60 (discussed above) there was disagreement on all other statements about the role of the public and the benefits of public participation (S8/L8, S65/L56, S68/L57, S69/L58, S70/L59, S72/L61)
- Need for consensus or even majority opinion (S58/L49, S62/L52)

- The value of market data as an indicator of the public interest (S9/L9)

**Therefore it is concluded that, with respect to the procedures to be used and the people to be involved in determining the public interest, there is mostly disagreement among the discourses. There are, however, four areas of agreement, namely:**

- **the rejection of politicians as having the best knowledge of the public interest,**
- **agreement that public consultation can reduce the probability of making decisions that are unjust,**
- **agreement that research can make an important contribution to understanding what is or isn't in the public interest, and**
- **acceptance of expert input,**

During data gathering it became apparent that some research participants distinguished between public participation in the issues-identification stage (which they thought was valuable) and public participation in the later, decision-making stage (which they thought was less appropriate).

This gave rise to the idea of separating of the issues-identification stage and the decision-making stage when discussing people and processes. This suggestion had been implemented in Chapter 8 (section 8.7).

## **6.8 CONCLUSION**

The preceding analysis indicates that a numbers of areas of agreement between the discourses can be identified:

- The discourses agree that the public interest is an important factor that needs to be considered (section 6.2).
- A description of the public interest in terms of its multiple dimensions, or the multiple public interests that need to be addressed and balanced, would be understood and accepted as a framework by all of the discourses (section 6.3).

- The discourses agree that advising the public on the criteria that will be used by decision makers is desirable, but in the case of public interest matters, the relevant criteria may not be fully understood by decision makers prior to consultation (section 6.4).
- With respect to the scope of the relevant public (section 6.5):
  - All of the discourses agree that there are times when the needs and wants of local residents will conflict with the broader public interest.
  - There is acceptance across the discourses of the inclusion of the future public, rather than limiting the 'relevant public' to the current public.
- Five of the discourses accept the inclusion of both collective and individual interests. The remainder, the Market Orientation, whilst rejecting the collective interest definition, would most likely be accepting of a definition of the public interest that includes private interests. Therefore the most profitable approach to operationalising the concept of the public interest would be to allow common interests and private interests to be considered (section 6.6).
- With respect to the procedures to be used and the people to be involved in determining the public interest, there is mostly disagreement among the discourses (section 6.7). There are, however, some areas of agreement. These are:
  - the rejection of politicians as having the best knowledge of the public interest,
  - an agreement that public consultation can reduce the probability of making decisions that are unjust,
  - an agreement that research can make an important contribution to understanding what is or isn't in the public interest, and



- an acceptance of expert input.

Therefore the second research issue, whether it is possible to identify areas of agreement among the discourses, has been answered in the affirmative, although the areas of agreement are relatively small compared to the areas of disagreement.

The next chapter explains the methodology for addressing the third research issue, namely whether an operational meaning of the public interest can be based on these areas of agreement and what principles or procedural standards for invoking the public interest they suggest.

## **CHAPTER 7**

### **METHODOLOGY II:**

### **DEVELOPMENT AND EVALUATION OF THE GUIDELINES**

#### **7.1 INTRODUCTION**

Having identified where the discourses agree about the concept of the public interest in Chapter 6, attention will now turn to developing guidelines for determining the public interest that are based on those areas of agreement. This development will occur in two stages.

The first stage involves searching relevant practice to identify techniques that are compatible with the areas of agreement, and developing these into a set of guidelines. The methodology for this work is discussed in section 7.2, and the work itself is presented in Chapter 8.

The second stage involves evaluating and improving the proposed procedure. The methodology for the evaluation is discussed in section 7.3, and the work itself is presented in Chapter 9. The final version of the procedure is presented at the end of Chapter 9.

#### **7.2 METHODS FOR THE DEVELOPMENT OF THE GUIDELINES**

##### **7.2.1 The use of mixed methods**

Having used a qualitative method to identify the research issues, and a quantitative method to identify areas of discourse agreement, the next research phase will use qualitative methods. That is, the starting concepts (the persistent ambiguities) arose from qualitative data (questions raised by training participants and audience members) and these directed the selection of statements used in the quantitative Q Method research. In the next phase that results of that quantitative research, namely the areas of discourse agreement, will set directions for the qualitative search of current practices.

The integration of qualitative and quantitative research methods is known as mixed methods research (Teddlie & Tashakkori 2009). However the use of mixed methods in this research is largely sequential rather than integrated, in

that the mixed methods are used in different phases of the research rather than being applied within one phase to achieve methodological triangulation.

Sequential use of quantitative and qualitative methods resembles one aspect of grounded theory (Glazer & Strauss 1967). Strauss & Corbin (1998, p34) advocate interplay between the two approaches, "The qualitative should direct the quantitative and the quantitative should feed back to the qualitative in a circular, but at the same time evolving, process with each method contributing to the theory in ways that only each can". It is not claimed that grounded theory methodology as a whole is being applied or is applicable. This research is not intended to produce explanatory theory and does not use the procedures set out by either the Glazer school of grounded theory or those of the Strauss school.

The methodology that has most influenced this phase of the research is loosely described as 'Research and Development' or 'R&D'. Rothman (1980) has described the application of this methodology to the development of intervention programs in the human services sphere. R&D typically involves a client defining a need and the researcher then drawing on existing knowledge and new research in a process that develops agreement about the design features and a prototype solution that is further refined through repeated trialling.

In this research, the 'client' is the body of planning practitioners who need guidelines for determining the public interest that fit their understanding of the concept, are politically acceptable and feasible to implement. In order to meet the practitioners' needs the guidelines should:

1. address the ambiguities that trouble practitioners, which were described in section 3.1;
2. be theoretically justifiable, in that it should be possible to trace any assumptions in the guidelines back to theoretical arguments about the nature of the public interest discussed in Chapters 2 and 3;
3. possess a unified logic and use well defined terms consistently;



4. be consistent with the areas of agreement among the discourses about the public interest that were identified in Chapter 6;
5. incorporate relevant practices found in NSW or Australian planning where appropriate;
6. address the concerns and critical feedback given by those practitioners who were involved before or during the development of the guidelines (see Appendix 12 and Appendix 15);
7. be feasible to implement, that is, not be too costly or difficult to operationalise.

If these requirements are satisfied then the guidelines will draw strength from their grounding in theory (requirements 2 and 3), areas of discourse agreement (requirement 4), current practice (requirement 5) and the needs of practitioners (requirements 1, 6 and 7). That is:

- **Theory** gives broad guidance, and provides the benefit of the wisdom that arises from decades (in this case centuries) of debate. The limitation of theory, for the task at hand, is that it does not always address the detailed issues that have arisen in the development phase.
- **Practitioner needs and areas of agreement** are useful in the setting of boundaries, and deciding which of the possible alternative approaches should be selected. The practitioner data is limited, however, because not all of the problems that arose during the development of the guidelines were canvassed in the Q Method research. (See examples (a to d) below.)
- **Current practice**, on the other hand, can be explored in detail as questions arise. For example, when the question of how government agencies make public interest criteria resistant to challenges, the methods used by government agencies to restrict public interest criteria can be examined. Similarly, to identify circumstances when a private interest can be a public interest, the logic used in court cases to decide which private interests have

a bearing on the public interest could be explored. The risk in using current practice is that it might not all prove to be good practice. Therefore discretion is needed, and theory and the areas of agreement were used to guide the selection of practices.

### **7.2.2 Challenge of R&D methodology**

R&D methodology aims to deliver a complete and well integrated solution to a problem so it is not uncommon for issues to arise in the development phase that were not addressed in the research phase. In this research the Q Method stimulus material (the statements) had been selected on the basis of the ambiguities raised in seminars on the public interest, but it became apparent during the research that there were some even more fundamental questions about the public interest. The main examples of this are:

- a) Is the public interest context specific? That is, does a determination of the public interest with respect to a particular issue in one context apply to other the same issue in other locations or at other times? This issue was not addressed in the statements used in the Q Method research, but it needs to be addressed in the formulation of guidelines. This matter is resolved in section 8.5.3.
- b) A related issue (also not addressed in the Q Method statements) is whether the procedure itself is applicable in all legislative contexts or if the procedure should be context specific. In an email correspondence with the researcher, the Acting Registrar of the NSW Land and Environment Court noted, "the interpretation of words such as 'the public interest' in one specific legislative context may not be applicable in another legislative context. A formula for determining 'the public interest' in that specific legislative context, similarly, may therefore not be applicable in another context" (Gray 2010). The researcher agrees that in the NSW planning and property development context there are several potentially relevant legislative instruments that refer to 'the public interest' in ways that may be interpreted differently. However, it is suggested that procedures can be developed that could accommodate these different legislative contexts. This matter will be revisited in Chapter 10 (section 10.6).



- c) What sort of balancing test should be used? Section 6.3 described how the agreement about the TBL balancing statements indicated that a balancing model of the public interest and the use of a balancing test might be acceptable. A number of balancing tests are described in the review of practice (see section 8.3.2). A decision is needed about which model is most appropriate, but the Q Method research did not assist this decision. Four very general statements on public interest testing were trialed in the student Q Method research but were deleted from the leader version because participants did not have a clear understand of what a public interest test was, and the statements didn't relate specifically to the areas of ambiguity. With hindsight, those statements could have been about different types of balancing tests. However, that didn't happen, so a decision about the most appropriate model needs to be made on the basis of the available information.
- d) Does only the best option serve the public interest? This is another fundamental question that was not one of the six research issues covered. Yet it underlies many of the problems that arise when claims about the public interest take the form of "x is in the public interest because x provides public benefits". Such a statement begs the question, "are there other options that provide more benefits or less detriments or both?" Only one of the statements used in the Q Method research referred to finding the best option (S61/L51: "We serve the public interest if we implement the option that does most to promote important public interest objectives"). The discourses did not agree on this statement. If more statements on this matter had been included then some area of agreement may have been identified. In particular, it would have been useful to include a statement such as "Only the option that creates the most benefit or the least detriment is in the public interest". Without such data, a decision had to be made with the available information (see section 8.7.7).

### **7.2.3 Application of R&D methodology**

During the development process some draft guidelines were 'road tested' with a small number of interest group members, through conference papers, and through a workshop with UTS postgraduate students. These participants



provided valuable feedback, which is summarised in Appendix 12. Of particular interest are the:

- reluctance of some interest group members to identify the benefits of the options proposed by their 'opponents';
- negative reaction of conference audiences to early versions of the procedures that used quantitative methods of weighing interests, and more positive reaction to later version that used qualitative methods;
- confusion about some aspects of the proposed procedure which caused misunderstandings on the part of the university workshop participants.

Overcoming these problems is the objective of requirement 6 in section 7.2.1 above. It is also the essence of the R&D methodology.

The development process initially resulted in 16 guidelines. These are presented in Chapter 8. Each guideline is presented in a box. Guidelines 1 to 8 provide the foundations for a procedure. Guidelines 9 to 16 build on the foundations and describe the steps in the procedure. The latter are illustrated by an assessment of whether locating a correctional centre at Nowra on the NSW south coast is in the public interest.

In keeping with R&D methodology, the small trials conducted during the development phase were augmented with a larger scale evaluation. The design of that evaluation is discussed in the next section.

## **7.3 METHODS FOR THE EVALUATION OF THE PROCEDURE**

### **7.3.1 Selection of the evaluation method**

The second methodology to be described in this chapter is that used to evaluate the proposed procedure that was contained within the guidelines. The researcher decided the following parameters:

- Evaluate one approach, not several. As only one procedure had been developed in detail, it was decided that only the one approach would be evaluated. A comparative evaluation would require locating or developing similarly detailed sets of procedural instructions for other operational definitions. Whilst this would be fruitful evaluative research, the locating or developing similarly detailed sets of procedural instructions was beyond the scope of this research.
- Conduct a formative evaluation, not a summative evaluation. Whereas summative evaluation occurs after implementation, formative evaluation occurs before or during implementation in order to detect and address weaknesses and to improve the object of the evaluation (Scriven 1991, pp168-199). Formative evaluation is more process-oriented than summative evaluation, which is more likely to be more outcomes-oriented.
- Discussion of the procedure, not trialing of the procedure. Some trials of the procedure on specific planning problems had already been undertaken during the development phase. Therefore this evaluation adopted a different approach, namely the engagement of practitioners in the property and planning sphere with experience in determining the public interest to discuss features of the proposed procedure.

The first aim of the formative evaluation was to elicit reactions to features of the proposed procedure with a view to using those reactions to improve the procedure. The second aim was to have others respond to those reactions in such a way that would generate suggestions for dealing with those reactions if they arise when the procedures are in use.

The desirable characteristics of the evaluation method are that it would:

1. allow participants to be anonymous as this means that ideas can be evaluated on their merit rather than on who has proposed the idea, and it limits stereotyping and hostility;
2. encourage the offering of evaluative comment and reasoning to assist the formative evaluation;

3. foster equity of participation by allowing each participant an equal opportunity to make comments;
4. encourage participants to engage with and respond to the unattributed ideas of other participants;
5. be efficient with respect to participants' time; and
6. enable the accurate and efficient recording of responses.

The researcher considered the following four methods of engagement for the evaluation:

**Workshop:** A workshop involves a face-to-face meeting of participants, and participants cannot be anonymous. Workshops, teleconferences and videoconferences are forms of 'interacting groups' (Van de Ven & Delbecq 1974, p605). A workshop is conducted on one or more occasions and requires participants to travel to one location. It can be structured or unstructured. It encourages interaction, but typically each participant will have *ad hoc* communications with selected individuals. Some participants will dominate discussion and it is difficult to record all responses with equal accuracy.

**Teleconference or videoconference:** This is a real-time meeting of participants by telephone or video link, on one or more occasions. This method eliminates the need to travel to one location and therefore can be more efficient with respect to participant's time. Otherwise it is similar to a workshop.

**Nominal group:** This involves a face-to-face group meeting. Participant anonymity is not possible. The meeting follows a structured format where:

- individuals silently and independently generate their ideas on a problem or task in writing;
- group members engage in a round-robin feedback session to concisely record each idea on a board or sheet of paper on the wall;



- after all individuals have presented their ideas, there is a discussion for the purpose of clarification and evaluation; and
- individuals silently rank or rate the ideas (depending on the agreed decision rule). The group decision is the outcome of individual votes. (Van de Ven and Delbecq 1974, p606)

Being highly structured, the nominal group technique can, with the assistance of a strong facilitator, prevent the group from being dominated by particular individuals. Recording occurs in steps 2 and 4, but less so in step 3. The output is in the form of ranked ideas, rather than in the form of narrative comment and reasoning.

**Delphi process:** The Delphi technique does not require that participants meet so participants can remain anonymous. Typically a Delphi process occurs over several rounds, where material is sent to each participant who completes the material in their own time and place before returning it to the researcher. The researcher collates and summarises the responses and sends this summary out in the next round with more questions. It is "a method for structuring a group communication process so that the process is effective in allowing a group of individuals, as a whole, to deal with a complex problem" (Linstone and Turoff 1975, p3). It allows for "the systematic solicitation and collation of judgments on a particular topic through a set of carefully designed sequential questionnaires interspersed with summarized information and feedback of opinions derived from earlier responses" (Delbecq *et. al.* 1975, p10).

These four methods are assessed against the six desirable characteristics as shown in Table 7.1. Delphi method was selected as it has more of the desirable characteristics than any of the other methods that were considered. Features of Delphi methodology are described in the next section.

**Table 7.1 Comparison of possible research methods**

<b>METHOD DESIRABLE CHARACTERISTIC</b>	<b>Workshop</b>	<b>Tele/Video Conference</b>	<b>Nominal Group</b>	<b>Delphi</b>
Responses can be anonymous to allow ideas to be judged on their merit?	No	No	No	Yes
Suitable for formative evaluation in that it encourages the offering of evaluative comment and reasoning?	Yes	Yes	<b>Not likely</b> As ranking of options is the usual output	<b>Yes</b> If open-ended survey items are used
Fosters equity of participation?	<b>No</b> Difficult, some participants will dominate	<b>Possible</b> If chair controls speakers	<b>Likely</b> (in steps 2 and 4, but not 3)	<b>Possible</b> Although participants can omit rounds or items
Encourages participants to engage with and respond to the ideas of other participants?	<b>Possible</b> Although most participants will focus on ideas of only a few	<b>Possible</b> Difficult to follow real-time debate among unseen strangers	<b>Yes</b> If chair controls speakers	<b>Likely</b> As ideas of others are presented in the next round
Efficient with respect to participants' time - Can participants select times and place to participate?  - Does it eliminate the need for participants to hear responses in real time?	No  No  No	No  No  No	No  No  No	Yes  Yes  Yes
Accurate and efficient recording of all responses?	No	No	<b>Yes</b> (in steps 2 and 4, but not 3)	<b>Yes</b> Participants do the recording

Source: Developed by the researcher for this work using sources listed in section 7.3.1.

### 7.3.2 Delphi methodology

#### Purpose

When the Rand Corporation developed Delphi methodology for defence research in the USA in the early 1950s, the objective of the original study was to obtain a consensus of opinion of a group of experts on particular issues. The issues related to long-range trends, and the opinion took the form of a prediction (Linstone and Turoff 1975, p10). This early emphasis on forecasting the future has been overtaken by its use in a wide variety of tasks, including design and evaluation. The focus on consensus has also diminished, although it is more relevant to some tasks (such as design) than to others (such as evaluation). Certainly the idea has persisted that each participant will refine his or her views in the light of the group's responses. This is the main logic behind the iterations and the feedback that is provided with each round.

Novakowski and Wellar (2008) describe the possible use of the Delphi technique in planning. They distinguish among the Normative Delphi, which explores the preferred future state or process; the Forecasting Delphi, which predicts likely future states or processes, and the Policy Delphi, which explores matters of political interest or consequence. Examples of the use of Delphi in planning include:

- Morgan *et al.* (1979) who use Delphi as a decision making aid in planning practice;
- Molnar and Kammerud (1975) who use a Delphi process to identify components of satisfaction indicators of the modern urban milieu and to determine their importance and alterability; and
- Needham and de Loe (1990) who describe the suitability of using Policy Delphi to synthesise divergent opinions and evidence about Canadian water policy.

The method is potentially applicable to a wide variety of situations in planning research and practice.



### Participants

Criteria used in the selection of participants might include:

- Expertise with respect to the issues under investigation
- Heterogeneity requirements if the group is required to represent (or be drawn from) a number of disparate groups whose responses will be analysed separately
- Availability and willingness to participate
- Communication skills (Skulmoski *et al.* 2007, p10).

The number of participants that are needed depends on whether data on disparate groups is to be analysed separately. If not, and there is no requirement for a low degree of error, or the generalisability of the results to the wider population, then a group of 10 to 15 will be sufficient (Skulmoski *et al.* 2007, p10).

The recruitment of participants depends on the selection criteria and the size of the pool. In some cases the number of people meeting the expertise criteria might be small and all of those people are invited to participate. Where the pool is larger, an element of random selection needs to be introduced to prevent any bias that the researcher might introduce. One way reducing researcher bias is to use a 'snowball' technique where the researcher identifies a number of contacts who would know other people who meet the criteria, and invites those contacts to invite others (Web Centre for Social Research Methods 2006).

### Mode of interaction

Possible modes of interaction include paper-based mail, email, and on-line surveys.

### Number of rounds

The number of rounds of interaction (iterations) is variable and depends on such factors as the purpose of the research, the need for consensus, and the heterogeneity of the group. "However, if the goal is to understand nuances (a goal in qualitative research) and the sample is homogenous, then fewer than three rounds may be sufficient to reach consensus, theoretical saturation, or uncover sufficient information" (Skulmoski *et al.* 2007, p11).

### Activities

The first activity should be something that promotes mutual understanding of the problem and assists in team building, such as the development of a 'straw model' that could be used to refine the solution in later rounds (Rotondi & Gustafson 1996, p43). Following that, the activities can be designed to produce quantitative or qualitative results, depending on the purpose. The challenge is to retain the interest of the participants through a variety of interesting activities and questions.

### Aggregation of results

The researcher presents the synthesised results of each round in the subsequent round. There is a tension between, on the one hand, the need to summarise feedback (and perhaps rephrase it) to conceal the source and authority of that source and, on the other hand, the need to represent the source accurately.

Using this outline of the Delphi method, the next section describes how the approach was applied in this research.

## **7.3.3 Application of the Delphi methodology in this research**

### Purpose

The first aim of this evaluation, as described in section 7.3.1, is to elicit reactions to features of the proposed procedure with a view to using them to improve the procedure. The second aim is to have others respond to those reactions in such a way that generates suggestions for dealing with those reactions if they arise when the procedures are in use.

### Participants

The following criteria were used in the selection of participants:

- Expertise - Participants needed to have had experience of determining whether a planning proposal serves the public interest, or identifying which planning option best serves the public interest.
- Heterogeneity - Participants were drawn from the ranks of:
  - planners (working in state or local government or in the private sector);

- developers (commercial or residential, at any scale);
- elected representatives (state or local government); and
- technical experts (for example, experts in public consultation, transport, environment etc.).

There would be no reporting by sub-group. That is, the group would be treated as a single group of experts in the planning and property development sphere who had experience with determining the public interest.

To recruit participants the researcher emailed contacts in the planning and property development sphere, invited them to participate and (in some cases) asked them to extend the invitation to persons in the sub-groups listed above who met the 'expertise criteria' described above. Those who were interested contacted the researcher who then sent them the Preliminary Reading (see Appendix 13) and included them in the Delphi group.

The researcher aimed to have approximately 10 participants in the Delphi process, with at least 2 from each of the 4 groups listed above. 13 people were recruited (see Table 7.2 below), and 11 of these participated although 4 did not participate in every round (due to travel commitments). This participation rate is similar to what could be expected from a panel of 13 experts used to determine public interest matters via attendance at a series of meetings. If a matter was decided over a period of 4 weeks, one could expect some members of the panel to be unavailable for the full 4 week period, and others to be unavailable for some part of the period. Nevertheless the committee process continues and a decision is reached.

See Appendix 1 for details of how ethical issues associated with this research, such as informed consent and participant confidentiality, were managed.

#### Mode of interaction

The Delphi process was conducted using online survey software. The company that was used for the online Q Method survey, Zoomerang (see <http://www.zoomerang.com/> for details), was also used for the Delphi process.



**Table 7.2 Participants in the Delphi process**

ID	Relevant current (and previous) roles where known	State, gender and participation details
R1	Property agent, developer, spokesperson for real estate agents association	NSW, male, participated in all rounds
R2	Member of the public, environmentalist, interests in the building industry	NSW, female, could not participate in Rounds 3 & 4
R3	Private sector planner, law student	NSW, female, did not participate in Round 3
R4	Consultant planner, mediator	NSW, male, did not participate
R5	State government regional planner	Queensland, female, missed Round 1 and departed overseas at the end of Round 3
R6	State government planning manager	Queensland, male, participated in all rounds
R7	Local government Councillor and consultant (former Shire Clerk, Mayor)	NSW, male, participated in all rounds
R8	Local government Councillor	NSW, male, participated in all rounds
R9	Local government environmental and strategic planner	NSW, female, participated in all rounds
R10	State government planner, local government Councillor	Victoria, female, did not participate
R11	Local government planner and public consultation specialist (formerly a social planner)	NSW, female, was unable to participate in Round 3
R12	Local government planner, and consultant urban designer	NSW, male, participated in all rounds
R13	Public consultation specialist working in the private sector, serving planning and development industry	NSW, male, participated in all rounds

Source: Developed by the researcher for this work

### Number of rounds

Participants were advised that there would be a maximum of 5 rounds over 5 weeks. In fact there were 4 rounds over 4 weeks followed by an email containing the results of the last round.

The rounds were each open for 5 days with 2 days between each round. That is, the process ran for 26 days, and participants were engaged once each week for between 15 and 30 minutes. This constituted an efficient use of their time, but also gave them the opportunity to reflect between rounds.

There was some evidence that participants modified their opinions between rounds. In particular, when comments from previous rounds were used in Round 4, and participants were invited to select those they agreed with, on several occasions the person who originally made the comment no longer agreed with it (that is, they did not include it in their selection).

### Activities

As described above, it has been suggested that in order to generate mutual understanding of the problem among the participants, they be given an initial task of creating a 'straw model' of the problem, in this case a procedure for determining the public interest. However, as such a model had been generated by the research so far, it was decided that instead of asking the participants to create a model they would be provided with Preliminary Reading (see Appendix 13) that described the model. Whilst providing a model framework, this is not an ideal method of generating mutual understanding or team building. It does, however, allow an efficient use of expert time and saves covering the complex ground already covered in this research. The Preliminary Reading oriented the participants to the task of reviewing an existing procedure.

The Preliminary Reading (Appendix 13) consists of an introduction that explains why the public interest should focus on interests of a public nature and not on interests that are exclusively private, and describes the proposed procedure for determining the public interest. It then sets out the procedure in 9 steps, using a hypothetical example that reflects a problem that is common to NSW planners at present (the aspects of this that were unique to NSW were explained to the interstate recruits by email). The Preliminary Reading (and the survey instruments) presented a slightly simplified version of the procedure. Some elaborations and qualifications that are contained in the guidelines in Chapter 8 were not included. This was intended to assist participation and did not significantly reduce the usefulness of the evaluation.

The activities used in the 4 rounds are shown in the survey instruments (Appendix 14) and are also explained in the data (Appendix 15). In summary, they involved:

- Rounds 1 – voting on multiple-choice items (single response) and providing comments;
- Round 2 – classifying interests as public, private or private requiring protection in the public interest, and providing comments;
- Round 3 – providing comments;
- Round 4 – voting on multiple-choice items (multiple response) that included the views of participants expressed in previous rounds and providing comments; and
- Feedback – results of Round 4 were summarised and sent to the respondents by email.

The Delphi group were not be given the task of acting as a panel to use the procedure to make a determination, because the group did not constitute a “group of people who can represent the values of the organisation or group in whose name the determination of the public interest is being made” (Guideline 10). It is possible that the Delphi method could be used to do this with a group that met this requirement.

Aggregation of results - Results of each round were collated by the researcher and distributed to participants in the next round. In most cases only a selection of the comments were presented. These were selected on the basis of their presenting a significant challenge to the procedure.

## **7.4 CONCLUSION**

As described above, the guidelines are developed in two stages. The initial version of the guidelines is developed in Chapter 8 and then modified in Chapter 9 using the results of the formative evaluation. That is, the full process



of developing the guidelines involves not only the three components described in section 7.2 (theory, areas of practitioner agreement, and current practice) but also the results of the evaluation described in section 7.3.

The final version of the guidelines, presented at the end of Chapter 9, is not subjected to further evaluation or trialing within this thesis, although that process should continue if the results of this research are to be promulgated and implemented.

## CHAPTER 8

### DEVELOPMENT OF GUIDELINES FOR INVOKING THE PUBLIC INTEREST

#### 8.1 INTRODUCTION

The methodology for developing the guidelines for invoking the public interest was discussed in Chapter 7. This chapter deals with the substantive content of that development process. It describes the development of guidelines that are compatible with those aspects of the concept of the public interest on which the discourses are in agreement. These approaches are the likely elements of a *modus vivendi* for debating the substance of the public interest, as they are unlikely to impede such discussion.

Five approaches to defining the public interests described in Chapter 2. Some of these have now been rejected:

- Unitary interest theories of the public interest (requiring that a society has a unitary scheme of moral principles that guide every individual) were rejected in Chapter 2 because they do not allow for the possibility of conflicting interests, and have lost credibility across disciplines.
- Group interest theories of the public interest were also rejected in Chapter 2 because they fail to consider the interests of those sections of the public that are not represented in the group bargaining process and so do not provide an appropriate basis for determining the public interest. Consequently these theories were not well represented among the statements in the Q Method research. However, one statement did directly relate to group interest theories, namely, "Politicians have the best knowledge of the public interest" (S5/L5). All of the discourses strongly rejected this statement. Therefore, as group interest theories suggest that it is through the decision making of politicians that the public interest is determined, it is concluded that group interest theories of the public interest would not be accepted in the planning and property development sphere as the basis for determining the public interest.
- Individual interest theories of the public interest were criticised in Chapter 2 for failing to include any notion of shared interests, and were judged,

therefore, to be not applicable to planning. This was tested in the Q Method research by statement, "The best definition of the public interest is that it is the sum of the private interests of individuals" (S4/L4). Three discourses agreed with the statement (Market Orientation, Localism and Anti-Authoritarianism) and three disagreed with it (Balanced Approach, Environmentalism and Executive Perspective). Therefore the individual interest theories do not provide an area of agreement which could be the basis for a method of determining the public interest.

- Common interest theories of the public interest were tested by statement, "The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all" (S3/L3). This statement was agreed with by five of the discourses, but weakly rejected (-0.30) by the Market Orientation discourse. Therefore, of these four approaches (unitary, group, individual and common interests) the common interest approach has the greatest level of support among the discourses. It still, however, has the problem of not being the preferred approach of the Market Orientation discourse, which favours individual interest approaches.
- Approaches that combine common and private interests therefore have potential, especially as all of the discourses allowed for the inclusion of private interests in the determination of the public interest, that is, they all disagreed with statement "The best way to define the public interest is to say it must exclude private interests" (S1/L1).

Therefore at this stage it is proposed that the development of the operational meaning of the public interest be based on a combined (common plus private interests) approach. This approach should include only those private interests that meet a criterion that is some way associated with public (common) interests. This condition is necessary if part of the role of planning is to balance public and private interests, as the public interest needs to be understood separately from private interests in the first instance. This aspect of the operational meaning will be further developed in sections 8.6 and 8.7.4.

This chapter is structured in terms of the six persistent ambiguities that were introduced in Chapter 3 and used in Chapter 6 to identify areas of agreement.



For each of the six ambiguities, the material presented in Chapters 3 and 6 is summarised and then relevant practice models are drawn from the work of the NSW Ombudsman's Office, the NSW Land and Environment Court (LEC) and other sources. Then, for each ambiguity, one or more guidelines for invoking the public interest are proposed.

Section 8.2 addresses the question of the importance of the public interest in the context of the rejectionist views (reviewed in Chapter 3), the views of modern planning theorists (also reviewed in Chapter 3) and the finding that the discourses agree that the public interest is important (addressed in Chapter 6). It examines a view that political practice in NSW pays only lip service to the public interest, and finds that such concerns relate to claims that equate the public interest with sectoral interests. A guideline on the inadequacy of claims about the public interest based on sectoral interests is proposed.

Section 8.3 picks up the issue of multiple public interests. As it was found section 6.3 that all of the discourses accepted at least one of the two statements about the need to balance dimensions of the TBL, section 8.3 first examines the language available for discussing multiple public interests, and then determines which of the available public interest tests are suited to dealing with the multiple interests model.

Section 8.4 explores practices for restricting the criteria used when determining the public interest. It addresses the apparent contradiction raised in section 6.4, where it was found that the discourses agree that advising the public on the criteria that will be used by decision makers is desirable, but in the case of public interest matters, the relevant criteria may not be fully understood by decision makers prior to consultation.

Section 8.5 addresses procedures for implementing the areas of agreement found in section 6.5 namely that local interests are likely to conflict with wider interests and that the interests of future generations should be taken into account.

Section 8.6 attends to the matter of the status of private interests, and the implications of including private interests in the determination of the public

interest. The proposed guideline sets out a criterion for deciding if a private interest can be included as a public interest consideration.

Section 8.7 turns to the issue of what people and processes should be involved in identifying the issues (8.7.1) and making decisions (8.7.2). The presentation of the proposed process is structured as follows:

- Categorisation of public and private benefits and detriments (8.7.3)
- Treatment of private interests (8.7.4)
- Assigning importance to benefits and detriments (8.7.5)
- Applying a balancing test to assess the net effect (8.7.6)
- Finding the best option and acknowledging trade-offs (8.7.7)

An accounting process is proposed that is based on reasoning rather than quantitative methods, and uses both a net benefit test (that compares benefits with detriments) and a best option test (that compares the merits of one option against the merits of other options).

The conclusion in section 8.8 describes the operational meaning of the public interest.

## **8.2 GUIDELINES RELATING TO THE IMPORTANCE OF THE PUBLIC INTEREST**

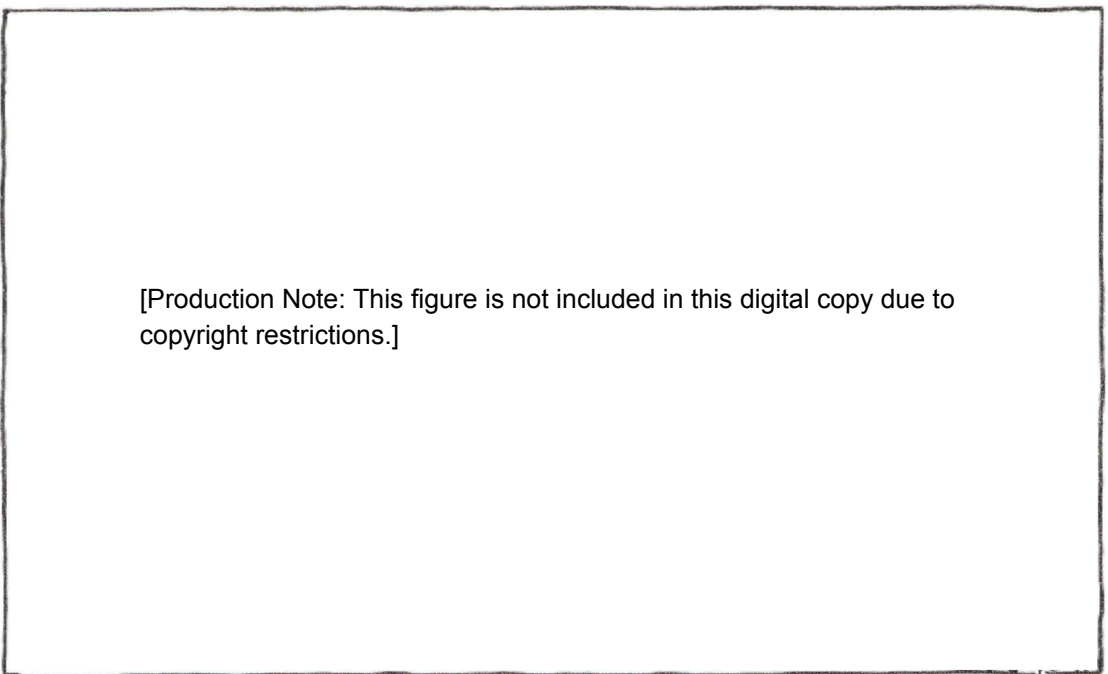
In Chapter 3 it was argued that although the rejectionists struggle to find an operational meaning of the concept of the public interest (section 3.2.1), a number of planning theorists have defended its importance (section 3.2.3). In Chapter 6 it was found that the participants in the Q Method research agreed that the public interest is important (section 6.2). With respect to current practice, it has already been noted (in section 1.3.1) that the concept of the public interest is used in public sector ethics, in planners' codes of conduct and in planning legislation, but is this just lip service to political correctness?

Section 8.2.1 looks at NSW planning politics and questions whether the public interest is really an important consideration, given the cases of proven corruption in local government planning in NSW. Section 8.2.2 concludes discussion of this research issue with a suggested guideline.

### 8.2.1 The links between the public interest and corrupt conduct

The currently popular view of the NSW government's reputation with respect to planning is that it serves the interest of donors to the political party, is at the mercy of factional influences within the governing party, and is lacking in both transparency and accountability. This view has been captured in the cartoon (below) that appeared in the Sydney press in 2009.

**Figure 8.1 Cartoon showing the popular view of the current NSW government with respect to urban planning**



Cartoon by Cathy Wilcox, published in the Sydney Morning Herald on 09/09/09, accessed 11/3/10 at <http://www.smh.com.au/photogallery/opinion/cartoon/cathy-wilcox/20090909-fhd6.html>

Planning practice in NSW has come to the attention of the NSW Independent Commission Against Corruption (ICAC) on many occasions. ICAC only makes investigations public if doing so is in the public interest. In the period 1989 to February 2010, 16 reports on investigations into suspected corruption of local government planning matters have been published (NSW ICAC undated). These cases have involved bribery or attempted bribery of officials by members of the public, and other forms of corruption by elected and appointed officials



with respect to development approvals and similar planning matters. The reports have recommended referral for prosecution and/or the implementation of stronger anti-corruption measures.

The ICAC report on corruption in the planning section of the Wollongong City Council (NSW ICAC 2008) provides insights into the relationship between, on the one hand, perceptions of the importance of the public interest and, on the other hand, understanding of the operational meaning of the public interest. The investigation found that one senior planner had corruptly given favourable treatment to two developers with whom she had sexual relations in return for personal benefits, and that several of the Council's key managers and four of the Councillor's had also engaged in corrupt conduct. The CEO of the Council at the time, Mr Rod Oxley, was not found to have been corrupt, but it was found that his pro-development philosophy at times entailed pressuring staff to overlook the statutory 'matters for consideration' set out in section 79C(1) of the Environmental Planning and Assessment Act, and was "liable to allow, encourage or cause corrupt conduct" (NSW ICAC 2008, p9).

In his defence Oxley argues that the Council had an entrepreneurial, pro-development culture, and leaders who were "prepared to be strong and creative, flexible in their approach to getting things done *for the public good*" (East 2009, p176, emphasis added). He explains that he was a strong supporter of the pro-development culture, and believes that he was justified in dismissing the anti-development lobby because what was happening was "good for the city", and in Wollongong's "best interests" (p48). He claims that Council needed to have a very thick skin to ward off the inevitable criticism that came from the naysayers, and a single-minded approach in the face of criticism or opposition (p39).

Oxley believes that in pursuing the entrepreneurial, pro-development approach he was acting in the public interest, but while he equates the public interest with rapid development, job creation and developer profitability, other players would have different views of the public interest. The staff who alerted the ICAC (the whistle-blowers) would more likely equate the public interest with observance of plans and regulations, and with balanced professional judgements; the anti-development lobby would more likely equate the public

interest with residents' needs, and with respecting local scale and character; and the ICAC might equate the serving the public interest with being honest and impartial in the exercise of official functions.

This is the problem. Due to a lack of consensus about how the public interest is to be determined, it can be whatever a given party wants it to be, whatever they deem to be the most important interest. What Oxley and the pro-development councillors believed was behaviour that served the public interest, the whistle-blowers, the anti-development lobby and the ICAC saw as behaviour that encouraged corrupt conduct. In other words, it can be argued that the fact that corruption occurred is not evidence that Oxley and the pro-development councillors thought the public interest was not important, but evidence that they had a faulty understanding of the concept of the public interest, namely that the public interest can equate with the interests of one particular group.

The tendency to see the public interest in terms of serving one interest is not restricted to any one political party or any one level of government. Nor is it limited to those who value the economic sector most highly. For example, those who place ecological values most highly sometimes argue that unless we favour environmental needs there won't be social or economic problems to worry about. Taylor (1994, p95) argues that the public interest cannot be a sectional interest, that is, primarily in the interest of a particular group. The universality of Taylor's argument might be debatable, but claims that one sectional interest should routinely be given priority are unlikely to be an adequate determination of the public interest.

### **8.2.2 Conclusion about the importance of the public interest**

The exploration of this research issue has led to two possible answers to the question of whether the public interest is important to planning. The first answer is no, it is not important, it is only paid lip service for the sake of appearances, and then it is ignored, and that is why corruption can flourish in some situations. The other, preferred, answer is yes, it is important but people struggle to use the concept successfully, which leads some people to short-cut any serious attempt to determine what best serves the public interest and to support, instead, one aspect of the solution (be it economic development, the environment, or whatever).



**Guideline 1: the importance of the public interest:**

There are strong social pressures for planning decisions to be made in the public interest. Believing, and claiming, that one is acting in the public interest can be a powerful motivator for oneself and others. Therefore it is important that what best serves the public interest is given careful consideration. Claims that one sectional interest should routinely be given priority are unlikely to be adequate.

**8.3 GUIDELINES RELATING TO THE NUMBER OF PUBLIC INTERESTS**

When this area of ambiguity was introduced in Chapter 3, several examples of public interest matters with multiple competing public interest considerations were discussed (sections 3.3.2 and 3.3.3). One of these was the idea of 'triple bottom line' (TBL) sustainability. In Chapter 6 was found that the discourses about the public interest used by actors in the planning and property development sphere display an acceptance of the logic of balancing the elements of the TBL, and would recognise multiple dimensions of the public interest. Section 8.3.1 explores language for discussing multiple public interests and proposes three guidelines. Section 8.3.2 explores types of balancing tests for balancing multiple public interests and proposes a guideline on the preferred approach.

**8.3.1 Language for recognising multiple public interests**

There are problems associated with the terminology used to describe these multiple aspects of the public interest. The main problem is that awareness of cultural diversity has become so 'politically correct' that any talk of a plurality of public interests is initially interpreted as referring to the diversity of views held by different sub-cultures or groups with competing interests. Shifting the assumed meaning away from the interests of people in conflict, and towards the interests that we all have in common but value to different degrees, requires careful use of language.



'Public interests' is the most obvious term that could be used. Some cultures and languages appear to use the 'public interests' to refer to the multiple interests of the public. For example, an Agence France-Presse (AFP) item from China quotes a man who became angry at the traffic delays and costs associated with the latest of many would-be suicide jumpers, as saying "I pushed him off (the bridge) because jumpers like (him) are very selfish. Their actions violate a lot of public interests" (Sydney Morning Herald, 23 May2009).

Wheeler (2006a, p18) also uses this language when he advises public officials to identify "the public interests applicable to an issue or decision".

In a section titled "Public Interests", Dovey (2005 p244) writes, "the public interest is a multiplicity of interests that are marshalled, debated and manipulated into collective interests that are then often misrecognised as a singular 'public interest'. ... There lies beneath this multiplicity a shifting but common ground of interests in the future of the place."

However it has already been noted that 'public interests' can cause confusion as exemplified by the comment, quoted in section 3.3.1, from an anonymous referee of a paper submitted for publication who argued that multiple interests must be particular or sectoral, not common, interests.

'Public interest objectives' is another possible term. It is used by Wheeler (2006a, p20) when he says, "a decision-maker will often be confronted by a range of conflicting or competing public interest objectives". However it suggests that something isn't in the public interest unless it has been consciously enunciated as a goal, which is not necessarily the case.

'Multiple facets or aspects of the public interest' are both possibilities. In a judgement of the NSW Land and Environment Court, Preston stated, "The public interest is multi-faceted and may be a factor in favour or against the grant of (an injunction request by the lawyer)" (*Tegra (NSW) Pty Limited v Gundagai Shire Council and Anor* [2007] NSWLEC 806, at 53). Preston went on to outline different aspects of the public interest that were relevant to the granting of the injunction. Some lent weight to the granting of the injunction and others lent weight to the refusal. Preston weighed these interests and decided

that the strongest case was with one that was against the granting of the injunction.

'Public interest factors' is another possibility, for example, "the relevant public interest factors may vary from case to case" (Australian Senate Committee on Constitutional and Legal Affairs 1979, at 5.28; quoted by Wheeler 2006a, p14)).

'Dimensions of the public interest' has been suggested, for example, Pal and Maxwell (2004, 16) recommend that decision-makers "engage with each of the basic dimensions of the public interest with respect to the specific issue".

'Public Interest considerations' is another possible term which could be used, for example, to describe the situation "where a decision requires a balancing of one public interest consideration over another, such as the public interest in providing access to government documents against the public interest in preserving the security of sensitive information (relating to law enforcement, for example)" (NSW Ombudsman 2005).

'Multiple common interests' is a term that can be used to stress that the interests in question are indeed common interests and not sectoral or private interests.

In summary, there are several ways of referring to the multi-faceted nature of the public interest, and the selection of the most appropriate term in any situation will depend on the nuance being communicated.

Establishing the existence of multiple aspects of the public interest has several benefits:

1. It introduces the possibility of describing the relationships among those aspects as, for example in the statement, "In practice, a decision-maker will often be confronted by a range of conflicting or competing public interest objectives or considerations" (Wheeler 2006a, p20) or alternatively, to describe considerations that are aligned, or mutually reinforcing.
2. It highlights the weakness of a 'single-minded' view of the problem, where a person or group is only prepared to take one sectoral interest into account.



This can be useful as single-minded groups can go to great lengths to have things their own way (Susskind & Cruikshank 1987, p4).

3. It is only by using language establishing the existence of multiple public interest objectives that attention can be given to the trade-offs that are made between these objectives when views about the public interest are formed or claims presented. Language that denies the existence of multiple objectives also deters the acknowledgement of trade-offs among them.
4. Establishing the existence of multiple common interests reduces the likelihood of a common interest being misconstrued as a private interest, for example, where environmental integrity is portrayed as only a private interest of the environmentalist, or where economic development is portrayed as only being a private interest of investors.

In other words, the language for discussing the multiple competing public interests needs to include language for acknowledging that a claim for more emphasis to be given to one interest need not deny the shared need for the other interests.

**Guideline 2: Recognising multiple competing public interests:**

When speaking or writing about the public interest remember that in any matter there are many public interest objectives that need to be served. Where these are in competition it will become apparent that different sections of the public value these objectives differently. Nevertheless, it is in everybody's interest for each of these common interests to be safeguarded to some degree. The question for debate is how much safeguarding of each common interest is too little, and how much is too much?

**Guideline 3: Language for discussing multiple public interests**

There are several terms available for referring to the fact that the public interest is multi-dimensional. These include 'public interests', 'public interest objectives', 'aspects or facets of the public interest', 'public interest factors', 'dimensions of the public interest', 'public interest considerations' and 'multiple common interests'. Each of these emphasises slightly different aspects of the idea and



the most appropriate term would depend on the context. What is important is that usage moves away from exclusively referring to '*the public interest*' as though it is uni-dimensional.

**Guideline 4: Definition of 'a public interest', 'public interests' and '*the public interest*'**

'A public interest' refers to an interest of potentially anybody (sometime during their life). In this respect it is an interest that is common to everybody and so is sometimes called a 'common interest'. It might not be valued equally by all section of the public.

'Public interests' refers to the many public interest considerations or factors that need to be considered when acting in the public interest.

'The public interest' is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in that same matter. Something will serve the public interest if, on balance, it creates more public benefit than public detriment. The option that does the maximum good or the least harm for the public is the one that best serves the public interest.

### **8.3.2 Balancing tests**

Another implication of the discourses accepting that there are multiple public interest factors is that those factors will need to be weighed one against the other. Where there are multiple factors that need to be weighed up, and opposing parties arguing for the importance of one factor or another, the appropriate test is a 'balancing test'. (The nature of what is being weighed will be discussed in sections 8.4 to 8.6, but as the argument that they will be weighed one against the other is derived from the clarification of this ambiguity about multiple public interests, it will be considered here.) In this section the possible types of balancing tests will be reviewed, and one selected. In section 8.7.4 the application of the test will be discussed.

Balancing tests identify, weight and balance conflicting decision considerations to determine the optimum balance among those considerations. They are used within Australian administrative law to determine the relative strength of two or more opposing views or considerations. The use of the term 'balancing'

highlights the fact that there are two (generally) opposing views or factors that need to be considered rather than merely weighing whether a single issue is sufficiently substantial to warrant or justify a particular outcome (Wheeler 2006b). In the USA there has been an increased use of balancing tests in the courts. In opposing this development McFadden (1988, p586) notes that a balancing test “directs a judge to eschew the application of formal rules in deciding a case, and instead to balance competing interests of the litigants (or the competing interests of society generally)”.

Examples of where balancing tests are used in Australian public administration include Freedom of Information legislation (which balances the public interest reasons for releasing a document against the public interest reasons for withholding it) and administrative appeals tribunals and other courts of administrative review where judgements are made “on the balance of probabilities”. The public interest itself has been described as a balancing test, “The public interest is a useful concept because it provides a balancing test by which any number of relevant interests may be weighed one against another” (The Australian Senate Committee on Constitutional and Legal Affairs (1979); quoted by Wheeler (2006a, p14)).

Performance-based planning also uses balancing tests. Baker, Sipe & Gleeson (2006, p397) describe performance-based planning as “land use regulation focusing on zoning and planning outcomes, where results-based measurement is used at both the strategic and operational levels to attain desired outcomes”. In Australia it is part of the movement away from prescriptive planning controls towards performance-based mechanisms that use outcomes-focused regulations to achieve flexibility (p404). Examples of the use of balancing tests in performance-based planning in Australia include the new national building code and the Australian Model Code for Residential Development (AMCORD).

This section reviews several public interest tests that have been proposed. Most are balancing tests that balance opposing arguments, or multiple considerations. Table 8.1 shows ten tests of some standing that are associated with the public interest. They are:



NSW Right to Information (formerly FOI), Public interest Test: This test asks if the public interest considerations against releasing the information outweigh the public interest considerations in favour of releasing this information. (See a summary of relevant NSW legislation in Appendix 11, and NSW Office of the Information Commissioner 2010).

SE Qld Regional Plan, Test to Determine an Overriding Need in the Public Interest: This test asks if the overall social, economic and environmental benefits of a proposed change of land use outweigh the detrimental impact on the natural values of the site and any conflicts with the desired outcomes of the plan of promoting urban consolidation and preventing land fragmentation; and whether there would be adverse impacts of not proceeding with the proposed change. (See more details of the test in Appendix 11, and Queensland Government DIP 2009)

Klosterman's Public Interest Criterion: This test asks 'Do the collective and individual benefits of (the action) outweigh the common and particular disbenefits of the action?' (Klosterman 1980, 329) I interpret this to mean 'do the public and private benefits of the action outweigh the public and private disbenefits of the action?' This test was proposed by Klosterman as part of a wider discussion about the public interest in planning in a journal article, and has not implemented (Klosterman 2009).

Roseth's Procedure for discerning the public interest in development applications: This test was used by Roseth in the case *Double Bay Marina v Woollahra Council* [2009] NSWLEC 1001. Roseth proposed that the test be established as a 'planning principle' of the Land and Environment Court<sup>1</sup>. He argues that if public interests are in conflict, value judgements need to be made and justified (Roseth 2009, at 52). The test includes steps for distinguishing public from private interests and weighing up the public benefits and detriments that the proposed development would have. A summary of the case and the test are provided in Appendix 11. Roseth uses terms such as 'serious' and 'moderate' to rank the impacts. These are similar to the terms he uses in a

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<sup>1</sup> Gray (2010) "the Court did not adopt (it) on the basis that it was unsuitable as a planning principle. Further, the Court has an internal protocol that ought to be followed for the purpose of developing a planning principle, but that protocol was not followed on this occasion."



nominal scale to describe the seriousness of view loss (namely 'negligible, minor, moderate, severe, or devastating') in the Court's planning principle on assessment of the impact of a new development of the views available from an existing development (Roseth 2005, p4; Roseth 2004, at 23-33). The purpose of the nominal scale is to assist the process of weighing up considerations.

Lichfield Planning Balance Sheet Analysis (PBSA) and Community Impact Evaluation (CIE): These tests are used to identify the option that has the best cost-benefit outcome when analysed in terms of the interests of different groups of people. PBSA (Lichfield 1964, 1968, 1971, 1988; Lichfield *et al.* 1975) was later developed into CIE (Lichfield 1994, 1996). Both use a modified version of cost benefit analysis. Unlike cost benefit analysis they do not depend on only financial measures; they use multiple decision criteria and pay attention to the distribution of benefits and detriments among sections of the population. These tests do not distinguish between public and private interests, and most of the interests included are private in nature. With respect to whether these are tests of the public interest, Lichfield (1994 p66) notes, "the 'public interest' derives a specific kind of meaning from CIE". Moroni (2006 pp63-66) describes the contribution of PDSA and CIE to the debate about the public interest.

Utilitarianism: For all individuals affected, if the sum total of pleasurable (positive) effects exceeds the total painful (negative) effects, the policy is in the public interest (Bentham (1789), pp17-22 and pp37-48; Sen & Williams 1982). This has been used in the form of cost benefit analysis to determine the best option. It considers private as well as common interests.

Pal & Maxwell: A policy is in the public interest if it strikes a balance among different public goods, and in the case of regulatory policy, among the interests of individuals, enterprises and society (Pal & Maxwell 2004, p11). In reaching this judgement, attention needs to be given to whether an option, and the procedure used to arrive at a decision, has taken into account due process, public opinion, special interests, common interests or public goods, and shared values of the society (p7).

Taylor: An action or policy is in the public interest if its effects are experienced as beneficial, and if they are beneficial to potentially everybody without discrimination (Taylor 1994, p102). One action or policy may be more or less in the public interest

than another (p97), and to determine the option that best serves the public interest will involve weighing the effects of each option on the interests "which individuals share in common as members of the public" (p 104, p106). Only common interests are to be included for consideration. For something to be in the public interest it cannot be only, or even primarily, in the interests of some particular group or sector (p 95, p105).

Flathman: An action is judged to be in the public interest if it would serve moral rules, namely that its consequences should be morally desirable, and people should be treated consistently unless different treatments are justifiable (Flathman 1960, p108, p111 & p185).

Alexander: Seeks a criterion that avoids the process of weighting and balancing conflicting decision considerations, which he says results in judgemental conclusions that are contestable, making a substantive public interest doubtful (Alexander 2002b, p241). He proposes instead a simple decision criterion that substantively reflects the public interest, namely that "a plan that does not enhance, or reduces, the welfare of the residents of the designated planning area is not in the public interest, unless the plan or its accompanying documentation demonstrates compelling public policy considerations in support of its provisions" (Alexander 2002a, p207; 2002b, p238 and pp242-245). He acknowledges that application of this criterion is limited to relatively small, simple plans with relatively homogeneous populations.

**Table 8.1 Features of relevant public interest tests**

<b>Author Test</b>	<b>Criteria</b>	<b>Public interest threshold used</b>	<b>Is this a balancing test that weighs opposing arguments?</b>	<b>If so, who are the opposing sides</b>	<b>Is this a net test that weighs up +ve and -ve outcomes?</b>	<b>Does it focus on public rather than private interests?</b>
<u>SE Qld Regional Plan</u> Test to determine the overriding need for the development in the public interest		Are the public interest benefits of varying the plan greater than the public interest benefits of following the plan?	Yes it weighs the objectives of the plan against the arguments of those want to vary the plan.	Government planners vs. landowners and/or developers.	Yes, the public benefits of the change of use are weighed against the detrimental impacts.	Yes, private interest grounds are excluded.
<u>NSW Right to Information</u> Public Interest Test		Are the public interest considerations in favour of disclosure greater than the public interest considerations against disclosure?	Yes it weighs the considerations in favour of disclosure against the considerations against disclosure.	The applicant who wants the document released vs. the agency wanting to refuse release.	Yes, one side is arguing the positive and the other side the negative.	Yes only public interest grounds are available in the legislation.
<u>Roseth</u> Procedure for discerning the public interest in development applications		If public interests are in conflict, value judgements need to be made (and justified) about the relative weight of public benefits and detriments.	Yes it weighs the developer's claims that the proposal is in the public interest, against the opposing arguments.	Developer and consent authority and/or objector.	Yes, the public benefits and detriments are weighed.	Yes. After the public interest is determined the court then weighs it against private interests.

Sources: Developed by the researcher for this work using the sources listed in section 8.3.2.

Continued next page



Table 8.1 continued

Author/Test	Public interest threshold used	Is this a balancing test that weighs opposing arguments?	If so, who are the opposing sides	Is this a net test that weighs up +ve and -ve outcomes?	Does it focus on public rather than private interests?
<u>Klosterman</u> Public Interest Criterion	Do the collective and individual outweigh the common and particular disbenefits?	Yes, it could be used in this way.	Advocates of opposing options.	Yes, the public & private benefits are weighed against the public & private disbenefits.	No, apparently equal weight is given to public and private interests.
<u>Litchfield</u> Planning Balance Sheet Analysis (PBSA), and Community Impact Evaluation (CIE)	Which option has the best cost-benefit outcome when analysed in terms of the interests of different groups of people.	Yes.	Advocates of opposing options.	Yes.	No, Litchfield focuses on people rather than the public. Some people's interests are private interests.
<u>Utilitarianism</u>	Sum the utility for all individuals, and the option with the greatest utility serves the public interest.	Yes. It has been used in this way by Cost Benefit Analysis to identify the best option.	Advocates of opposing options.	Yes.	No, most of the interests considered would be private interests or self-interests rather than common interests.
<u>Pal &amp; Maxwell</u> Public Interest Accountability Framework	A regulatory policy will serve the public interest if it balances interests/rights of individuals, enterprise & society.	Yes.	In the regulatory context, individual consumers, enterprises and social values.	Yes, these interests/rights are weighed in a qualitative manner.	No, equal emphasis is given to public (common) and private interests.

Continued next page

Table 8.1 continued

Author/Test	Public interest threshold used	Is this a balancing test that balances opposing arguments?	If so, who are the opposing sides	Is this a net test that weighs up +ve and -ve outcomes?	Does it focus on public rather than private interests?
<u>Taylor</u> Common Interest Conception	Something is in the public interest if its effects are experienced as beneficial, and if they are beneficial to potentially everybody without discrimination.	Yes. The argument that the option serves common interests is weighed against the argument that it does not.	Advocates of opposing options that are seen to benefit the public.	Yes	Yes. Only interests that individuals share in common are considered.
<u>Flathman</u> Moral Rules Test	An action is judged to be in the public interest if its consequences are morally desirable, and people are treated consistently unless otherwise justified.	No.		No.	Yes, although private interest can be considered.
<u>Alexander</u> - Threshold criterion	A plan is not in the public interest if it reduces or does not enhance the welfare of the residents of the designated planning area, unless there are compelling public policy reasons.	No. Alexander specifically sought a simple decision criterion that did not involve the weighting of benefits and detriments. He acknowledges that it has limited use.		No.	No.

Eight of the ten tests described above are balancing tests that are designed to weigh competing arguments. The two non-balancing tests are Flathman's test (which employs moral principles) and Alexander's test (which can only be used in relation to small areas with simple plans covering relatively homogeneous populations). It would seem that balancing tests are more frequently suggested and are seen as applicable in a wider range of circumstances.

Of the eight balancing tests some have features that make them unsuitable models for use in this research. These are:

- The SE Queensland test of whether there is an 'overriding need in the public interest', whilst having some interesting characteristics (discussed below), is designed to be used within an existing policy, where that policy is being challenged. That is, it is a test of whether the considerations raised by the applicant should override the view of the public interest contained in the policy. As that is not the only circumstance in which the public interest is being determined, the SE Queensland test will not be the basis of the model used here.
- The NSW Right to Information test only has to deal with a simplified set of issues, allowing the range of matters that are to be considered to be pre-determined. This is not the case in planning so this test is similarly excluded from contention.
- Litchfield's methods (PBSA and CIE) and Utilitarianism focus on the competition between sectors or private individuals, and are also rejected as less appropriate to matters of public interest than the remaining options.

This leaves the models proposed by Roseth, Klosterman, Pal and Maxwell and Taylor. Each of these is based on the identifying, weighting and balancing conflicting decision considerations, especially the benefits and detriments of options on collective and private interests. As was noted above, Alexander (2002b) observes that this process results in judgemental conclusions that are contestable, making a substantive public interest doubtful. However, given the importance of recognising the multifaceted nature of the public interest, it is better to recognise the conflicting decision considerations and develop methods of addressing the problems of doing



so, rather than oversimplifying the public interest and encouraging claims that are one-dimensional.

**Guideline 5: Use of a balancing test**

In order to take multiple, perhaps competing public interests into account, it is necessary to use a balancing test of the sort that identifies and weighs up the positive and negative effects of a proposal on the various dimensions of the public interest. The identification and weighing process will inevitably be influenced by the values and perceptions of the person(s) applying the test. These value judgements should be made explicit to enable evaluation of the resulting claim about the public interest.

Among these tests there are several other features that might prove to be useful. Of particular relevance to the research issues in this thesis are:

- The measurement processes used. Only two of the tests in Table 8.1 (that is, those of Roseth and Lichfield) contain metrics to be used in the assigning of weights, and these are similar. This will be relevant in section 8.7.6.
- The exclusion of certain criteria in the test used in the SE Queensland Regional Plan, and in the NSW Right to Information public interest test. This is of relevance to the issue of whether the criteria can be limited and will be considered in section 8.4.
- The different approaches taken to the question of whether private interests should be assigned a weight in the balancing process. While the SEQ Regional Plan test, the NSW Right to Information Test and the Taylor test do not give any weight to private interests, the Pal and Maxwell test, the Roseth test, Klosterman's test and Lichfield's tests do. This will be relevant in section 8.6.
- The use of the test as an accountability mechanism by Pal and Maxwell. This will be relevant in section 8.7.7.

### **8.3.3 Conclusions about the number of public interests**

This review of planning related practice has shown that there is a well-established language for discussing multiple public interests and at least five models of balancing tests for determining which balance among those multiple interests best serves the public interest. Two language-related guidelines have been proposed, and the significance of the tests to the remainder of this chapter has been indicated.

The approach taken in this section may seem pedantic. Why establish that there are numerous ways of saying the same thing, or that eight of the ten public interest tests reviewed are balancing tests?

The justification relates to the tendency of humans to take sides and experience difficulty when asked to consider what is right about their opponent's argument, to become 'single minded' and to equate the public interest with one sectoral interest. (See for example, Mutz 2006.) In section 6.3 only 2 of the 6 discourses rejected the suggestion that one of the three dimension of TBL was more important than the other two. The remaining four discourses each nominated one dimension as the most important, even though they agreed with idea of balancing the dimensions. Given this tendency to take sides it is important to establish that society has developed at least seven different terms and eight different tests for addressing this problem as this indicates that the problem is significant and that solutions are available. The remainder of this chapter is now able to assume that recognition of multiple public interest considerations can be the core of an operational meaning of the public interest.

## **8.4 GUIDELINES RELATING TO RESTRICTING CRITERIA**

Criteria are sometimes restricted by the specification of 'terms of reference' when calling for submissions, or by setting criteria to be considered in a public interest test. This issue was introduced in section 3.4 where a number of possible explanations for this behaviour were presented. Section 3.4.2 looked at explanations from organisation theory and section 3.4.3 described explanations from collaborative planning theory. These explanations were represented in the statements used to identify discourses about the concept of the public interest

and areas of agreement among those discourses. In section 6.4 it was found that the discourses agree that advising the public on the criteria that will be used by decision makers is desirable. However, they also agreed that in the case of public interest matters, the relevant criteria might not be fully understood by decision makers prior to consultation.

Section 8.4.1 describes the statutory position in NSW with respect to the disclosure to the public of decision-making criteria and the position adopted by the courts. They are found to reflect competing principles, in much the same way as the discourses agree on two apparently contradictory statements. Section 8.4.2 examines how this problem is dealt with in statutory public interest tests and section 8.4.3 concludes with a guideline on how to deal with the problem.

#### **8.4.1 The statutory position in NSW**

The NSW Freedom of Information Act 1989 section 15 (3) states:

“A person is not to be subjected to any prejudice because of the application of the provisions of an agency’s policy document ... to any act or omission of the person if, at the time of the act or omission:

- (a) the policy document was not available for inspection and purchase, and
- (b) the person was not aware of those provisions, and
- (c) the person could lawfully have avoided the prejudice had the person been aware of those provisions.”

A similar provision is made in the NSW Government Information (Public Access) Act 2009 that is to come into effect later in 2010.

This provision means (among other things) that an application by a person to a government agency cannot be refused on the grounds that the person did not demonstrate that they were complying with a requirement that they were unaware of because of a failure of the agency to make their policy requirements available. The enactment of this legislation in 1989 resulted in NSW government agencies preparing and promulgating policies on all aspects



of their operations so that they could perform their functions. It also had the effect of encouraging agencies to list the decision-making criteria that would be applied in any matter, and to avoid open-ended criteria that allowed other matters to be raised.

This development was perhaps not appropriate to decision-making about the public interest.

The Australian courts recognise that "...the relevant public interest factors may vary from case to case – or in the oft quoted dictum of Lord Hailsham of Marylebone 'the categories of the public interest are not closed' " (Australian Senate Committee on Constitutional and Legal Affairs 1979, at 5.28; quoted by Wheeler 2006a). The public interest is thus "a concept for aggregating *any number of interests* that may bear upon a disputed question that is of general – as opposed to merely private – concern" (Australian Senate Committee on Constitutional and Legal Affairs 1979, at 5.25, emphasis added).

Wheeler (2006a, 22) notes that one of the ways that the public interest is used in NSW legislation is as a 'catch-all' consideration over and above various specific considerations that the statute specifies must be considered. This is the use made of the concept in the NSW Environmental Planning and Assessment Act quoted in 1.3. In these situations there would be grounds for suggesting that the range of issues used when determining the public interest should not be limited, otherwise that step will be less able to 'catch all' of the outstanding issues.

The obvious way around this dilemma is for policies that include tests of the public interest to indicate that decisions taken under the policy will consider the listed matters and any other matter that can be shown to be relevant.

#### **8.4.2 Examples of restricted criteria in public interests tests**

Two examples of tests that limit the criteria to be considered were discussed in section 8.3, are also described in Appendix 11. These were the SE Queensland test (which excluded certain private interests from the matters that would be considered) and the NSW Right to Information Test (that allows other

factors in favour of disclosure of the information to be raised, but does not allow other factors against disclosure of the information to be raised).

Three other tests presented in Appendix 11 also exemplify practices relevant to the issue of restricted criteria:

- NSW Crown Lands Policy for Marinas and Waterfront Commercial Tenures (NSW Department of Lands 2005), explicitly states that the test is not limited to the nine listed criteria, but the power to include other criteria appears to rest with the government authority. While this allows the authority to include a criterion raised for example in a submission, it does not require the authority to do so.
- The public interest test pursuant to the WA Liquor Control Act 1988 (Western Australia Department of Racing, Gaming and Liquor 2008a, 2008b), states that the test is flexible in order to consider the impact of the proposal on the relevant surrounding community. Furthermore, the onus is on the proponent to identify and address all negative impacts of the proposed development, therefore the test cannot limit the list of matters to be considered.
- The Public Benefit Test used in the Transport Corridor Outdoor Advertising and Signage Guidelines (NSW Department of Planning 2007), defines the public benefit as consisting only of the monetary or in-kind contributions by the proponent to a local authority. Other specified matters are addressed elsewhere in the policy, but there is no capacity for the proponent or objector to widen the criteria.

The NSW Crown Lands policy on marinas and waterfront commercial tenures attracted the newspaper headline "Run for it while the coast is clear: cash cows are eating your parks". The item began "Parks in spectacular locations along the NSW coast are being sold and leased to developers to fund State Government maintenance of harbours, jetties and foreshores" (Besser & Munro, 2007). The NSW outdoor advertising policy was criticised by the Local Government Association as a blatant "grab for cash" by the state government, and by road safety experts for its capacity to increase visual distractions (Nixon



& Creagh, 2007). Public comment on talk back radio noted the cynicism of the agencies in using the concept of 'public interest' and 'public benefit' to describe fund raising activities that result in the commercialisation of parks and increased outdoor advertising. That the public benefit test of the outdoor advertising policy denied any comment on whether such advertising is in the public interest attracted negative comment.

#### **8.4.3 Conclusion about the issue of restricted criteria**

The discourses agree that advising the public on the criteria that will be used by decision makers is desirable, and this is in accordance with freedom of information principles. Therefore the guideline should encourage this.

The discourses also agree that decision makers would not know the issues well enough to be able to set public interest criteria prior to consultation. This indicates a need for open-ended criteria, which would be in accordance with the legal dictum that the categories of the public interest are not closed, and the use of the public interest as a catch-all of matters otherwise not addressed. This approach would also help to avoid the public criticism that was levelled at the agencies that introduced public interest/benefit tests that restricted the public interest criteria being used.

However open-ended criteria can create problems:

- Open-ended criteria can encourage the rehearsal of well established arguments that do not add new information to the decision-making process, and encourage people to raise arguments that agency staff already have reasons for discounting. Therefore, in order to prevent these problems, decision-makers should alert applicants or objectors to criteria that they consider to be irrelevant or unconvincing. In the case of the public interest, these might be matters relating to exclusively private interest.
- Open-ended criteria can also favour the government rather than the public. They can encourage agencies to add considerations favouring the refusal of requests or objections. Therefore, in order to prevent these problems, governments should restrict the agencies' powers to add criteria that reduce public influence or exclude public interest matters.



**Guideline 6: Limiting of criteria**

It is desirable, and in some circumstances necessary, for decision-makers to make known to the public, in advance, the criteria they will be using to determine a public interest matter. It is also desirable that the public be allowed to advise decision-makers of public interest considerations that were excluded from that list of criteria. Therefore the list of criteria should invite "other matters relevant to the public interest". The agency can also indicate any private interest matters they regard as unconvincing, but cannot disregard without consideration a matter that is not exclusively a matter of private interest.

**8.5 GUIDELINES RELATING TO IDENTIFYING THE RELEVANT PUBLIC**

In section 3.5 the issue of defining the relevant public was introduced by comparing how the concept of the relevant public (as used in the determination of the public interest) differs from how the concept of stakeholders is used in stakeholder analysis. Spatial aspects of the relevant public were discussed, including the NIMBY concept and its derogatory application. Temporal aspects of the relevant public were also canvassed, including whether the interests of future generations can be sufficiently understood to warrant their inclusion in current-day determinations of the public interest.

These matters were represented in the statements about the public interest that were used in the Q Method research that identified discourses about the public interest within the planning and property development sphere. It was found in Chapter 6 that those discourses agreed that there are times when the needs and wants of local residents will conflict with the broader public interest, and that the needs of future generations must be considered.

The aim of section 8.5 is to explore ways of finding the scope of the relevant public. Section 8.5.1 presents techniques for analysing the spatial scope of the wider or narrower public, and section 8.5.2 presents techniques for including the needs of future generations.

### 8.5.1 Techniques for identifying the spatial extent of the relevant public

There are four basic ways in which the benefits and detriments of a proposed development could be distributed between local and wider populations, namely local detriments and wider benefits, local benefits and wider detriments, local and wider benefits, or local and wider detriments. This section describes and exemplifies these using cases from the NSW Land and Environment Court (LEC) and then presents questions that can be used to assist in the identification of these patterns.

The process of discovering the sections and extent of the relevant public and the process of discovering the range of relevant public interest considerations are inter-dependent. The identification of a section of the public leads to the identification of interest and vice-versa. The following approach to identify local and wider interests will trigger the identification of wider and narrower populations and vice-versa.

#### Local Detriment / Wider Benefit

Perhaps the best known version of the difference between the interests of the local population and the wider population is where a new or changed facility brings detriments to the local population but benefits to the wider population (which may include the local population). Examples include:

- The siting of communication towers where the disbenefits for the local include visual impact and health concerns, and the benefits for the wider public include improved mobile phone coverage. See for example the judgement in *Hutchison Telecommunication (Australia) Limited v Ku-ring-gai Municipal Council* [2004] NSWLEC 665, which concludes that in balancing the local and wider aspects of the public interest and the limitations on other locations, the proposal achieves a reasonable balance (at 13) and therefore there is no substantive reason why the development should not proceed (at 17).
- The extension of trading hours of a shopping centre where the disbenefits for the locals include longer periods of noise, and the benefits for the wider public include greater convenience. See for example *LGSS Pty Ltd v*

*Leichhardt Municipal Council* [1999] NSWLEC 72, where it was judged that the local public interest of protecting residential amenity from such adverse impacts which could not be mitigated, outweighed the suggested wider public interest of allowing more extended trading hours of a local shopping centre.

#### Local Benefit / Wider Detriment

Alternatively a proposed development can bring benefits to the local population but detriments to the wider population. Examples would include some instances of local road closures where traffic is forced on to other streets, or the government funding of a desirable public facility such as a hospital in one area and the resulting reduction of the likelihood of other neighbouring areas ever gaining such a facility of their own.

#### Local Benefit / Wider Benefit

The provision of a desirable facility (such as a hospital, or open space) in one location can also be a benefit to other locations that already have such a facility, as it will reduce overuse of the latter.

#### Local Detriment / Wider Detriment

Where a proposal brings a detriment to the local area it might also have a detrimental effect on those who visit, travel through or view the area from a distance.

These patterns can be identified through the consideration of such questions as:

- Who will experience the proposed development? Who will see, hear or smell it? Who will work there or visit?
- Who will pay the costs fall on ratepayers, state taxpayers, or federal taxpayers?
- Who will use the resource and what would be its catchment area or service area?



- Who else will benefit?
- Who has the greatest need for the resource and will they benefit?
- Who will bear the detriment?
- Which locations would have to bear more detriment if this location does not bear some? This would occur, for example, where land re-zoned medium density continues to be used for low density (as would happen if medium density development applications were refused on the basis that the development would not be in keeping with the character of the area), and more areas are zoned medium density to make up the lost opportunity (see *Designlink International v Baulkham Hills Shire Council* [1999] NSWLEC 243).
- Is there an overriding principle at stake? This was found, for example, in *Miles v Armidale Dumaresq Council* [2006] NSWLEC 360, where the subdivision of a rural-residential block, whilst arguably creating no local detriment and representing orderly and economic development, would not be in the wider public interest because such development would be in direct contravention of the Local Environment Plan and planning study. Compliance with planning instruments was considered to be the more relevant and important aspect of orderly and economic development and needed to prevail over any local consideration. In this example the spatial extent of the wider interest is that of the Local Environment Plan, or perhaps that of the state planning legislation.

These patterns and questions will assist in the identification of local and wider interests that may be in conflict.

### **8.5.2 Techniques for including the needs of future generations**

The discourses agreed that the needs of future generations should be taken into account when determining the public interest, so what is the best way of doing this?

One obvious approach is through the appearance, functionality and externalities of what is being built now and is likely to be standing in the future, and through the lost opportunity to build something else that would better serve future generations, or to prepare for the future (for example to prepare for sea level rise by raising or relocating roads).

The other approach is through the conservation or destruction of resources that would benefit future generations. Examples include the conservation or loss of:

- items that would have aesthetic, historic, scientific, social or other special value for future generations;
- environmental health, diversity and productivity;
- natural assets such as views, wilderness, natural landscapes, minerals and fossil fuels;
- resources such as open space in urban areas or agricultural land for use by future generations for agricultural purposes.

Brown-Weiss has suggested that three fundamental principles form the basis of intergenerational equity (Brown-Weiss 1992, p401):

1. The “conservation of options” principle, which requires each generation to conserve the diversity of the natural and cultural resource base in order to ensure that options are available to future generations for solving their problems and satisfying their needs.
2. The “conservation of quality” principle, which requires each generation to maintain the quality of the earth such that it is passed on in no worse condition than in which it was received.
3. The “conservation of access” principle, which requires each generation to give its members “equitable rights of access to the legacy of past generations and should conserve this access for future generations”.

These principles put the onus on the current generation to conserve options, quality and access in the present, so that they are available in the future, thereby reducing the need to predict the circumstances or opinions of people in the future. While not eliminating the desirability of trying to imagine the

problems and needs of future generations, the application of these principles acts as a safety net for the resources needed by those future generations.

#### **Guideline 7: The relevant public and their interests**

A determination of the public interest needs to consider not only the local interests but also the wider interests that are affected by a proposal. This requires consideration of who will experience, pay for, use, benefit from or suffer from it. Ask who has the greatest need for such a development and if they will benefit. Ask if other locations would have to bear more detriment if this location did not bear some. Ask if there are broader principles that should be considered. Protect the interests of future generations by examining how current proposals would affect their options. Seek proposals that maximise those options by conserving resources, the quality of those resources and future access to those resources.

#### **8.5.3 Conclusions about the context of a public interest determination**

Identifying the relevant public is a key part of grounding a decision about the public interest in its context. This is necessary because, as Flathman (1966, p82) argues, the public interest “has no general, unchanging, descriptive meaning applicable to all policy decisions, but a non-arbitrary descriptive meaning can be determined for it in particular cases”. That is, any decision about the public interest should be a decision applicable in a particular context that has a number of characteristics including its physical, social, economic or legislative features.

It was noted in section 7.2.2 that the issue of whether the public interest is context specific was not well covered in the statements used in the Q Method analysis, and therefore it is not known whether the discourses agree on this issue. Is information about practitioner practice able to provide direction?

It is possible to see a government agency’s regulations and policies as descriptions of the extent to which (the agency’s view of) the public interest applies in all circumstances covered by the regulation or policy and what, if any, discretion public officials are allowed. By building in scope for discretion the agency is acknowledging that fairness is sometimes better achieved through



sensitivity to contextual differences than through treating all cases as though they were alike.

Practitioners who are bound by such regulations need to judge what discretion they have and how it is best exercised. Others who are not bound by such regulation and who might be seeking to challenge the regulations, have more freedom to argue that the circumstances of the case deserve a custom-made determination of the public interest. They are also able to argue that the changing context, understanding or values mean that the policy or regulation needs to be modified in the public interest.

This role of the public (which in this instance includes public officials acting in a private capacity) is vital. Without such challenges interpretations of the public interest are unlikely to remain relevant. Therefore the dominant principle needs to be that the public interest is context specific, despite the tendency for government agencies to seek consistency and predictability.

## **8.6 GUIDELINES RELATING TO STATUS OF PRIVATE INTERESTS**

This issue was introduced in section 3.6 where it was described as having three parts:

- With respect to the first part (whether private interests are to be included in the determination of the public interest), it was established in section 6.6 that all of the discourses see a place for private interests in the determination of the public interest and are likely to accept an operational meaning of the public interest that includes the consideration of both private interests and the collective interests. That is, if the guidelines are to be based on areas of agreement, then Taylor's (1994) approach (described in section 2.3) which excludes private interests from consideration would be unacceptable. Similarly an approach that only considers private interests (for example some forms of cost benefit analysis) would also be unacceptable.
- With respect to the second part (self interest, altruism and questions of motivation), it was established in section 6.6 that there is likely to be

acceptance by all discourses of guidelines that require some, but not too much, altruistic concern for others.

- With respect to the third part (commons problems, restrictions and penalties), no areas of agreement were identified in section 6.6.

Therefore this section focuses on how private interests should be incorporated into the public interest. Section 8.6.1 explains why a criterion is needed for including only some private interests. Section 8.6.2 examines three such criteria and the proposed guideline recommends one of these.

### **8.6.1 The need for a criterion for including private interests**

Should all private interests to be considered or should only some private interests be included in determining the public interest? If all private interests were to be considered then there would be no difference between this process and any other decision making process conducted by planners that involves the weighing-up of public and private interests. The public interest needs to be distinctively 'public' in nature and relating to, affecting or done for the community in general. Therefore any private interests that are to be included in the process of determining the public interest need to meet one or more criterion of being 'public', that is, relating to, affecting or being done for the people as a whole. Alternatively, if all private interests were to be included, there would need to be criteria for giving greater weighting to those interests that of greater public significance and lesser weighting to those interests that are of only private significance.

This logic leads to the exclusion of Klosterman's (1980) approach, which is to include all private interests and give them equal weight to the public interests.

### **8.6.2 Three contenders and a winner**

Three criteria for judging whether the private interest is of sufficient public significance will be considered:

- a. Banfield (1955) suggests private interests could be included in the public interest if their ends are community-regarding rather than self-regarding, or pertain to the role of citizen rather than to some private role,



- b. Roseth (2009) suggests that for an interest to be equated with the public interest, the interest has to be of a public nature, which means that those with the interest will be identifiable as a section of the public (at 49). If the interest is not of a public nature, then the group can be seen as identified by some characteristic that isolates them in a private capacity (at 45). Roseth employs the logic of a High Court judgement, namely that “for some purposes and in some circumstances each person can constitute a section of the public and any group of persons can constitute a section of the public. For other purposes and in other circumstances, the same person or the same group can be seen as identified with some special characteristic which isolates him or her in a private capacity and places him or them in a position of contrast with a member or section of the public” (*Australian Central Credit Union v Corporate Affairs Commission South Australia* 157 CLR 201-214 at 208). Roseth says (at 49) that the private interest that a group of residents has in their local park is a public interest because “the fact that their numbers may be small ... does not deny the public nature of their interest”.
- c. Purchas (1998), in a judgement in the case of *AL Wood-Robinson v. Secretary of State for Environment and Council of London Borough of Wandsworth* concerning the interest of building occupiers, proposes an approach that is gaining some interest in the UK (Crow 2001). The approach is to ask whether there is a public interest in protecting the private interest. Purchas (1998) states, “The public interest, as I see it, may require that the interests of individual occupiers should be considered. The protection of the interests of individual occupiers is one aspect, and an important one, of the public interest as a whole” (at 11). “The guiding principle seems to me to be in each case whether the private interest in question requires to be protected in the public interest” (at 17). Purchas goes on to apply this principle to the case and says, “... detriment to the amenity of residential user[s] through overshadowing or overlooking is far more likely to be something to be resisted in the public interest than interference with a view” (at 17). Purchas distinguishes between the protection of a private interest and the protection of the public interest in protecting that private interest.



**Table 8.2 Comparison of criteria for judging whether a private interest is warrants inclusion in a determination of the public interest**

<b>Criteria</b>	<b>Banfield – Are the ends of the private interest community-regarding or pertaining to the role of a citizen?</b>	<b>Roseth – Are those with the private interest an identifiable section of the public, in which case the interest is public in nature, or do they act in a private capacity?</b>	<b>Purchas – Is it in the public interest to protect the private interest?</b>
<b>Examples of private interests</b>			
1. A development company's interest in obtaining approval for a greater building height than specified in the relevant plan	No – the ends are self-regarding (profit) rather than community regarding	No – development companies are not a section of the public, they act in a private capacity	No – it is not in the public interest to protect the private interests of individual firms
2. Eight home owners' interest in preventing a neighbour from building a structure that would cause them to lose amenity and property values	No – the ends of retaining the view are self-regarding rather than community regarding	No – the homeowners are acting in a private capacity and are not a section of the public	Possibly – it might be in the public interest to protect the amenity of the properties and the right of the property owners to that amenity
3. A company's interest in opening a childcare centre in a building with poor access to daylight	Yes – the ends of childcare are arguably community regarding	No – childcare operators are not a section of the public. They are acting in a private capacity	No – the company's interests are not in the public interest
4. The interests of developers in having consistent planning and building regulations across local government areas	No – the ends are self-interests (business efficiency) not community regarding interests	No – development companies are not a section of the public, they act in a private capacity	Yes – there is a public interest in having an efficient development industry
5. The interests of a family that fosters teenage children in opposing the extension of a nearby brothel	Yes – the ends of fostering are community regarding	Yes – foster care givers are a section of the public and their interest is public in nature	Yes – it is in the public interest to protect the work related interests of foster care givers

Source: Developed by the researcher for this research, using criteria described by Banfield (1955), Roseth (2009) and Purchas (1988). Scenarios are drawn from various sources including Purchas (1988), and cases in the NSW Land and Environment Court.

In order to test whether any one of these three criteria is preferable, each is used in Table 8.2 to identify whether the interest in the left hand column of the table should be given a weighting in the determination of the public interest. The allocations are based on the researcher's best attempts to interpret the intentions of Banfield, Roseth and Purchas respectively.

In developing this table it was observed that:

- The weakness in the Banfield criterion can be seen in example 3, the childcare case, where because childcare is interpreted as a 'community regarding' activity, any interest of the childcare operator would meet the criterion.
- The examples where the Roseth and Purchas criteria disagree (examples 2 and 4) are where the interest is a private financial interest. The Purchas criteria would include the interests on the grounds that property rights and the financial interests of a sector (as distinct from an individual firm) can be matters of public interest.
- The Purchas criterion was the simplest and easiest to use.

Crow (2001, p11) agrees that simplicity of the concept is an attractive feature of the Purchas criterion. He says,

"There is much in planning theory and practice now that seems broadly in accord with the principle expressed in Wood-Robinson that in each case involving a private interest, the question that has to be asked is whether that private interest, in the opinion of the decision maker, requires to be protected in the public interest. This principle is attractively simple in concept even it is difficult to effect in practice".

Crow argues that private interest matters (such as the loss of view or property value due to a neighbouring development) "should not be ignored, but rather should be put in the balance in that discernment of the public interest which is necessary in the making of a sound decision" (Crow 2001, p11).



Therefore the Purchas principle will be adopted as a proposed guideline for the inclusion of private interests in the determination of the public interest. An important reason for doing so is that this criterion admits to the determination of the public interest the matter of rights, which it views as a common interest of society even if the rights in question are private interests.

#### **Guideline 8: Status of private interests**

Where private interests are raised as considerations, they can be included in the determination of the public interest if their protection is a matter of public interest. Otherwise they are not included in the determination of the public interest. This is called the **Wood-Robinson test** (after the UK case in which it appeared).

Guidance about the application of the Wood-Robinson test is provided in section 8.7.4.

### **8.7 GUIDELINES RELATING TO PEOPLE AND PROCESSES INVOLVED**

This issue was introduced in section 3.7 where the link between preferred rationality and preferred processes was discussed (3.7.2) and a number of questions about the processes that could be used when determining the public interest were raised (section 3.7.3). These matters were subsequently represented in the statements used in the Q Method research and the preferences of each of the discourses were identified in Chapter 6. It was established in section 6.7 that there is little agreement across the discourses about the specific procedures to be used and people to be involved in determining the public interest. Four areas of agreement were identified:

- an acceptance of expert input;
- agreement that public consultation can reduce the probability of making decisions that are unjust;
- agreement that research can make an important contribution to understanding what is or isn't in the public interest; and



- the rejection of politicians as having the best knowledge of the public interest.

Notable areas of disagreement related to the value of public participation, the need for consensus or majority opinion, and the relevance of market data.

It is difficult to find clear direction in this pattern. The areas of agreement and disagreement indicate minor aspects of a procedure that could be included or should be treated cautiously, but they do not define an overall approach. On the other hand, many indicators of an overall approach have already been identified in the preceding sections of this chapter, and these will be put into effect in this section.

Whereas sections 8.2 to 8.6 addressed the foundations of an operational meaning of the public interest, section 8.7 focuses on the creation of a procedure - a description of the operation itself. The guidelines presented so far have been foundational guidelines. The remainder are procedural guidelines, which describe how to go about the task of determining the public interest. Sections 8.7.3 to 8.7.7 are illustrated with an example (namely the determination of the public interest with respect to the location of a prison in the south coast of NSW). The example was developed by the researcher from documents published by the relevant government department, public debate and media coverage. The example was developed after the prison location decision was made and implemented. The procedure was not used in the decision nor was it available to anyone involved in the decision. It serves only to illustrate the proposed procedure.

This chapter concludes with Table 8.4, which shows for each of the guidelines the main evidence supporting that guideline. The foundational guidelines (that is, Guidelines 1 to 8 which have been presented above) are mostly based on areas of discourse agreement, supplemented in some cases by key aspects of theory or planning practices. The procedural guidelines (that is Guidelines 9 to 16 which will be presented below) draw heavily of the foundational guidelines, supplemented in some cases by key aspects of theory and areas of discourse agreement.

### **8.7.1 Issues identification stage**

At the suggestion of some of the research participants (described at the end of section 6.7), the procedure for determining the public interest is divided into two stages, namely the issues-identification stage and the decision-making stage. This allows for the two stages to be different in terms of their approach.

The identification of public interest issues relevant to a proposal would benefit from the use of multiple methods to include citizens in the identification of differing viewpoints and multiple interests. These methods might include public participation methods, seeking expert advice, consideration of market data or any other processes that assist in generating relevant considerations and understanding different points of view. This approach has the advantage of accommodating any regulatory requirements that might apply (for example requirements for public consultation or the referral of the matter for expert opinion). Despite the pressures on government to reduce the time and costs of such information gathering exercises, and the periodic pruning of the requirements that results, it is still the case that if the decision-making authority fails to satisfy the requirements of the day then their decision may be challenged.

The suggested multi-method approach is consistent with methodological pluralism (Norgaard 1988), and the use of mixed methods / methodological triangulation (Tashakkori & Teddlie 2003) not only to verify observations but also to gain a more holistic perspective of the subject matter. The aim of gaining 'a more holistic perspective on the subject matter' is arguably the key to the debate about what people and processes should be employed.

Another reason for undertaking wide ranging enquiries to identify issues, and to include consultation with the segments of the relevant public, is to reduce the risk of making decisions that are later shown to be unjust. Public consultation reduces the possibility of failing to anticipate some of the consequences of decisions. Use of consultation to avoid injustice is an area of agreement among the discourses on the public interest in planning and property development.



**Guideline 9: People and processes involved in issues identification**

Use a wide range of people and multiple methods to identify the range of issues that are relevant to a proposal and the differing viewpoints on those issues. These methods might include obtaining public input, generating public debate, seeking expert advice, working in cross-disciplinary teams, examining market data, using opinion polls, reviewing literature or any other process that assists in generating relevant considerations and understanding different points of view. (See also Guideline 7 Identifying the relevant public and their interests.) Take care to satisfy any regulatory requirements that apply (for example, requirements for public consultation). Remember that your claims about the public interest will be judged in terms of how well you have identified the issues.

**8.7.2 Decision-making stage**

With respect to who should be involved in the decision-making stage, it is suggested that the determination be made in the name of a person, group (such as an interest group) or organisation (such as a government agency, a government, a company or association). Therefore, the decision about what that group or organisation believes serves the public interest should be made by people who can speak on behalf of that group or organisation. That is, having consulted widely and been inclusive in the issues identification stage, the decision making stage can be seek to be more decisive than inclusive.

With respect to process, whereas there is a choice of methods available for use in the issues-identification stage, the main argument of this thesis is that a standardised method of decision-making about the public interest is needed if the concept of the public interest is to regain its importance.

**Guideline 10: People and processes involved in decision-making**

The decision making stage should involve a person or small group of people who can represent the values of the organisation or group in whose name the determination of the public interest is being made. They should apply an operational definition and procedures that have legitimacy in the planning and property development sphere.



Would Guideline 10 result in determinations that are inevitably politically motivated or reflecting the self-interest of the organisation? The degree to which this occurs will vary according to the role of the organisation or group in whose name the determination is being made. It is more likely to occur in a determination by a lobby group than by a court. However no determination will be completely free of such bias (nor of the effects of organisational narcissism described in section 3.4.2), but it can be minimised and made more easy to detect by the application of the standards contained in the procedural guidelines presented here.

### 8.7.3 Categorisation of public and private benefits and detriments

As a consequence of recognising that the public interest is multi-faceted, we also recognise that these multiple facets can be beneficially and/or detrimentally impacted by a proposal. The weighing up of these effects requires the use of a balancing test as described in Guideline 5.

The first step in the decision making stage is to categorise the identified issues into one of four categories, namely public benefits, public detriments, private benefits and private detriments.

#### **Guideline 11: Categorising public and private benefits and detriments**

Identify the beneficial and detrimental impacts, and classify them as being either public or private. An interest is a **public interest** if it impacts on the population as a whole, or on anyone at some stage of their life. An interest is a **private interest** if it impacts on a person or company in a private capacity and the benefits are privately owned.

#### **Example**

The example that will be used here and in the remaining sections of this chapter to illustrate this process relates to the locating of a new correctional centre (prison) on the south coast of NSW. In the 2005/06 state budget funding was approved for a new prison within one hour's travel of Kiama and the NSW Government notified five local councils in the area that they were seeking

council bids nominating appropriate sites. Local councils were encouraged to see this as an opportunity for economic growth in their area. Only Shoalhaven Council submitted possible sites, and the state government selected a site on the southern edge of Nowra in 2006/07. At the time of writing the new prison is under construction.

Apart from increasing the supply of prisoner accommodation to meet demand, an important aim of the new centre is to provide such accommodation in a location that is accessible by the families of offenders from the south coast (Corrective Services NSW undated). Therefore the location of those families, public transport links, accessibility and the location of the infrastructure necessary for a prison were all factors taken into account by the government planners. The public were more focused on the impact that a prison would have on the amenity of their local area. Without attempting to present a comprehensive list of factors relevant to the decision, the following selected issues will be used to demonstrate the categorisation of public and private benefits and detriments, and the ensuing steps in the determination of the public interest. These factors have been drawn from the media coverage of the debate, objector's websites (especially the Stop Shoalhaven Gaol Now group), and a Socio-Economic Impact Assessment commissioned by the Department of Corrective Services and the Department of Commerce (BBC Consulting Planners 2007).

Several public interest issues relating to the location of the south coast correction centre were raised during the public debate. Each of these is categorised below:

- Increasing prison accommodation in NSW to meet demand (public benefit)
- Placing inmates close to their families and communities (private benefit)
- Inmate contribution to community projects (public benefit)
- Long-term jobs (private benefit)
- Economic opportunities for local businesses (private benefit)
- Risks to the safety and security of residents and workers (public detriment)
- Families of inmates moving to the area (public detriment)
- Inmates remaining in the area on release (public detriment)
- Increased need for emergency accommodation (public detriment)
- Increased demand for low cost housing (public detriment)



- Increased crime and anti-social behaviour in the area (public detriment)
- Increased demand for social welfare services (public detriment)
- Social stigma of having a prison in the community (public detriment)
- Negative impact on local tourism businesses (private detriment)

These issues have been inserted into the relevant sections of Table 8.3 (located at the end of section 8.7, at the completion of this example). The black text in Table 8.3 denotes printing that is part of the form, and red text denotes information that is specific to the determination. This form has been designed as part of the development of the procedural guidelines.

Four issues are classified as private, because in each of these issues the benefit or detriment accrues to an individual person or business. These are further discussed in the next section.

#### 8.7.4 Application of the Wood-Robinson test

In section 8.6 the following guideline on the status of private interests was proposed:

“Where private interests are raised as considerations, they can be included in the determination of the public interest if their protection is a matter of public interest. Otherwise they are not included in the determination of the public interest. This is called the Wood-Robinson test (after the UK case in which it appeared).”

Now the following guideline is added to this.

#### **Guideline 12: Applying the Wood-Robinson test**

A private interest requires to be protected in the public interest, if:

- it involves a right or responsibility, the enforcement of which will benefit potentially anyone;
- all members of a category (for example, an occupation, an industry, a gender) could be impacted rather than only a few; or
- the flow-on effects will be so generalised as to affect everybody.



### Example

The application of this test to the four private interests that were identified in the case of the South Coast Correctional Centre is as follows:

- Placing inmates close to their families and communities (private benefit) – this private interest might require to be protected because of the positive effect family and community contact might have on inmate rehabilitation. It might also require protection on the grounds that an inmate has a right to visits from family members, although few states set out prisoner rights in their legislation. Still, it is arguably in the public interest for the families, especially children, of inmates to remain in contact with the inmate during detention. Therefore this interest should be treated as a public benefit, as shown in Table 8.3
- Long-term jobs (private benefit)
- Economic opportunities for local businesses (private benefit)
- Negative impact on local tourism businesses (private detriment)

These three private interests all involve a financial benefit to an individual or business in the first instance. Claims are sometimes made that such private income benefits the public as it circulates in the economy, but if a benefit remains exclusively private then it is hard to see how the interest of the public is affected. One way to proceed is to ask whether individual workers/individual businesses (a plumber/a plumbing business) or whole categories (all plumbers/the plumbing industry) would be affected. If it is the latter, then the issue takes on more of a public nature than if it is only the former. A prison will only employ individuals. A prison will only let contracts to individual businesses and not to whole industries. But a prison is more likely to have a negative impact on the local tourism industry than on individual businesses. Therefore only the last of the three passes the Wood-Robinson test, as shown in Table 8.3.

### **8.7.5 Assigning importance to benefits and detriments**

Having identified the benefits and detriments to be considered, the next step is to decide if any one of these should be more influential than any other. It is possible to simply count the number of benefits and detriments and decide in favour of the majority (McFadden 1988, p595) but this approach is easily thwarted by the presentation of either benefits or detriments in smaller, more detailed units. For example, a person unfamiliar with environmental matters might list one detriment labelled 'environmental damage', while an equally concerned but more informed person could break this down into numerous components.

Therefore it is necessary to actively consider whether all the identified public benefits and detriments should be equally influential in the determination. The language used to describe this process needs to be carefully considered. References to 'taking factors into account', in the researcher's experience, attract complaints that as these things are incommensurable they cannot be subject to accounting practice. The analogy of 'weighing' the factors can be criticised on the grounds that without the pull of gravity to determine weight of a factor, that weight assigned will vary from person to person and from place to place (Mc Fadden 1988, p630). However, this is unavoidable, and it is better to use a procedure that requires the weighting to be described and justified rather than one that does not. In his review of the use of balancing tests, McFadden (1988, p620) describes how balancing tests became popular in the USA courts because the judges were increasingly uncomfortable about their lack of candour in their written judgements, where their subjectivity was hidden behind the use of legal rules. The judges recognised that a balancing test allowed them to indicate how their worldview influenced the weighing up of the factors they were taking into account.

Stone (2000, pp24-26) describes the operation of balancing tests in the High Court of Australia to assess proposed changes of law. It is described in three steps.

- For both the benefits and detriments sides of the scale, evaluate the nature of the rights or interests involved and the extent to which the proposed change achieves or restricts those rights or interests.



- Then regarding both the benefits and the detriments sides, calculate the significance of the beneficial and detrimental effects. Both of these calculations are like those of risk assessors, involving the multiplication of the magnitude of the potential loss and the likelihood of that loss.
- Then decide which of these two, the overall benefits or the overall detriments, is the weightier.

Stone notes that the weighing of incommensurables is inevitable unless the Justices of the Court were to agree on a Utilitarian reduction of the various rights and interests to a single denominator or on some scheme of comparability or ranking (which they describe as 'far from likely'). Therefore, the balancing will be idiosyncratic and the real reasons will remain undisclosed (which, they note, is ironic since balancing tests emerged in the USA in an effort to increase candour).

In order to encourage such candour it is recommended in the proposed procedure that importance of each benefit or detriment be described in words rather than numbers. This might involve the use of a qualitative ordinal scale (for example not important/ of little importance/ important/ very important) and the provision of an explanation of the choice. Alternatively a description of impact could be applied, such as (for detrimental impact) negligible/ minor/ moderate/ severe/ devastating (Roseth 2005, p4). The important element is that reasons need to be given for whatever is assigned.

The accounting process is then an explanation or justification, of the type given when one 'accounts for one's actions', rather than a reporting of numerical calculation.

Two problems that can arise when assigning importance to issues are differences of opinion about the importance of a matter, especially if popular opinion is contradicted by expert opinion, and cumulative impact. These are discussed below.



### Conflicting opinion about importance

In *Port Stephens Pearls Pty Limited v Minister for Infrastructure and Planning* [2005] NSWLEC 426 at 72 and 73, Talbot J. advised,

"The community response to a proposal must be taken into account as part of the consideration of the public interest pursuant to s 79C(1)(e) of the EP&A Act. However, where the opinions expressed are not supported by evidence objectively expressed by experts in a particular field of expertise, then the views of those who do not have the essential expertise will be given little or no weight or, at the most, less weight than the expert opinion."

In *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154 (30 July 2003) Lloyd J made relevant comments on amenity:

- evidence on amenity impacts must be objectively assessed before a finding can be made of an adverse effect on the amenity of the area,
- little, if any, weight can be given to amenity impacts if there is no objective, specific, concrete, observable likely consequence,
- a fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact, and
- a Court would prefer views from residents that are based upon specific, concrete, likely effects of the proposed development.

These approaches to assessing conflicting opinions about the importance of a matter are the qualitative equivalent of the quantitative method used in risk analysis (as suggested by Stone (2000) and described above). The quantitative approach requires the measurement of likelihood on a numerical scale (with known intervals and a meaningful zero). The qualitative approach requires only an ordinal scale consisting of ranked categories (nearly certain, likely, unlikely, very unlikely) based data that satisfies nominal categories (such as 'objective', 'specific', 'concrete', or 'observable').

### Cumulative impact

Cumulative impact can refer to the growth in quantity, strength, or effect by successive additions, accumulating until a saturation point is reached beyond which further growth would be objectionable (Ealing study quoted in *Rifon Pty*

*Ltd v Sydney City Council* [2006] NSWLEC 778). An assessment of cumulative impact requires evidence of the likely increment brought about by each successive addition or loss, and the likely number of additions or losses that would accumulate to or beyond the tipping point.

### **Guideline 13: Assigning importance to benefits and detriments**

For each public benefit or detriment, and for each private benefit or detriment that passes the Wood-Robinson test, assign an importance. Use a qualitative ordinal scale such as not important/ of little importance/ important/ very important, and give reasons for your choice. If the claimed effect is unlikely, or contradicted by expert opinion, then assign less importance. If cumulative impacts are reaching a tipping point, assign more importance to them.

### **Example**

The assignment of importance to each of the benefits and detriments associated with the South Coast Correctional Centre is shown in Table 8.3. These judgements are only those of the researcher as this example is used only to illustrate the various issues.

Some key features are:

A rating of 'Very important' is given to only one issue, namely the need to increase prison accommodation in NSW to meet demand. The growth in demand is largely as a result of population growth, and whilst some argue that prevention is better than incarceration, the researcher is of the view that prison overcrowding is unconscionable.

A rating of 'Important' is given to three issues:

Inmate contribution to community projects, not because the contribution will be highly valued by the community, or because it comes without a cost (as the effect of perceived safety and security will be a detriment) but because offender



reparation to the society is judged by the researcher to be important in their rehabilitation.

Placing inmates close to their families and communities is judged to be important, not only for the inmate but for their families, especially in the case of Aboriginal inmates who will make up a large section of the prison population.

Negative impact on local tourism businesses is judged to be important as tourism is an important industry in the Shoalhaven Shire

A rating of 'Moderately important' is given to each of the public detriments. In real life these need to be given careful individual attention, especially as the Socio-Economic Impact Assessment commissioned by the government rated some as these as minor (although they listed methods of minimising the impact of them). The experience of some other towns with prisons is that while the problems can be mitigated by good management, the government funds to do so are not necessarily forthcoming (McInerney, 2005). This has caused them to argue that proposed extension to the prison should be recognised as causing them to approach a 'tipping point' of cumulative impacts.

These rating of importance are shown in Table 8.3.

#### **8.7.6 Assessment of net effect**

Determining whether the option is in the public interest involves judging whether the public benefits outweigh the public detriments. This is sometimes clear, with most of the weight being assigned to either the benefits or the detriments. On other occasions it is not clear.

#### **Guideline 14: Judging the net outcome**

If the public benefits clearly outweigh the public detriments, or vice versa, then the net outcome and the conclusion are readily determined. If the net outcome is not clear, then that is the conclusion. Additional insights might be drawn from examining which sections of the relevant public will benefit, for example the wider or local public, or the current or future generations.



### Example

In the example of the South Coast Correctional Centre at Nowra the outcome is not clear. That is, do nine overlapping issues of moderate importance outweigh two important and one very important benefit? The answer is not clear, and this is stated in the conclusion at the bottom of Table 8.3.

Another part of the conclusion is to examine who benefits and who does not. In the example of the South Coast Correctional Centre it is concluded (at the bottom of Table 8.3) that the main beneficiaries are the wider public of NSW (who need more prisons and better rehabilitation of inmates) and the local inmate population (including the Aboriginal population in the Nowra area). It is the non-inmate population of the town who expect to suffer the majority of the detriments. The experts argue that their expectations won't be realised. As the prison is being constructed, the emphasis should be on mitigating those detriments.

Note also that the Socio-Economic Impact Assessment commissioned by the government includes in the calculation of the net benefit all economic benefits (such as jobs, business contracts, short-term economic activity during construction). That is, in public interests terms, it treats them as public rather than private interests. This is a common practice that favours the proposed development. One of the main reasons for introducing the Wood-Robinson test for including private interests in the calculation of net benefits is to distinguish a *public* interest test from other forms of impact assessment.

### 8.7.7 Identification of best option and trade-offs

What best serves the public interest is the option that does the most good or the least harm. A party can argue that their preferred option has a good net benefit test outcome. However, if the claim lacks a holistic view of the other options, and the public and private benefits and detriments associated with those options with respect to the wider relevant public, then their argument is likely to be incomplete and therefore do them a disservice.

**Guideline 15: Finding the best option**

Search for the best option by repeating this process for other options, including status quo, and option that that modifies the proposal to increase the benefits and reduce the detriments. Give reasons for your choice.

The selection of any one option means that the benefits of the rejected options have been traded off in order to achieve the benefits of the selected option (to the extent that the former will not be realised). Such trade-offs are in inevitable consequence of decision-making. In order to fully explain a determination of the public interest, these trade-offs need to be acknowledged and communicated.

**Guideline 16: Acknowledging trade offs**

Acknowledging trade offs shows that other factors were considered and not ignored. This might involve acknowledging that:

- there are distributional consequences of the selected option, and that certain social groups or locations will receive more benefits or detriments than other groups or locations, for example, when waterfront commercial development increases access to waterfront for those who are able to pay, but reduces access for those who are not able to pay;
- priority is being given to one public interest problem rather than other public interest problems that are competing for the same resources, for example, when sharing scarce water resources between towns, agriculture and the 'environmental flow' needs of rivers;
- outcomes for the wider public are judged as more important than outcomes for the local public, for example, when the construction of wind turbines has a detrimental impact local views; or
- sacrificing some of the potential benefits for current generations is needed in order to protect the interests of future generations, for example if the Australian government were to decide to reduce coal mining (and mining royalties to governments) in order to reduce greenhouse gas emissions.

### **Example**

In the example of the South Coast Correctional Centre, other sites in the Shoalhaven Council area were assessed in terms of the physical characteristics of each site. The only alternative option is the status quo, and the government ruled this out. Therefore the examination of options is not an important step in this example.

Trade offs are recognised in the conclusion at the bottom of Table 8.3.



**Table 8.3 Determination of the public interest with respect to locating the South Coast Correctional Centre at Nowra**  
**OPTION: Locate the South Coast Correctional Centre at Nowra**

PUBLIC BENEFITS			Importance	Reason
<ul style="list-style-type: none"><li>Increasing prison accommodation in NSW to meet demand</li><li>Inmate contribution to community projects</li></ul>			V Important Important  Important Nil Nil	<ul style="list-style-type: none"><li>Overcrowding of prisons is unacceptable</li><li>Offender reparation to society is important</li> <li>This is/should be a right of the families</li><li>Exclusively private interest</li><li>Exclusively private interest</li></ul>
Private Benefits <ul style="list-style-type: none"><li>Placing inmates close to their families and communities</li><li>Long-term jobs</li><li>Economic opportunities for local businesses</li></ul>	Does the public interest require that this private interest be protected?			
	Yes No No	If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		

PUBLIC DETRIMENTS			Importance	Reason
<ul style="list-style-type: none"><li>Risks to the safety and security of residents and workers</li><li>Families of inmates moving to the area</li><li>Inmates remaining in the area on release</li><li>Increased need for emergency accommodation</li><li>Increased demand for low cost housing</li><li>Increased crime and anti-social behaviour in the area</li><li>Increased demand for social welfare services</li><li>Social stigma of having a prison in the community</li></ul>			Each of these is moderately important   	

Source: Developed by the researcher for this work, using information from BBC Consulting Planners (2007) and other sources (see section 8.7.3)

## **8.8 CONCLUSION: THE OPERATIONAL MEANING OF THE PUBLIC INTEREST**

Chapter 8 has explored the possible approaches for developing procedures for operationalising the public interest that are compatible with the areas of agreement among the discourses. Table 8.4 shows for each of the guidelines the main supporting evidence for that guideline. This can be in the form of a theoretical argument, area of discourse agreement, planning practice or another guideline. The foundational guidelines (Guidelines 1 to 8) draw mostly of the areas of discourse agreement. The procedural guidelines (Guidelines 9 to 16) are mostly derived from the earlier guidelines (especially Guidelines 5, 7 and 8).

From the guidelines it is now possible to define the operational meaning of the public interest. This definition needs to be consistent with each of the guidelines so as to create a unified logic. It is proposed that:

**The public interest is a judgement about the relative importance of the multifaceted benefits and detriments that an action will cause on the collective or common interests of the relevant public (that is, the local and wider, current and future public who will be impacted). Whilst most private interests are to be put aside when making this judgement, there are some private interests that require protection in the public interest and these should be included. The judgement is made by comparing the importance and likelihood of the benefits of the action with the importance and likelihood of the detriments that will result from that same action.**

Having constructed this operational meaning and a set of procedural guidelines, attention will now turn to their evaluation.



**Table 8.4 Proposed guidelines for determining the public interest and their basis in areas of discourse agreement, planning practice and/or foundational guidelines**

Proposed guidelines for determining the public interest	Basis of the guideline in theory, discourse agreement, planning practice and/or other foundational guideline
<b>FOUNDATIONAL GUIDELINES</b>	
Section 8.2 1: The importance of the public interest	<p><b>Theory:</b> Taylor (1994) for something to be in the public interest it cannot be primarily a sectoral interest (subject to Guideline 8).</p> <p><b>Discourse agreement:</b> The public interest is an important factor that needs to be considered</p>
Section 8.3 2: Recognising multiple competing public interests 3: Language for discussing multiple public interests 4: Definition of 'a public interest', 'public interests' and 'the public interest' 5: Use of a balancing test	<p><b>Discourse agreement:</b> The public interest is multi-dimensional</p>
Section 8.4 6: Limiting of criteria	<p><b>Discourse agreement:</b> Decision makers can indicate what public interest criteria they see as important, but should also consider other matters that are shown to be relevant to the public interest;</p> <p><b>Planning practice:</b> Queensland Govt DIP (2009)</p>
Section 8.5 7: Identifying the relevant public and their interests	<p><b>Discourse agreement:</b> Local interests can conflict with the broader public interests, and the interests of future generations need to be considered;</p> <p><b>Planning practice:</b> Roseth (2009)</p>
Section 8.6 8: Status of private interests	<p><b>Discourse agreement:</b> Private interests as well as common interests, need to be considered when determining the public interest;</p> <p><b>Planning practice:</b> Wood-Robinson test (Purchas 1988)</p>

Source: Developed by the researcher for this work

Continued next page



Table 8.4 continued

Proposed guidelines for determining the public interest	Basis of the guideline in theory, discourse agreement, planning practice and/or other foundational guideline
<b>PROCEDURAL GUIDELINES</b>	
Section 8.7 9: People and processes involved in issues identification	<p><b>Discourse agreement:</b></p> <ul style="list-style-type: none"> <li>- Public consultation can reduce the probability of making unjust decisions.</li> <li>- Research can make an important contribution to understanding what is or isn't in the public interest.</li> <li>- Politicians don't have the best knowledge of the public interest.</li> <li>- Expert input is valued.</li> </ul> <p><b>Guideline:</b> 7 - Identifying the relevant public and their interests</p> <p><b>Planning practice:</b> separation of issues identification and decision-making stages</p>
10: People and processes involved in decision-making	<b>Theory:</b> March & Low (2004) re inclusiveness versus decisiveness
11: Categorising public & private benefits & detriments	<b>Guideline:</b> 5 – Use of a balancing test
12: Applying the Wood-Robinson test	<b>Guideline:</b> 8 – Status of private interests
13: Assigning importance to benefits and detriments	<b>Guideline:</b> 5 – Use of a balancing test
14: Judging the net outcome	<b>Guideline:</b> 5 – Use of a balancing test
15: Finding the best option	<b>Guideline:</b> 5 – Use of a balancing test
16: Acknowledging trade-offs	<b>Theory:</b> Pal & Maxwell (2004) Public Interest Accountability Framework

## CHAPTER 9

### EVALUATION AND IMPROVEMENT OF THE PROCEDURE

#### 9.1 INTRODUCTION

In the previous chapter a set of foundational guidelines and a set of procedural guidelines were developed. The procedural guidelines constituted the steps in the proposed procedure for determining the public interest. This chapter describes the evaluation of that proposed procedure.

As described in section 7.3.1, the first aim of the formative evaluation is to elicit reactions to features of the proposed procedure with a view to using those reactions to improve the procedure. The second aim is to have others respond to those reactions in such a way that would generate suggestions for dealing with those reactions if they arise when the procedures are in use.

This requires those participating in the evaluation be introduced to the main features of the procedure and develop a common understanding of it. This need was addressed by sending Preliminary Reading to each person who agreed to participate in the Delphi process (see Appendix 13). The preliminary reading is a simplified statement of the procedure and uses a hypothetical example. It has an introduction that focuses attention on three issues, namely (1) the status of private interests in the consideration of the public interest, (2) the definitions used in the procedure, and (3) the importance of involving the public in the identification of public interest issues while passing responsibility for decision-making to a panel that can represent the values of the relevant organisation.

The online instruments sent to participants in each of the 4 rounds of the Delphi process are available in Appendix 14. Appendix 15 sets out the responses received (the data set).

The Delphi process focused on specific aspects of the proposed procedure. Table 9.1 shows how these aspects were managed over the 4 interactive rounds and the non-interactive report-back to participants.

**Table 9.1 Structure of the Delphi process, showing how the threads (rows) were discussed over the rounds (columns)**

Interactive Round 1	Interactive Round 2	Interactive Round 3	Interactive Round 4	Non-interactive report-back
<b>A - Definition of the public interest</b> (Round 1: Q2, Q3 & Q4)	Round 1 results reported. Comments on issue of relevant public invited. (Round 2: Q1)			
<b>B - Comparing Steps 2 and 4</b> (Round 1: Q5 & Q6)	Round 1 results reported and 3 options proposed (Round 2: Q2)	Round 2 results reported and discussion closed.		
<b>C - Not restricting the public interest issues</b> (Round 1: Q7)	Some suggestions made in Round 1 reported and discussion closed.			
	<b>D - Definition of a public interest and a private interest</b> (Round 2: Q3)	Round 2 results reported and discussion closed.		
	<b>E - Classification of interests as public, private or private that need protection</b> (Round 2: Q4 & Q5)	Round 2 results reported.	Remaining concerns reported and options proposed (Round 4: Q2)	Round 4 results reported
		<b>F - Excluding other private interests</b> (Round 3: Q1)	Remaining concerns reported and options proposed (Round 4: Q1)	Round 4 results reported
		<b>G - Qualitative description of importance</b> (Round 3: Q2)	Remaining concerns reported and options proposed (Round 4: Q4)	Round 4 results reported
		<b>H - Reaching a conclusion</b> (Round 3: Q3)		
			<b>I - Classification of issues as benefits or detriments</b> (Round 4: Q3)	Round 4 results reported
			<b>J - Breaking of tied results</b> (Round 4: Q5)	Round 4 results reported
			<b>K - Overall opinion of procedure</b> (Round 4: Q6)	Round 4 results reported

Source: Developed by the researcher for this work

Table 9.1 shows how threads were progressively introduced into the discussion (that is, threads A to C were introduced in Round 1, D and E in Round 2, F to H in Round 3 and I to K in Round 4), and how the first four of these were ‘closed’



by the end of Round 3, although participants continued to refer to those matters in other discussions.

The results of the Delphi process are presented in an order that reflects the sequence in which the persistent ambiguities were presented in Chapter 3 and used in Chapters 6 and 8. They are discussed as follows:

- Section 9.2 examines the responses to the proposed definition of *the* public interest and minor revisions are made to the definition.
- Section 9.3 reviews the matters relating to the balancing test, namely the nature of the test, methods of classifying issues as benefits or detriments, methods of valuing and weighing benefits and detriments, and dealing with tied results.
- Section 9.4 incorporates into the procedures the feedback on the matter of not restricting the public interest issues when seeking input from the public.
- Section 9.5 revisits the matter of the relevant public, and what the participants added to the guideline on this.
- Section 9.6 examines how the participants responded to the problem of distinguishing between private and public interests and the Wood-Robinson test.
- Section 9.7 reviews the responses relating to the question of who should determine the public interest, the guidelines relating to the issues identification and decision-making stages are revised, and a new guideline is introduced on documenting a determination of the public interest.
- Section 9.8 assesses the success of procedure as a *modus vivendi* for debating the public interest, and introduces a new guideline on invoking and debating the public interest.

The final version of the guidelines, written for practitioners, is in presented section 9.9.

## 9.2 DEFINITION OF THE PUBLIC INTEREST (Thread A)

The definition of the public interest used in the evaluation process was the definition proposed in Guideline 4 (section 8.3). That is:

### **Guideline 4: Definition of... ‘the public interest’**

“the public interest is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in that same matter. Something will serve the public interest if, on balance, it creates more public benefit than public detriment. The option that does the maximum good or the least harm for the public is the one that best serves the public interest”.

Round 1 Question 2 asked the Delphi participants if they agreed with this definition. All 10 respondents in Round 1 said they agreed with this definition and 2 comments were made in response to Round 1 Question 3.

The first comment, by R13, was that the words “on balance” were unnecessary. In a later round R13 also asked how a tied result, “where the outcome is 50/50”, would be decided. This raises another question, namely, what is a sufficient margin that would warrant a declaration that something is or is not in the public interest? Should the margin be ‘significant’ or even ‘overwhelming’ (how ever these terms might be operationalised)? While this issue of dealing with a tied result is addressed in section 9.7, it is mentioned here because of the impact it has on the definition of the public interest. To R13, a tied result means ‘50/50’ (a term which conveys a certain degree of accuracy). The proposed procedure will not produce results with such accuracy. This problem is not resolved by the removal of the words ‘on balance’ because, as R13 suggests, the definition has the same meaning without those words being included.

An alternative approach would be to say that something would serve the public interest if it *clearly* creates more public benefit than public detriment. That is, a determination of whether a proposal is or is not in the public interest could actually produce one of three results:

Option 1 - clearly in the public interest,

Option 2 - clearly not in the public interest, or

Option 3 - unclear, producing both beneficial and detrimental affects in similar proportion such that neither of the above applies.

The third option would create a 'tied' result, the treatment of which is discussed in section 9.7.

The second comment, made by R6 was in part, "The first sentence is fine. The second and third are silent on the extent of private interest. The definition is strong on establishing a measure of the degree of public benefit, but weak on contrasting with private interest; to a certain extent "public" can be understood only by differentiating from the private sphere." One way of rectifying this would be to insert after the first sentence, "Interests that are exclusively private interests must be put aside when determining the public interest".

With the changes shown in *italics*, the guideline then becomes:

**Guideline 4 (*Revised*): Definition of... 'the public interest'**

'The public interest' is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in that same matter. *Interests that are exclusively private must be put aside when determining the public interest.* Something will serve the public interest if it *clearly* creates more public benefit than public detriment. The option that does the *most* good or the least harm for the public is the one that best serves the public interest.

(The remainder of this guideline is revised in section 9.6.)



### **9.3 DEALING WITH MULTIPLE PUBLIC INTERESTS: THE BALANCING TEST (Threads G, H, I and J)**

This section describes the participant's feedback on the balancing test, particularly the methods of classifying issues as benefits or detriments (Thread I), methods of valuing and weighing benefits and detriments using qualitative descriptions of importance (Thread G), reaching a conclusion (Thread H) and breaking of tied results (Thread J). It does not deal with the public/private distinction, as that is the focus of section 9.6.

#### **9.3.1 Balancing of benefits and detriments**

##### **(No thread specifically addressed this matter)**

At the core of the proposed procedure is the idea that because there are multiple common interests that sometimes conflict, a balancing test is required.

This was challenged by R6 in Round 4 Question 3 when he commented,

“...it is a mistake to think that there is a public interest which can be discerned by balancing benefits and costs. Rather the public interest is the holy grail or standard to which policy-makers strive as they conduct analysis. This should be a process of enquiry and analysis with the public interest as the guiding star rather than a calculus with the public interest as a clinical outcome at a point in time.”

The researcher regards this approach as unhelpful. Saying something is a standard or benchmark increases, not decreases, the need for it to be given a clear operational meaning.

Apart for the above comment, the respondents in the Delphi process appeared to accept the balancing of benefits and detriments to determine the public interest. Even R6, when responding to another question in the same round (Round 4 Question 4), suggested that, “the benefit of the matrix process that you outlined last week (*which the researcher understands to involve the distinction between public and private benefits and detriments*) is not its quantitative nature but the process is that it obliges the analyst to follow: a process of enquiry and evaluation”.

### 9.3.2 Classifying impacts as benefits or detriments (Thread I)

The original guideline that covered this matter was presented in section 8.7.3, and in Step 5 of the Preliminary Reading for the Delphi participants:

#### **Guideline 11: Categorising public and private benefits and detriments**

Identify the beneficial and detrimental impacts, and classify them as being either public or private. An interest is a **public interest** if it impacts on the population as a whole, or on anyone at some stage of their life. An interest is a **private interest** if it impacts on a person or company in a private capacity and the benefits are privately owned.

There is little guidance provided on the benefit/detriment dimension of the classification, compared with the public/private dimension, and more guidance appears to be needed on the former. A postgraduate student participant in the workshop (described in Appendix 12) noted the problem that "People may view benefits and detriments differently". The researcher takes this to mean something similar to the comment made by R6 in Round 2 Question 5, when he reported that he could see both benefits and detriments in the one issue:

I believe that "economic PROSPERITY" is very much in the public interest and it is the duty of governments to facilitate prosperity and economic-well-being for their electorate and residents. However, as a scientist, I hold strongly to the view that "economic GROWTH" is now against the public interest because modern industrial society has exceeded the capacity of the Earth to yield resources and assimilate wastes. In other words, if GROWTH happened to be a sustainable route to prosperity, its promotion would very much be in the public interest, but for technical reasons outside your exercise is now profoundly detrimental.

In Round 4 Question 3 participants were presented with 2 statements about the classification of issues as benefits or detriments and were asked to select any of the statements with which they agreed. Only one of the two statements was popular, with 8 of 9 respondents selecting the statement:

When a change is likely to have both positive and negative effects it should be broken down into its parts, for example, "the benefits of population growth such as increased range of services that can



be supported" and "the detriments of population growth such as increased congestion and strain on infrastructure".

This approach has the advantage of allowing the Trojan horse to be dismantled and its contents inspected, that is, it allows the apparently good idea to be analysed and the unintended negative consequences to be identified. Therefore, given the respondents' acceptance of this approach, the relevant guideline will be revised as follows (changes are shown in *italics*):

**Guideline 11 (Revised): Categorising public and private benefits and detriments**

Identify the **beneficial** and **detrimental** impacts *associated with a proposal*. *This may mean breaking down an impact into its beneficial and detrimental parts. For example, an action resulting in population growth might have benefits such as the increased range of services that can be supported, as well as detriments such as increased congestion and strain on infrastructure.*

(The remainder of this guideline is revised in section 9.6)

**9.3.3 The method of weighing benefits and detriments – qualitative description of importance (Thread G)**

Most participants agreed with the use of a qualitative scale of importance and the provision of written justification (Round 3 Questions 2 and 3, Round 4 Question 4). At several points in the Delphi process R6 objected to the language of 'weighting' and in Round 4 Question 4 he proposed the wording,

"the public interest is a matter of judgement. There are rules, there are absolutes, there are time-honoured traditions of ethics and social justice and there are certainly scientific standards of environmental management. But weighing all of these with appropriate levels of significance is a matter of informed judgement".

His concerns about the tendency of the procedure to share the weaknesses of Utilitarianism were noted and are addressed in section 10.3.



#### 9.3.4 Reaching a conclusion and breaking tied results (Threads H & J)

The relevant guideline provided to participants in their Preliminary Reading at Step 8 was, "Using the descriptions of importance, judge if the PUBLIC BENEFITS outweigh the PUBLIC DETRIMENTS" This was a simplified version of the guideline presented in section 8.7.6:

##### **Guideline 14: Judging the net outcome**

If the public benefits clearly outweigh the public detriments, or vice versa, then the net outcome and the conclusion are readily determined. If the net outcome is not clear, then that is the conclusion. Additional insights might be drawn from examining which sections of the relevant public will benefit, for example the wider or local public, or the current or future generations.

The following comment was supplied by R13 in Round 3 Question 4:

Are there any plans to 'force' participants to continue until they achieve a result - if the initial outcome is 50/50? It seems as though such a process might be more attractive if it contained a means of resolving a deadlock. Just a thought...but probably a can of worms into the bargain!

In Round 4 Question 5 participants were asked to select any of the statements on this topic with which they agreed:

- 4 of the 9 respondents selected the statement that reflected the solution contained in the guidelines, namely "Conclude that the proposal is borderline"
- 4 of the 9 respondents selected the statement: "Modify, or put conditions on the proposal to increase the benefits or decrease the detriments"
- 2 of the 9 respondents selected the statement: "Require the individual or panel to continue to add (less significant) impacts until it is clear that the proposal is or isn't in the public interest".

The respondents' comments did not propose alternative approaches. Therefore all of these options will be included the guideline for a decision-maker to consider using if the result is unclear. The revised guideline would then be (new material is in *italics*):

**Guideline 14 (Revised): Judging the net outcome**

A determination of whether a proposal is in the public interest can take one of three forms:

1. *Clearly in the public interest*
2. *Clearly not in the public interest, or*
3. *Unclear - producing public benefits and public detriments in similar proportion such that neither of the above applies.*

*If the net outcome is not clear, then several options are available:*

- *Report that it is not clear whether the proposal is or is not in the public interest, as the public detriments seem to be as significant as the public benefits. This might be an appropriate course of action where other options are also being considered.*
- *Modify or put conditions on the proposal to significantly increase the public benefits or decrease the public detriments, and report that while the original proposal is borderline, these modifications would result in a proposal that would serve the public interest.*
- *Examine more carefully the likelihood of benefits and detriments materialising, and adjust the importance of expected impacts accordingly.*
- *Decide to place greater emphasis on the distributional considerations, especially where future generations or disadvantaged sectors of the current generations would bear most of the detriments.*
- *Require the individual or panel to continue to add (less significant) impacts until it is clear that the proposal is or is not in the public interest. (This would only work if the less significant impacts were mostly benefits or mostly detriments.)*

#### 9.4 RESTRICTING THE PUBLIC INTEREST CRITERIA (Thread C)

The original guideline, as presented in section 8.4 was:

##### **Guideline 6: Limiting of criteria**

It is desirable, and in some circumstances necessary, for decision-makers to make known to the public, in advance, the criteria they will be using to determine a public interest matter. It is also desirable that the public be allowed to advise decision-makers of public interest considerations that were excluded from that list of criteria. Therefore the list of criteria should invite "other matters relevant to the public interest". The agency can also indicate any private interest matters they regard as unconvincing, but cannot disregard without consideration a matter that is not exclusively a matter of private interest.

In the Preliminary Reading Step 3, and Round 1 Question 7, the Delphi participants were provided with a simplified statement of this Guideline. In Round 1 it appeared in the form, "If, for example, someone is calling for submissions about what best serves the public interest in a particular matter, and they wish to list 'terms of reference', they should indicate that they will also accept other matters relevant to the public interest." Participants were invited to comment if they wished to do so, and that "Silence will be taken as agreement." 5 of the 10 respondents in this round provided comments.

Two of these comments agreed with the statement, namely those of R2 and R6. R6 noted, "the public interest is 'non-rationalist' and cannot be prescribed (although it can be supremely rational)". This is taken to mean that the process of determining the public interest has to acknowledge multiple truths rather than claiming the existence of a single universal truth. Also the process has to take into consideration the 'irrational' views that might be derived from emotions, social custom, social interactions etc. This does not prevent the rational assessment of these views, which might involve assigning more or less importance to them based on, for example, the rationality derived from an organisation's statutory framework.

Two other comments embellished the logic of the original statement. R10 commented, "Sometimes it is important to be clear about the parameters within which the decision-making is occurring. Failure to do so can be very



disengaging, particularly if those parameters are immutable". R3 suggested, "matters or terms of reference should be provided as examples; however, people may feel limited and/or biased by terms of reference".

Both of these comments relate to the setting up of boundaries (parameters or terms of reference). R10 argues that if they exist then people should be advised of them, while R3 argues that they are intimidating, and a better approach would be to include them as examples.

Incorporating the suggestions from R10 and R3 (*in italics*), the guideline becomes:

**Guideline 6 (*Revised*): Limiting of criteria**

It is desirable, and in some circumstances necessary, for decision-makers to make known to the public, in advance, *any* criteria they will be using to determine a public interest matter, *if such criteria exist*. It is also desirable that the public be allowed to advise decision-makers of public interest considerations that were excluded from that list of criteria. Therefore the list of criteria should invite "other matters relevant to the public interest". *Alternatively, the agency could indicate that the matters listed are examples of the matters that might be relevant to the public interest.*

The *decision-making* agency can also indicate any private interest matters *it* regards as unconvincing *and will exclude from consideration*, but cannot disregard without consideration a matter that is not exclusively of private interest.

## 9.5 IDENTIFYING THE RELEVANT PUBLIC

(No thread specifically addressed this matter)

The original guideline, as presented in section 8.5.2 was:

### **Guideline 7: The relevant public and their interests**

A determination of the public interest needs to consider not only the local interests but also the wider interests that are affected by a proposal. This requires consideration of who will experience, pay for, use, benefit from or suffer from it. Ask who has the greatest need for such a development and if they will benefit. Ask if other locations would have to bear more detriment if this location did not bear some. Ask if there are broader principles that should be considered. Protect the interests of future generations by examining how current proposals would affect their options. Seek proposals that maximise those options by conserving resources, the quality of those resources and future access to those resources.

This step was given minimal attention in the Preliminary Reading, and would not have been discussed in the Delphi process had not R7 asked whether 'general public' refers to "all people residing in the local government area or if it sometimes only refers to the people residing in the particular locality that is the subject of the particular proposal" (Round 1 Question 2). This became the focus of Round 2 Question 1, where the researcher responded, suggesting that it would be necessary "to identify all those who will be impacted. For some proposals this might be relatively local, but in other matters it might be regional, national or global".

6 respondents commented on this. R2 and R13 were satisfied with the idea that general public will vary from case to case. R6 sought to set up some guidelines, "at a minimum" including the residents of the local government area, tourists to the locality, "all citizens of the State in terms of having confidence in the development approval system", and if there is significant environmental damage, the affected natural systems (which may extend internationally). R3 noted the need to consider the scope and purpose of the Act under which the determination was being made. R11 saw a parallel with

the concept of 'community', which can refer to physical groupings or interest groupings.

These responses suggest the following improvements to Guideline 7 (*inserted in italics*).

**Guideline 7 (Revised): The relevant public and their interests:**

Identify the local interests and wider (*regional, state-wide, national or international*) interests that are affected *by the proposal in question* by examining who will experience, pay for, use, benefit from or suffer from it. Ask who has the greatest need for such a development and if they will benefit. Ask if other locations would have to bear more detriment if this location did not bear some. *Consider the interest groups who might be affected even if they do not physically visit the location.* Ask if there are broader principles that should be considered.

Protect the interests of future generations by examining how current proposals would affect their options. Seek proposals that maximise those options by conserving resources, the quality of those resources and future access to those resources.

*Consult any relevant legislation for specifications of who must or must not be considered.*



## 9.6 DISTINGUISHING BETWEEN PRIVATE AND PUBLIC (Threads D, E & F)

### Definition of public interest and private interest (Tread D)

Thread D began in Round 2 Question 3 where participants were asked if they agreed with the proposed definitions of a public interest and a private interest, and were asked to provide comments or suggestions.

With respect to the proposed definition of a public interest, 7 of the 11 respondents agreed with the statement that, "An interest is a public interest if it impacts on the population as a whole, or on anyone at some stage of their life". 2 comments (from R13 and R6) objected to the wording of "anyone at some stage of their life" (an approach taken from Taylor (1994, pp96-97) as discussed in section 2.3). An alternative expression of this idea would be to say, "or on all people in a particular stage of life".

With respect to the proposed definition of a private interest, 9 of the 11 respondents agreed with the statement that, "An interest is a private interest if it impacts on a person or company in a private capacity and the benefits or detriments are privately owned". R5 commented on the use of the term 'owned', and noted the potential for a narrow interpretation based on tenure. She suggested the wording "of primary benefit to an individual or individuals rather than to the public". R1 noted that public and private interests overlap, and there is no clear delineation and transition point between them. This comment goes to the heart of the problem. The distinction between private and public interests is not clear-cut, and a third area, where it is in the public interest to protect private interests, is recognised in the Wood-Robinson test. The Wood-Robinson test, however, does not avoid the difficulty; it simply re-introduces it at a finer level of distinction by asking which private interests have public interest implications and which do not. Finding the 'transition point' in matters such as the public interest in defending individual rights, or the public interest in the profitability of privately owned or even publicly owned businesses, is at the heart of the struggle to define what best serves the public. It cannot be avoided.

Taking these comments into account where possible, the relevant guidelines would be revised as follows.

**Guideline 4 (Revised): Definition of a private interest, a public interest, public interests ...**

'A public interest' is an interest of the population as a whole, *or of all people at some stage of life*. In this respect it is an interest that is common to everybody and so is sometimes called a 'common interest'. It might not be valued equally by all section of the public.

'Public interests' are the many public interest considerations or factors that need to be considered when acting in the public interest.

(The remainder of this guideline is revised in section 9.2)

**Guideline 11 (Revised): Categorising public and private benefits and detriments**

*Then classify the impacts as either public or private. An interest is a **public interest** if it impacts on the population as a whole, *or on all people at some stage of life*. An interest is a **private interest** if it impacts on a person or company in a private capacity and *those impacts are of benefit (or detriment) primarily to an individual or individuals rather than to the public*.*

(Additions to the guideline are made in section 9.3.2)

**Classification of interests as public, private or private that need protection (Thread E)**

Having discussed the relevant definitions, Thread E required participants to classify interests as public, private or private but needing protection in the public interest. Round 2 Question 4 asked participants to classify a set of 3 interests, namely a landowner's property value, a property owner's views, and a property owner's access to sunlight. Views and sunlight (overshadowing) were the interests considered in the case that gave rise to the Wood-Robinson test (Purchas 1988, discussed in section 8.6.2c above). View sharing was also the subject matter of March's work on the tension between rights and utility (March 2003; discussed in section 2.3.3) and Roseth's planning principle on



the assessment of view impact (Roseth 2004, 2005; and see 8.3.2 above). Therefore a task involving the classification of a right to a view was included.

Round 2 Question 5 asked participants to classify a set of 4 interests (the profitability of a private business, the profitability of a private business that is a major employer, growth of Council/Shire income or government tax income, and regional economic growth). The instructions for both these questions noted that "It would of course 'depend on the details', but please indicate the most likely category".

In each case the set was presented in a specific order rather than in a random order. The first interest was that which the researcher considered most likely to be classified as an exclusively private interest, and the last interest was that which the researcher considered most likely to be classified as a public interest. This would not be acceptable practice if the results were to be used in a planning decision, as it would be clear to the participants what results the researcher was expecting or seeking and therefore would lead to response bias. The aim here was simply to introduce participants to the categories while they were working in isolation without assistance. This device was used to help them to understand the nature of the task. Within each set, responses did indeed shift in the expected manner. No attempt was made to identify the extent of the response bias.

The participants' comments show engagement with the task of dealing with the lack of "a clear delineation and transition point" (to quote R1). Some began to nominate scenarios where a particular classification might or might not be appropriate. Some referred to current planning principles and practices, and other proposed public interest reasons for protecting private interests (see Appendix 15 for details). Round 2 Question 6 invited any other questions or comments, and R5 noted that the classifications provided by participants in the previous questions would vary depending on individual experiences. She queried whether the procedure would yield 'consistent responses', and stated, "it highlights to me the importance of gathering as much information as possible, testing the subjective weightings with other practitioners, and documenting the reasoning so it can be tested at a later time if need be".



Whether the procedure could produce 'consistent responses' with respect to the classification of interests would depend on factors such as the nature of the interest to be classified, the homogeneity of the decision-making group and what opportunities the group has for dialogue and consensus building. R5's conclusions regarding the importance of gathering information and testing ideas with other practitioners are insightful. So too is her suggestion that one advantage of documenting the reasoning is to test it at a later time when actual impacts, rather than expected impacts, can be considered.

The results of the classification task were presented in Round 3, where one participant challenged the classifications made by other participants, specifically with respect to views and access to sunlight being classified differently. This challenge became the subject of Round 4 Question 2, and comments provided there again demonstrated an engagement with the task of defining the transition points in the classification system.

On the issue of whether the right to a view was a public interest, a private interest or a private interest that requires protection in the public interest, 8 of the 11 of the respondents classified it as a private interest. Only one appeared to be aware of view sharing principles and the relevance of view sharing to the public interest and commented,

The whole community is impacted over time by the cumulative effect of decisions. Protection of views is important for all those enjoying them. View sharing in some locations is vital for community cohesion. (Round 4 Question 2 R7)

The discussion focused instead on whether views and access to sunlight should be treated differently. This discussion was hampered by the participants being drawn from two states with different planning regulations, but given sufficient rounds and contextual information the discussion could have come to a conclusion.

### **Excluding private interests (Thread F)**

Round 3 Question 1 asked participants if they were convinced by the argument presented on page 1 of the Preliminary Reading that "The public interest is perhaps the only criterion for judging proposals where private interests are put

to one side." Of the 8 participants in this round, 7 provided a response and 6 of those agreed with the argument.

The reasoning of the one who did not agree was presented in Round 4 Question 1, along with some of the statements made by those who did agree. The statement that attracted the most support (8 out of 9 respondents) was one that had been made by R6, "To be a public interest it must be a shared interest. There is an inescapable collective dimension".

## **9.7 PEOPLE AND PROCESSES INVOLVED IN DETERMINING THE PUBLIC INTEREST (Thread B)**

This section continues the discussion of the persistent ambiguity concerning who knows best and which people and processes should be involved. The particular process of using a balancing test was discussed in section 9.3, and this section addresses the broader aspects of the people to be involved, particularly relating to public participation and collaborative planning.

This thread started in Round 1 Questions 5 and 6, where participants were asked whether they supported the suggestion "that when identifying the issues a wide range of people should be involved, but making a judgment should be done by a smaller group of people who have the expertise to represent the diverse public or to represent the organisation in whose name the determination of the public interest is being made." Of the 10 respondents in this round, 6 indicated that they agreed with the arrangement, and the remaining 4 selected the option that it was appropriate in some circumstances. Of the 6 who agreed with the arrangement, only one (R2) felt the need to defend the idea of involving a wide range of people in the issues identification stage, but all 6 felt the need to defend the idea of excluding these people from the decision making phase. Their reasons for the latter idea included that the members of the small group would:

- be "detached from the process" (R3), have "objectivity" (R2);
- be trained in balancing people's interests (R3), have expertise (R2), or "need to have an understanding of the craft" (R6);
- have the necessary delegated authority (R7); and

- be accountable, and accountability sharpens one's attention (R6).

Of the 4 who said the arrangement would be appropriate in some circumstances but not in others, 2 focused on defining such circumstances. Their examples were:

- when the organisation making the decision has little credibility (R13); and
- when there are wide ranging disparities between how people value the site of the development, where it might be appropriate to facilitate workshops with those representing the various issues (R9).

R1 wisely advised that the guideline should not appear to be dogmatic.

In the following round (Round 2 Question 2) these comments from R13 and R9 were presented to the participants along with 2 alternative arrangements that allowed for some public involvement in the decision making stage. 6 of the 11 respondents agreed with the option, "Stick with the original approach", and neither alternative arrangement attracted much support. This indicated to the researcher that the problem might not be with the use of the small group to make the decision, but with the ambiguity of the ongoing role of the wider group or the general public. More specifically, the procedure lacked a third stage where the decision was referred to the wider group to allow the collaborative process to be ongoing. In other words, the procedure had failed to formalise the feedback stage that was only implicit in the requirement that the decision making stage be documented with the reasoning of the small group.

This suggests that the existing Guidelines 9 and 10, which referred to the issues identification stage and the decision-making stage respectively, should be replaced with the following:



### **Guideline 9 (New): A collective understanding of the public interest**

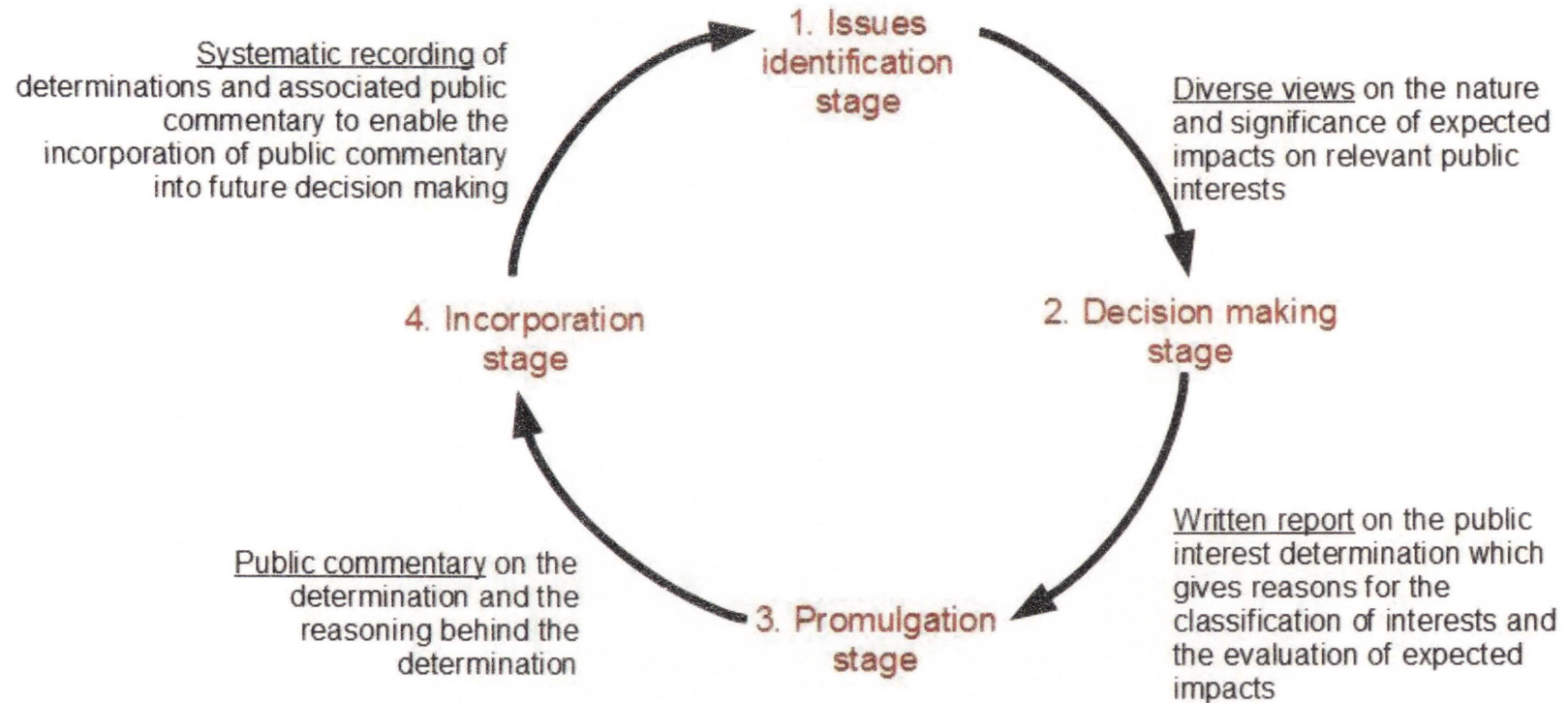
*Develop an ongoing exchange among sections of the public, and between the public and the decision-making bodies, about the nature of the public interest. This will facilitate the collaborative development of a shared understanding of the distinctions between public and private interests, the way public interests might be damaged or enhanced, and the significance of those impacts.*

*Implement the following four-stage process:*

- 1. An issues-identification stage that is focused on identifying the relevant public and involving them in discussion of the public interests that will be affected by a proposal, including discussion of which private interests require protection in the public interest and the nature and significance of the expected impacts on those interests.*
- 2. A decision-making stage where the likely benefits and detriments to the public interest of a proposal are identified and assessed and a written record of this reasoning (the judgement) is prepared. The decision-making stage should involve a person or small group of people who can represent the values of the organisation or group in whose name the determination of the public interest is being made.*
- 3. A promulgation stage where the judgement is made widely available, not only to the relevant public but also to the wider society, for comment and discussion. This would enable public comment on the decision and the reasoning behind the decision.*
- 4. An incorporation stage where the public comments are systematically recorded and incorporated into future determinations in similar cases leading to the development of a collective understanding of what serves the public interest.*

The four stage cycle described in Guideline 9 is represented in Figure 9.1.

Figure 9.1 The public interest determination cycle and the associated information flows between stages.



Source: Developed by the researcher for this work

**Guideline 10 (Revised): Identifying the relevant public and their interests.**

*In order to satisfy Guideline 7: The relevant public and their interests, a wide range of people and multiple methods should be involved in the issues identification stage to enable the identification of a wide range of issues and viewpoints. The methods might include obtaining public input, generating public debate, seeking expert advice, working in cross-disciplinary teams, examining market data, using opinion polls, reviewing literature or any other process that assists in generating relevant considerations and understanding different points of view.*

*Take care to satisfy any regulatory requirements that apply (such as a requirement that a particular process be used, or that a particular consideration be included). Remember that your claims about the public interest will be judged in terms of how well you have identified the issues.*

An additional guideline on the documentation of determinations is also required. It could draw on the statement made by R2 in Round 1 Question 5, "For this method to retain public trust there have to be efforts made to keep the process transparent and accountable rather than tokenistic. 'The public' has to be able to see and understand how a decision is made".



**Guideline 17 (New): Documenting a determination of the public interest.**

*The decision-making group should document in writing:*

- *the factors that they have considered (including public comment on similar determinations in the past)*
- *whether these were judged to be of a public or private nature (and if private, whether the protection of those interests was judged necessary in order to protect the public interest);*
- *whether these were considered to be a public benefit or a public detriment,*
- *the importance attributed to each public benefit and public detriment and the reasons for this; and*
- *the overall conclusion, being one of the 3 alternatives provided in Guideline 14, and the reasons for this decision.*

*This determination should be made widely available, possibly on a website. In order to retain public trust the process needs to be transparent, and the public has to be able to see and understand how a decision is made.*

*It is also recommended that the public's commentary on the determination be collected and published with the determination to facilitate public debate and to generate a collective understanding of the factors impacting on the public interest. Future determinations should access this resource during their issues identification stage.*

Reporting of the matters considered in the determination of the public interest is advocated by Pal and Maxwell (2004, pv) in their Public Interest Accountability Framework (PIAF) described in section 2.6, which focuses on the accountability of the decision-maker to the relevant public. "We recommend that all major regulatory decision-makers conduct a PIAF assessment to make more explicit and transparent the definition of public interest that guided the regulatory authority towards its conclusions". While the approach described here is derived from the PIAF, the PIAF is set in the context of regulation development, a process that cycles infrequently. It is therefore focused on accountability that is achieved within the promulgation stage. The current procedure is set in the planning context where public interest determinations are frequent. Guideline 9 therefore outlines a promulgation strategy and then

links the promulgation stage of the current determination to the issues identification stage of future determinations, as shown in Figure 9.1. This has the potential to make the reporting and commenting efforts more productive as they can influence future determinations of similar proposals.

## **9.8 CONCLUSION: OVERALL OPINION OF THE PROCEDURE (Thread K)**

The first indicator that the procedure might be successful as a *modus vivendi* is the response to Round 1 Question 2, where all 10 participants in that round said they could accept the procedural definition of the public interest. The second indicator was their response to Round 1 Question 4 where 9 of the 10 said that they expected that most of the group would accept the definition. In other words, had this diverse group of individuals been invited onto a decision-making panel, they would have begun with an acceptance of the procedure and would have expected the others present to do likewise.

The third indicator of success is the response to the task of classifying interests (as public, private or private that need protection) in Round 2 Questions 4 and 5. All of the 16 comments made during this exercise related to the substantive issues (that is, to the matters of property values, views, access to sunlight, business profitability, government income and regional economic growth). Not one respondent challenged this step of the procedure in Round 2 or queried the Wood-Robinson test. This is an additional indicator that the procedure was acting as a *modus vivendi*, and allowing the participants to concentrate on the real business of discussing which interests are to be considered in the determination of the public interest. The substantive matters raised by participants were pertinent and insightful, often suggesting strategies for setting the elusive 'transition point'.

These are three unobtrusive measures of success, and as such they are more reliable than the responses to Round 4 Question 6 (the overall evaluation question), where the respondents might have been generous. When asked about their overall opinion of the procedure, only 1 respondent (of the 9 in that round) thought the procedure would not be acceptable in their workplace, and only 1 said it was too complicated for general use. No respondent thought it



omitted important steps, required the user to reveal too much about the values behind the decision, or produced the wrong result.

The comments received with respect to this question included, from R11, “Qualitative evaluations benefit greatly from the use of frameworks and this would be a great tool to add to the collection.” A similar sentiment was expressed by R7 in Round 3 Question 2 (about descriptions of importance that improve transparency and reveal individual and/or organisational values) when he remarked, “Basing on values is acceptable, but needs to be augmented by adherence to protocols, both developed by the organisation, and imposed at law or through external guidelines”. R6 made a similar comment in response to Round 4 Questions 4 (the subjective nature of qualitative judgements), when he argues that the benefit of the matrix process is that it obliges the analyst to follow a process of enquiry and evaluation. (Emphasis has been added in each case.)

That is, participants variously described the proposed procedure as a framework, a tool, a protocol and a process of enquiry and evaluation. In each case the participants were suggesting that the proposed procedure had some success in this capacity. These comments put into context R12's concerns that the final conclusion may be subjective, inconsistent and open to challenge or debate. The proposed procedure is likely to produce results that are inconsistent from one user to another, but that inconsistency is likely to be small compared to the inconsistency that currently exists. In fact, it is not the aim of the procedure to eliminate variations in the results, as such variations reflect cultural differences within society and between organisations. Rather, by using a protocol that sets out the necessary steps of enquiry and evaluation, the process of invoking, challenging and debating the public interest is facilitated.

***Guideline 18 (New): Debating the public interest***

*Debating the public interest involves clarifying what public detriments and benefits are expected or experienced. This requires the separation of public and private matters, which is possibly the most difficult aspect but one that sometimes receives little attention. The debate needs to clarify whether the claimed impacts are public or are they primarily of benefit (or detriment) to*



*individuals, and whether the most significant public benefits and public detriments are being acknowledged. By setting aside exclusively private matters, all the participants in the debate will have a stake in the remaining matters (in the sense that if they are public interests then everyone has some stake in them, even if they value them differently). Therefore the debate can focus on whether the impacts are caused by the factors being claimed, are likely to occur, are serious and if they can be mitigated or avoided.*

*Challenging a claim about the public interest should follow the same path by asking the following questions*

- Is the claim wrongly including private interests of individuals or firms, by overstating the flow-on effect to the general public?*
- Is the claim failing to include private interests where it would be in the public interest for those private interests to be protected?*
- Is the claim paying equal attention to the benefits and the detriment of each option, or only considering the benefits of the preferred option and the detriments of the others?*
- Is the claim assigning a reasonable level of importance to each impact?*

**9.9 FINAL VERSION OF THE GUIDELINES FOR INVOKING THE PUBLIC INTEREST**

The final version of the guidelines follows. It is presented in a style and layout suitable for those engaged in planning and property development, rather than an academic audience.

**THE OPERATIONAL MEANING OF THE PUBLIC INTEREST:  
A public interest test for determining the public interest in planning matters**

Governments claim to act in the best interests of the public, and people make claims about what will or will not be in the public interest. How can we judge whether these claims are valid? How should claims about the public interest be made? What standards should apply to these claims?

This document sets out such a standard.

**In a nutshell...**

To determine whether a proposal will serve the public interest, identify who will be impacted and whether the benefits or detriments they might experience relate to public or private interests. This will include deciding which, if any, private interests require protection in the public interest.

Then taking only those interests that are not exclusively private, separate the beneficial impacts from the detrimental impacts and judge whether the benefits (as a whole) or the detriments (as a whole) are more significant. Seek alternative options that create more public benefits and/or less public detriments.

When presenting your conclusions, explain what impacts you considered and the reasoning you used to assign their relative importance. Explain the trade-offs you are making when selecting one option over another. Share this reasoning with those who are affected and with the wider public, and use the feedback when next invoking the public interest.

**How is this different from typical claims about the public interest?**

When you hear a claim about the public interest, it is possible that it reflects an assessment that:

- serves only the interests of the person or group making the claim;
- ignores some of the people who will be impacted;
- includes private interests that are not relevant to the public interest;
- ignores the detriments of the preferred option and the benefits of alternative options; and/or
- attempts to conceal or misrepresent the factors that were considered.

That is, the claim misrepresents the public interest. The procedure presented here provides a standard that can be used to make defensible claims about the public interest, and to challenge claims that do not meet that standard.



**When can this public interest test be used?**

The test can be used in the assessment of any proposed development, plan or policy or after the completion of a development or the implementation of a plan or policy. At the proposal stage the *expected impacts* are considered, and afterwards the *actual impacts* are considered.

**Who can use this procedure?**

The possible users can be considered in two categories – decision-making bodies on the one hand, and those who seek to influence those decision-making bodies on the other. The former include elected and appointed government officers who have an obligation to act in the public interest, and to give fair consideration to the views of all parties. The latter include individuals and groups such as local interest groups, business associations, or professional associations whose members may not have a professional or moral obligation to act in the public interest nor an obligation to give fair consideration to the views of all parties. People in both categories can use this procedure to formulate their position on a public interest matter or to challenge the position taken by other lobby groups or decision-making authorities.

**Does this mean there's no 'correct' decision about the public interest?**

Yes. The public interest is a matter of judgement, but it must be an informed judgement. It must consider such things as the views of those who are affected, principles of ethics and social justice, scientific standards of environmental management, and the likely impact on shared prosperity. Weighing all of these with appropriate levels of significance is a matter of judgement, and different sections of society are likely to weigh them differently. But the decision should not simply reflect private interests, and the way to make certain it does not is through the use of a protocol.

**Why is it so important that only public interests are considered?**

Firstly, because 'the public interest' is all about our shared or collective well-being. It is the one test we have for judging if something is in the common good. There are plenty of other tests that consider private interests when judging whether something will benefit an individual, a firm or an association (including cost benefit analysis). Secondly, we need the concept of the public interest to help us focus on caring for our common goods, our shared resources and arrangements. Individuals, firms and associations care for their own private interests and we expect the government to care for the public interest, but we bombard the government with demands that our private interests be considered. Thirdly, when we focus on the potential impact on the public we are including those who do not have the capacity or resources to lobby governments themselves, including future generations.

**Why not use market research or opinion polls?**

Polls can be used to identify issues and opinions, but they are likely to reflect the private interests of those polled, as well as some views about our common interests. The same is true of the submissions made to a government or council when they seek public input. This is valuable information, but from that information we need to identify those things that will impact on us collectively.

## FOUNDATION GUIDELINES

### **Guideline 1: Importance of the public interest**

There are strong social pressures for planning decisions to be made in the public interest. Believing, and claiming, that one is acting in the public interest can be a powerful motivator for oneself and others. Therefore it is important that what best serves the public interest is given careful consideration. Claims that one sectional interest should routinely be given priority are unlikely to be adequate.

### **Guideline 2: Recognising multiple competing public interests**

When speaking or writing about the public interest remember that in any matter there are many public interest objectives that need to be served. Where these are in competition it will become apparent that different sections of the public value these objectives differently. Nevertheless, it is in everybody's interest for each of these common interests to be safeguarded to some degree. The question for debate is how much safeguarding of each common interest is too little, and how much is too much?

### **Guideline 3: Language for discussing multiple public interests**

There are several terms available for referring to the fact that the public interest is multi-dimensional. These include 'public interests', 'public interest objectives', 'aspects or facets of the public interest', 'public interest factors', 'dimensions of the public interest', 'public interest considerations' and 'multiple common interests'. Each of these emphasises slightly different aspects of the idea and the most appropriate term would depend on the context. What is important is that usage moves away from exclusively referring to '*the* public interest' as though it is uni-dimensional.



#### **Guideline 4: Definition of a public interest, public interests, and *the* public interest**

'A public interest' is an interest of the population as a whole, or of all people at some stage of life. In this respect it is an interest that is common to everybody and so is sometimes called a 'common interest'. It might not be valued equally by all section of the public.

'Public interests' are the many public interest considerations or factors that need to be considered when acting in the public interest.

'The public interest' is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in that same matter. Interests that are exclusively private must be put aside when determining the public interest. Something will serve the public interest if it clearly creates more public benefit than public detriment. The option that does the most good or the least harm for the public is the one that best serves the public interest".

#### **Guideline 5: Use of a balancing test**

In order to take multiple, perhaps competing public interests into account, it is necessary to use a balancing test of the sort that identifies and weighs up the positive and negative effects of a proposal on the various dimensions of the public interest. The identification and weighing process will inevitably be influenced by the values and perceptions of the person(s) applying the test. These value judgements should be made explicit to enable evaluation of the resulting claim about the public interest.

#### **Guideline 6: Limiting of criteria**

It is desirable, and in some circumstances necessary, for decision-makers to make known to the public, in advance, any criteria they will be using to determine a public interest matter, if such criteria exist. It is also desirable that the public be allowed to advise decision-makers of public interest considerations that were excluded from that list of criteria. Therefore the list of criteria should invite "other matters relevant to the public interest". Alternatively, the agency could indicate that the matters listed are examples of the matters that might be relevant to the public interest.

The decision-making agency can also indicate any private interest matters it regards as unconvincing and will exclude from consideration, but cannot disregard without consideration a matter that is not exclusively of private interest.



### **Guideline 7: The relevant public and their interests**

Identify the local interests and wider (regional, state-wide, national or international) interests that are affected by the proposal in question by examining who will experience, pay for, use, benefit from or suffer from it. Ask who has the greatest need for such a development and if they will benefit. Ask if other locations would have to bear more detriment if this location did not bear some. Consider the interest groups who might be affected even if they do not physically visit the location. Ask if there are broader principles that should be considered.

Protect the interests of future generations by examining how current proposals would affect their options. Seek proposals that maximise those options by conserving resources, the quality of those resources and future access to those resources.

Consult any relevant legislation for specifications of who must or must not be considered.

### **Guideline 8: Status of private interests**

Where private interests are raised as considerations, they can be included in the determination of the public interest if their protection is a matter of public interest. Otherwise they are not included in the determination of the public interest. This is called the **Wood-Robinson test** (after the UK case in which it appeared).

**Guideline 9: A collective understanding of the public interest**

Develop an ongoing exchange among sections of the public, and between the public and the decision-making bodies, about the nature of the public interest. This will facilitate the collaborative development of a shared understanding of the distinctions between public and private interests, the way public interests might be damaged or enhanced, and the significance of those impacts.

Implement the following four-stage process:

1. An issues-identification stage that is focused on identifying the relevant public and involving them in discussion of the public interests that will be affected by a proposal, including discussion of which private interests require protection in the public interest.
2. A decision-making stage where the likely benefits and detriments to the public interest of a proposal are identified and assessed and a written record of this reasoning (the judgement) is prepared. The decision-making stage should involve a person or small group of people who can represent the values of the organisation or group in whose name the determination of the public interest is being made.
3. A promulgation stage where the judgement is made widely available, not only to the relevant public but also to the wider society, for comment and discussion. This discussion will be an input to future determinations in similar cases and leads to the development of a collective understanding of what serves the public interest.
4. An incorporation stage where the public comments are systematically recorded and incorporated into future determinations in similar cases leading to the development of a collective understanding of what serves the public interest.

## PROCEDURAL GUIDELINES

### Guideline 10: Identifying the relevant public and their interests.

In order to satisfy Guideline 7 (The relevant public and their interests), a wide range of people and multiple methods should be involved in the issues identification stage to enable the identification of a wide range of issues and viewpoints. The methods might include obtaining public input, generating public debate, seeking expert advice, working in cross-disciplinary teams, examining market data, using opinion polls, reviewing literature or any other process that assists in generating relevant considerations and understanding different points of view.

Take care to satisfy any regulatory requirements that apply (such as a requirement that a particular process be used, or that a particular consideration be included). Remember that your claims about the public interest will be judged in terms of how well you have identified the issues.

### Guideline 11: Categorising public and private benefits and detriments

Identify the **beneficial** and **detrimental** impacts associated with a proposal. This may mean breaking down an impact into its beneficial and detrimental parts. For example, an action resulting in population growth might have benefits such as the increased range of services that can be supported, as well as detriments such as increased congestion and strain on infrastructure.

Identify the beneficial and detrimental impacts, and classify them as being either public or private. An interest is a **public interest** if it impacts on the population as a whole, or on all people at some stage of life. An interest is a **private interest** if it impacts on a person or company in a private capacity and those impacts are of benefit (or detriment) primarily to an individual or individuals rather than to the public.

### Guideline 12: Applying the Wood-Robinson test

A private interest might require protection in the public interest, if:

- it involves a right or responsibility, the enforcement of which will benefit potentially anyone;
- all members of a category (eg a location, an industry, a gender) could be impacted rather than only a few;
- or the flow-on effects will be so generalised as to affect everybody.



### **Guideline 13: Assigning importance to benefits and detriments**

For each public benefit or detriment, and for each private benefit or detriment that passes the Wood-Robinson test, assign an importance. Use a qualitative ordinal scale such as not important/ of little importance/ important/ very important, and give reasons for your choice. If the claimed effect is unlikely, or contradicted by expert opinion, then assign less importance. If cumulative impacts are reaching a tipping point, assign more importance to them.

### **Guideline 14: Judging the net outcome**

A determination of whether a proposal is in the public interest can take one of three forms:

1. Clearly in the public interest'
2. Clearly not in the public interest, or
3. Unclear - producing public benefits and public detriments in similar proportion such that neither of the above applies.

If the net outcome is not clear, then several options are available:

- Report that it is not clear whether the proposal is or is not in the public interest, as the public detriments seem to be as significant as the public benefits. This might be an appropriate course of action where other options are also being considered.
- Modify, or put conditions on the proposal to significantly increase the public benefits or decrease the public detriments, and report that while the original proposal is borderline, these modifications would result in a proposal that would serve the public interest.
- Examine more carefully the likelihood of benefits and detriments materialising, and adjust the importance of expected impacts accordingly.
- Decide to place greater emphasis on the distributional considerations, especially where future generations or disadvantaged sectors of the current generations would bear most of the detriments.
- Require the individual or panel to continue to add (less significant) impacts until it is clear that the proposal is or is not in the public interest. (This would only work if the less significant impacts were mostly benefits or mostly detriments.

**Guideline 15: Finding the best option**

Search for the best option by repeating this process for other options, including status quo, and option that that modifies the proposal to increase the benefits and reduce the detriments. Give reasons for your choice.

**Guideline 16: Acknowledging trade offs**

Acknowledging trade offs shows that other factors were considered and not ignored. This might involve acknowledging that:

- there are distributional consequences of the selected option, and that certain social groups or locations will receive more benefits or detriments than other groups or locations, for example, when waterfront commercial development increases access to waterfront for those who are able to pay, but reduces access for those who are not able to pay;
- priority is being given to one public interest problem rather than other public interest problems that are competing for the same resources, for example, when sharing scarce water resources between towns, agriculture and the 'environmental flow' needs of rivers;
- outcomes for the wider public are judged as more important than outcomes for the local public, for example, when the construction of wind turbines has a detrimental impact local views; or
- sacrificing some of the potential benefits for current generations is needed in order to protect the interests of future generations, for example if the Australian government were to decide to reduce coal mining (and mining royalties to governments) in order to reduce greenhouse gas emissions.

**Guideline 17: Documenting a determination of the public interest.**

The decision-making group should document in writing:

- the factors that they have considered (including public comment on similar determinations in the past)
- whether these were judged to be of a public or private nature (and if private, whether the protection of those interests was judged necessary in order to protect the public interest),
- whether these were considered to be a public benefit or a public detriment,
- the importance attributed to each public benefit and public detriment and the reasons for this,
- the overall conclusion, being one of the 3 alternatives provided in Guideline 14, and the reasons for this decision, and
- the trade offs involved

This determination should be made widely available, possibly on a website. In order to retain public trust the process needs to be transparent, and the public has to be able to see and understand how a decision is made.

It is also recommended that the public's commentary on the determination be collected and published with the determination to facilitate public debate and to generate a collective understanding of the factors impacting on the public interest. Future determinations should access this resource during their issues identification stage.



### **Guideline 18: Debating the public interest**

Debating the public interest involves clarifying what public detriments and benefits are expected or experienced. This requires the separation of public and private matters, which is possibly the most difficult aspect but one that sometimes tends to receive insufficient attention. The debate needs to clarify whether the claimed impacts are public or primarily of benefit (or detriment) to individuals, and whether the most significant public benefits and public detriments are being acknowledged. By setting aside exclusively private matters, all the participants in the debate will have a stake in the remaining matters (in the sense that if they are public interests then everyone has some stake in them, even if they value them differently). Therefore the debate can focus on whether the impacts are caused by the factors being claimed, are likely to occur, are serious and if they can be mitigated or avoided.

Challenging a claim about the public interest should involve asking the following questions:

- Is the claim wrongly including private interests of individuals or firms, by overstating the flow-on effect to the general public?
- Is the claim failing to include private interests where it would be in the public interest for those private interests to be protected?
- Is the claim paying equal attention to the benefits and the detriment of each option, or only considering the benefits of the preferred option and the detriments of the others?
- Is the claim assigning a reasonable level of importance to each impact?

## FINAL CONSIDERATIONS

### **Why is the word “balance” used? Are we trying to get an equal result?**

The idea of balancing refers to the “pan scales” held aloft by the figure of Justice in statues outside some courts or in some illustrations of justice. If the benefits are placed in one pan and the detriments in the other pan, the scales will show which is the heavier. The process of identifying benefits and detriments should be balanced in the sense of not being biased to one side or the other, but we are not seeking an outcome where the detriments equal the benefits (although this is sometimes unavoidable).

### **What is it that is being compared: the interest groups, the interests or the impacts?**

It is the impacts on the public in general that are being compared. For example, if we are determining whether a proposal to turn an old racetrack into a housing estate is in the public interest, we are not judging whether those with an interest in selling and developing the racetrack or those with an interest in retaining the open space should ‘win’ or ‘lose’. On the contrary, we are hearing their concerns, and adding other considerations from other sources, then estimating how these will impact on the general public, including the local population and the wider public, including future generations.

### **Does a determination of the public interest set a precedent?**

This will depend on who is making the determination. A determination by a court may set a precedent, but a determination by interest group probably will not. Also, what will serve the public interest will differ from place to place as the contextual details will differ. It will also vary over time. How society ranks its problems also changes. Therefore the substance of the public interest needs to be the subject of ongoing discussion and the procedure and its associated formats are intended to aid that discussion. The four-stage cyclical process described in Guidelines 9 and 17 encourages consideration of similar determinations made in the past along with the public commentary they provoked, but these determinations are not necessarily precedents that need to be followed.

### **Does this public interest test conflict with existing legislation?**

It is possible that this could occur, and users need to check and abide by any legislative requirements if they are making a determination under legislated powers. People challenging such a determination are also advised to consider any constraints imposed by the legislation.

## **CHAPTER 10 CONCLUSIONS**

### **10.1 INTRODUCTION**

This chapter draws conclusions about the research and assesses the extent to which the work makes a contribution to knowledge. Section 10.2 reviews the progress made towards resolving the six persistent ambiguities, and section 10.3 reviews the progress made towards the solving the overall research problem of developing an operational meaning of the public interest that is compatible with divergent practitioner views and ideologies. Nine contributions to knowledge have been identified (eight are covered in section 10.2 and one in section 10.3). Whilst each of these contributions may be modest when taken in isolation, when considered in the broader scheme of academic endeavour, collectively they make this research worthwhile and significant. They are summarised here.

Two of the contributions arise from the use of the Q Method data in Chapter 6 to identify areas of agreement.

- The first is the finding that all of the discourses, even the Market Oriented discourse that had most problems with the concept of the public interest, agreed that the public interest was an important factor that needed to be considered. This tends to justify this and other research that aims to rehabilitate of the concept of the public interest.
- The second is the finding that all of the discourses, even the most planning-oriented discourses, agreed that there was a place for the consideration of private interests when determining the public interest. This has implications for planning theory, policy and practice that will be explored later in this chapter. On the other hand, the discourses strongly disagreed about the roles of altruism, regulation and compensation, showing that these are not matters that should feature in an operational meaning of the public interest.

Three of the contributions arise from the review of practice in Chapter 8.



- The first is the finding of the study in section 8.2 of the relationship between corrupt conduct and perceptions of the public interest in the Wollongong City Council. That finding not only corroborates the Campbell and Marshall (2002a) argument that the public interest's loss of value and importance is caused by the lack of an operational meaning; it also illuminates aspects of that causal connection.
- The second is the selection of the Wood-Robinson test from a number of contenders as the best approach for deciding when a private interest should be included in the public interest.
- The third is the practitioner-led decision to break down the determination process into stages and limit public involvement to those stages where it has the most beneficial impact on the inclusiveness/decisiveness balance.

Two of the contributions are contained in guidelines presented in section 9.7

- The first is contained in Guideline 1, which introduces the logic of the proposed procedure and must capture the interest of the user. It does this by focusing on the main flaw in most attempts to invoke the public interest, namely that they involve claims that the public interest is best served by giving priority to one sectional interest.
- The second is the argument built in Guidelines 2, 3 and 4, namely that the determination of the public interest involves the examination of multiple common interests that may be in competition, which shifts the focus from people in conflict to common interests in competition.

The last two contributions arise from the totality of the work.

- In so far as the proposed guidelines as a whole clarify the operational meaning of the public interest, they have the potential to rehabilitate the concept of the public interest and reinvigorate its role as a legitimising concept in planning.

- The contribution of the proposed public interest test (discussed in section 10.3) is that it retains the outcomes focus that is central to the business of planning (in the sense that planning involves the identification of beneficial outcomes and the means of achieving them) but avoids the problems of Utilitarianism.

Sections 10.4 and 10.5 examine the implications that this research raises for planning theory, and for planning policy and practice, respectively.

Section 10.6 sets out the limitations of the research (relating to the robustness and meaningfulness of the evidence base and the generalizability of the findings) and recommends further testing of the guidelines in other legislative contexts. Section 10.7 addresses methodological implications, including the value of discourse analysis to inform policy or process development and the potential for Delphi techniques to be used in the testing of interactive procedures.

Section 10.8 suggest three other topics for future research, namely further enquiries into practitioners views on the status of private interests; further testing of the proposed guidelines in NSW and in other planning environments; and research into the applications and success of the Wood-Robinson test.

## **10.2 CONCLUSIONS ABOUT THE RESEARCH ISSUES**

### **10.2.1 Introduction**

Section 10.2 considers for each of the research issues what contributions this research has made to the development of a defensible operational meaning of the public interest. Sections 10.2.2 to 10.2.7 consider each of the persistent ambiguities in turn. Each section begins by setting the starting point, that is, the status of the issue as described in the relevant literature review in Chapter 2 or Chapter 3, then considers what contribution, if any, was made by the identification of areas of agreement in Chapter 6, the review of practices in Chapter 8 and the relevant guidelines presented at the end of Chapter 9.

### 10.2.2 Importance of the public interest

The starting point for this research issue was the statement by Campbell and Marshall (2002a, p163), "What constitutes the public interest has always been contentious but its value as a legitimising concept has increasingly been called into question in the recent past *for the reason* that it cannot be given operational meaning either by those who make policy or those who evaluate it" (emphasis added). Of particular interest was the suggested causal link between the lack of operational meaning and the declining value of the concept. This link was explored in section 3.2 where the rejectionist arguments described by Cochran (1974) and Lucy (1988) were considered along with Moroni's (2006) review of three interpretations of the argument that the public interest does not exist. Moroni's conclusion was that the public interest could exist as a universal overriding value, arguing that "the fundamental idea is that, notwithstanding the plurality of values and ideals, we can identify and defend certain preferable societal arrangements" (p62). He drew on Lichfield's (1996, p184) view that, "The fact that governments include values in their decision-making, and make ordinal comparisons of value, is certainly true". Lichfield puts emphasis on the fact that governments make ordinal comparisons of value (and will presumably continue to do so regardless of arguments that challenge the practice), which implies that attempts to improve how this is done will be for the good. The current research makes some progress in understanding this issue.

- The research established that all of the identified discourses about the public interest in the NSW planning and property development sphere agreed that the public interest is an important factor that needs to be considered (section 6.2). Even the Market Oriented discourse, the one most likely to discount the value of the concept, agreed on its importance. This finding is claimed to be a contribution as it established the basis for further efforts to rehabilitate the concept of the public interest.
- In order to examine whether this was just lip service to political correctness, and whether the planning culture in NSW is more accurately described in terms of corrupt self-interest overriding concerns about the public interest, section 8.2 examined the motives the CEO of the Wollongong City Council. The CEO's behaviour had been described by the NSW Independent



Commission Against Corruption as being liable to allow, encourage or cause corrupt conduct. It was found that rather than neglecting the public interest, the CEO apparently believed that he and his colleagues were serving the public interest when they pursued an entrepreneurial, pro-development approach to planning. This confirms Campbell and Marshall's (2002a) position, because it demonstrates that in the absence of an agreed operational meaning of the public interest it can mean whatever a party wants it to mean, and they can equate the public interest with the sectoral interest they deem to be the most important. This confirmation is a contribution to the development of this issue. Similar case study conclusions are to be found in the research described in sections 4.2.1 and 4.2.2, and this adds an example from NSW to those.

- The guideline on this issue (Guideline 1) identifies the argument that is most likely to change people's behaviour when they invoke the public interest; namely that claims that one sectional interest should routinely be given priority are unlikely to be adequate. The selection of this argument, found in the work of Taylor (1994), from among the many competing arguments that might convince people to pause and open their minds to what might be a defensible operational meaning of the public interest, is claimed as a contribution to the rehabilitation of the concept of the public interest.
- Another contribution of this research to this rehabilitation of the concept of the public interest and its repositioning as the legitimising concept of planning, is the complete set of guidelines and the operational meaning of the public interest that the guidelines contain. In so far as the operational meaning might now be clearer, the importance of the public interest is also on firmer ground. This research has progressed the clarity of that meaning in many specific ways, listed in the following sections. It is the totality of those that is claimed here to be a contribution to research on the concept of the public interest.

### **10.2.3 Multiple public interests**

The starting point for the second research issue, described in section 3.3, was the divergent use of the term 'the public interest'. It was noted that in some quarters it was recognised that there are multiple competing public interests,

most recognisably captured in the concept of the triple bottom line (TBL). In other quarters the idea of multiple public interests was considered to be an oxymoron that could only be used for rhetorical effect as multiple public interests are identifiable in the form of competing sectional interests.

- All the discourses accepted at least one of the statements that described the need to balance the three dimensions of the triple bottom line (section 6.3). This is illustrative rather than conclusive but it does suggest that planning and property development discourses accept that 'multiple public interests' need not be an oxymoron.
- The review of current practice in section 8.3.1 identified a variety of terms that are used to convey the concept of multiple public interests in different circumstances. These were drawn mostly from publications of the NSW Ombudsman's Office, and the determinations of the NSW Land and Environment Court, which lend them credibility, especially in the Australian context (section 8.3.1).
- Guidelines 2, 3 and 4 use these terms to build on the argument begun in Guideline 1. These guidelines put in place the argument that there are multiple competing common interests, and that these, rather than competing sectional interests, are the core of the operational meaning of the public interest and the procedure for determining its substantive content. This step, away from people in conflict and towards common interests in competition, is a contribution of this research.
- Another implication of there being multiple public interest factors is the need to weigh them one against the other, and therefore to use a balancing test. Balancing tests of the public interest have been suggested many times in planning, and ten such tests were described in section 8.3.2:
  - Utilitarianism (Bentham 1789; Sen & Williams 1982);
  - Lichfield's (1964, 1968, 1971 & 1988) Planning Balance Sheet Analysis and (1994, 1996) Community Impact Evaluation;
  - Taylor's (1994) Common Interest Conception;
  - Pal & Maxwell's (2004) Public Interest Accountability Framework;
  - Klosterman's (1980) Public Interest Criterion;



- Roseth's (2009) Procedure for discerning the public interest in development applications;
- Flathman's (1966) Moral Rules Test
- Alexander's (2002a, 2002b) Threshold Criterion;
- Queensland Government DIP (2009) SE Qld Regional Plan – Test to determine the overriding need for the development in the public interest; and
- NSW Office of the Information Commissioner (2010) – NSW Right to Information Public Interest Test.

The tests described by Roseth, Klosterman, Pal and Maxwell and Taylor were assessed as being the most relevant.

At the theoretical level the argument for a balancing test is that because there are multiple collective interests based on multiple shared values that may be in competition and may need to be traded off, the meaning of the public interest will need to be based on the ordinal comparison of values. In other words, the recognition of multiple public interests reinforces the need for the Moroni/Lichfield argument (presented in section 3.2.1) that we must accept the legitimacy of the practice of making ordinal comparisons of value. While this grounding of the use of a balance test and ordinal comparisons of value (in the existence of multiple common interests) is an important step in the development of the thesis, it is not in itself a contribution, as it does not extend the existing understanding.

- Similarly Guideline 5, which introduces the user of the guidelines to the inevitability of a determination of the public interest being influenced by personal values and perceptions, is only a stepping-stone to later contributions.

#### **10.2.4 Practice of restricting criteria**

The review of theory relating to the third research issue in section 3.4 described how management theory and collaborative planning theory each explain how the restricting of considerations can be beneficial to the party making the determination. This was the starting point for this research issue. The



subsequent research did not aim to confirm or extend this theoretical explanation, but instead it set out to formulate a way of managing the practice.

- Section 6.4 presented the finding that the discourses all accepted two moderately worded statements on this issue, indicating that decision-makers would not understand the issues well enough to be able to set public interest criteria prior to calling for public comments, but if they do set such criteria in advance then the public need to be advised of these. This is not claimed to be a contribution to knowledge, but it assisted in setting a direction for the later steps of the research with respect to this issue.
- The review of practice with respect to this issue in section 8.4 found that despite the tendency of government organisations in NSW to prescribe decision-making criteria, the legal dictum that the categories of the public interest are not closed indicates that they should at least be prepared to consider other matters that can be shown to be relevant to the public interest. A number of statutory public interest tests (described in Appendix 11) were examined, and a number of practices relevant to the management of this issue were identified. Guideline 6 presents these in two parts. The first advocates the inclusion of an invitation to the public to raise other matters relevant to the public interest. The second suggests that an agency can signal any private interest matters that they will not consider in a determination of the public interest. This lays the groundwork for later work on the status of private interests, but is not itself a contribution to knowledge.
- The practice of defining which private interests *should not* be admitted into the determination of the public interest gains more significance in the light of the Wood-Robinson test, which asks which private interests *should* be admitted into the determination of the public interest because their protection is itself a matter of public interest. Together these approaches help to define the 'transition point' between exclusively private interests and public interests. They also illustrate the interaction between the issue of limiting public interest considerations and the issue of the status of private interests. They do not constitute a contribution to the expansion of knowledge, but they do advance the debate about strategies for managing

the self-serving behaviours of government agencies. Agencies issuing restricted public interest criteria in policies, tests or when calling for submissions could be asked to explain (1) how the included criteria serve the public as distinct from the agency or its partners, and (2) why the excluded criteria are not matters of public interest.

#### **10.2.5 Relevant public**

The starting point for this issue in section 3.5 was that the question “what is the relevant public in this matter” is a legitimate question for the common interest theories and those that combine common and private interests, but not necessarily for the remainder. In sections 3.5.2 and 3.5.3 it was noted that the spatial and temporal extent of the relevant public is ambiguous. The research aimed to identify the views of the practitioner discourses with a view to providing more guidance.

- The discourses agree that the needs and wants at the local level conflict with the broader public interest. As noted in section 6.5.1, this is potentially useful as it can be generalised to each level of the spatial hierarchy. The discourses did not agree on any statement relating to NIMBY behaviour or on any statement declaring one spatial level to be more important than any other. With respect to the temporal dimension, there was acceptance of the moral requirement to care for the needs of future generations, and agreement that their needs will be different from ours today. These findings do not constitute a contribution to knowledge but do inform the research about the limited terms in which these issues can be addressed in the guidelines if they are to operate as a *modus vivendi*.
- The review of practice provided techniques from NSW Land and Environment Court cases for identifying whether it is the narrower (local) public or the wider public that will experience benefits or detriments. With respect to the temporal dimension, existing guidelines on intergenerational equity were used in Guideline 7. On the whole this research has not progressed this matter and no contribution to knowledge is claimed, although definition of the relevant public is key to the later issue of who should be involved in determining the public interest issues (Guideline 10).



### 10.2.6 Status of private interests

The starting point for this research issue was the review of public interest theories in Chapter 2. The different views about whether the public interest consists of unitary interests, common interests, group interests, individual interests or a combination of these lie at the core of the definitional problem. Section 3.6 divided the problem into three parts, namely the status of private interests, the role of altruism and the need for regulation of and compensation for negative externalities.

- With respect to the inclusion of private interests, all of the discourses rejected the statement that the best way to define the public interest was to exclude private interests (section 6.6). This was interpreted to mean that all of the discourses would want to consider private interests as part of the determination process. In the context of planning, a discipline with strong views about collective interests, this was perhaps surprising. It is certainly a finding that deserves further research. The results with respect to the other aspects of this issue (altruism and regulation/compensation) revealed deep disagreements that should be avoided when developing a *modus vivendi*. These insights are a contribution to the operational meaning of the public interest.
- In the review of current practice in section 8.6, three potential criteria for including private interests in the determination of the public interest were evaluated. The criterion used by Purchas (1998) in the case of *AL Wood-Robinson v. Secretary of State for Environment and Council of London Borough of Wandsworth* was selected. The Delphi group tested this criterion and the result was that it fostered a relevant and interesting debate about which private interests should be protected in the public interest. Clearly this criterion existed prior to this research, but the selection of this criterion for use in Guidelines 8 and 12, and in the overall operational meaning of the public interest, is claimed to be a contribution to extending knowledge about how the public interest might regain its status as a legitimising concept in planning.



### **10.2.7 People and processes involved in determining the public interest**

The starting point for the final research issue was described in section 3.7 as the struggle between those practitioners who are instrumentally inclined (and prefer to determine the public interest using scales and measures) and those who are discursively inclined (and prefer to seek the public interest in debate and consensus building). Another perspective on this tension sees it in terms of the competing organisational needs for inclusiveness and decisiveness (March & Low, 2004). A number of sub-issues were identified and were represented in the statements used in the identification of discourses and areas of agreement in section 6.7.

- The discourses disagreed on six of the seven statements about the value of public participation, and the one they agreed on was the mildly worded, “public consultation, if taken seriously, can reduce the probability of making decisions that are unjust”. While the areas of agreement and disagreement provide insight into how to incorporate public consultation in the guidelines, this only confirms existing knowledge, and therefore this finding is not a contribution to the advancement of understanding.
- The separation of the issues identification stage and the decision-making stage of the determination process was suggested by some of the participants in the Q Method research during a group discussion following the completion of data collection. They recommended it on the grounds that public participation can be valuable in the identification and of relevant issues, but is less valuable and more problematic in the decision-making stage. Those participants reported their success with this approach. This is a simple but compelling idea. Perhaps the struggle referred to above could be relieved if there was some finer grained allocation of people to processes. Rather than arguing for the inclusion of the relevant public in the process generally, those who are discursively inclined could aim for the inclusion of the public only in those steps where they could contribute most efficiently (thus minimising any negative impact on organisational decisiveness). Conversely, those who are instrumentally inclined could aim for the exclusion of the public only from those steps where they cause most disruption (thus minimising any negative impact on organisational inclusiveness). With this in mind, Guidelines 9 and 10 include the relevant

public in two of the three stages of the public interest determination cycle (shown in Figure 9.1). The relevant public is included in stages 1 and 3, but not in stage 2 of the determination process. Stage 2, on the contrary, should only involve a person or small group who can represent the values of the organisation in whose name the determination is being made. This ties back to Guideline 5 that recognises the influence of values and perceptions in this stage. This separation might be found in practice but hitherto it has not had a high profile in discussion about the operational meaning of the public interest, and is thus a contribution to this field.

Having reviewed the contribution made to the resolution of the persistent ambiguities that made up the research issues, focus will now turn to the successes of the research in solving the overall research problem.

### **10.3 CONCLUSIONS ABOUT THE RESEARCH PROBLEM**

The research problem, as stated in section 1.2, was:

To determine what operational meaning of the concept of the public interest might be compatible with the differing views about the concept that occur within the planning and property development sphere, and to develop that operational meaning into procedural guidelines for invoking the public interest.

This section compares the operational meaning that has been proposed with other existing operational meanings, and asks if the proposed meaning addresses the gaps identified in section 1.3, namely the lack of an ideologically sensitive procedure, and the lack of research into the development of components of an ideologically sensitive procedure, particularly:

- a means of incorporating both collective and private interests;
- a means of incorporating public participation and dialogue without making the procedure too time consuming and expensive; and
- a means of including multiple public interest considerations without making unreasonable commensurability assumptions.



Addressing these issues will also answer the question of whether the proposed procedure suffers from “Utilitarianism’s bad breath”<sup>1</sup>, that is does it consider only good outcomes and ignore wrong actions? Is it prone to “the Utilitarian fallacy that you weigh up these things in some kind of rational mathematical manner” (R6 in Round 4 Question 3 of the Delphi process), and is it doomed to use “the intellectually barren economic metric of weighing benefits and costs” (R6 in Round 4 Question 6).

Table 10.1 compares the public interest test proposed in this research with five other procedures for determining the public interest that are found in planning literature, and asks three questions of each test:

- What is the correct basis of assessment of the public interest? This links to the ideological sensitivity of including or excluding individual and/or collective interests.
- What is correct action in the determination of the public interest? This links to the ideological sensitivity of attending to the ‘right actions’ of protecting rights, being inclusive, hearing others and building consensus and not only attending to good outcomes.
- How are divergent interests resolved? This links to ideological sensitivities about the use of Utilitarian calculus.

This schema is influenced by the identification of three components of Utilitarianism by Sen and Williams (1982, pp3-4), namely *welfarism* (the correct basis of assessment is the use of “welfare, satisfaction, or people getting what they prefer”, *consequentialism* (the correct way to value actions is solely on the basis on their consequences), and *sum ranking* (which sums the individuals’ welfare or utility and ranks the alternative action accordingly).

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<sup>1</sup> This term is used by Thompson (1978, p368) and by Campbell and Marshall (2002a). It became vivid for the researcher when participant R6 in the Delphi process suggested that a balancing test “erects a utilitarian calculus and this suffers from the well-established weaknesses of utilitarianism” (R6 Round 1 Question 2). The researcher learned from this that the inclusion of any one feature of Utilitarianism may ‘taint’ the proposal with all of the weaknesses of Utilitarianism, in much the same way as all of the verbal communications of a person with halitosis may be discounted, or even ignored, in an effort to distance oneself from the speaker.



The Public Interest Test proposed in this research is compared to the operationalisation of the public interest proposed by Utilitarianism, Klosterman (1980), Roseth (2009), Healey (2006), and Pal & Maxwell (2004).

The aim of Table 10.1 is to show how the basic model of Utilitarianism has influenced subsequent approaches to the operationalisation of the public interest. The subsequent approaches could be described as variations on the basic model. *Welfarism* (individuals getting what they prefer) has been varied in particular through the introduction of collective/public interests (as shown in Table 10.1 in the entries for Klosterman, Roseth, Pal & Maxwell) and inter-subjective views of what those collective interests might be (as shown in the entry for Healey). *Consequentialism* (particularly the version that says that the value of an action derives *solely* from the value of its consequences) has been varied by the inclusion of other related consideration, particularly the distribution of impacts (Klosterman, Healey, Pal & Maxwell). Whereas Utilitarianism saw the consideration of consequences as the only way to value actions, subsequent approaches have included other criteria such as whether the action follows due process (Pal & Maxwell), whether the evaluation uses inclusive dialogue and consensus building (Healey) and whether the evaluation and the proposed action respect individual rights and are fair (Pal & Maxwell, Healey). *Sum ranking* (the ranking of alternatives on the basis of their summed impacts on individuals) has been varied by the use of incommensurable units of measurement (Klosterman), weighing using qualitative ordinal scales (Roseth), and the recognition and sharing of claims (Healey).

The bottom row of Table 10.1 shows the Public Interest Test proposed in this research. The proposed test is described as follows.

- Basis of assessment in the proposed test is public (collective) benefits and detriments including those relating to private interests that require protection in the public interest. Of the tests listed above, the proposed test owes most to the work of Klosterman and Roseth. But it also goes beyond both of these by incorporating a criterion for the inclusion of private interests (namely the Wood-Robinson test).

- Method of valuing actions in the proposed test involves a modified consequentialism that takes into account not only the consequences of alternatives on public interests, but also allows the admission of any other issues that are relevant to the public interest including distributional effects. Furthermore it specifically targets the rights of individuals through the application of the Wood-Robinson Test, and the inclusion of the relevant public through their involvement in issues identification and accountability to the general public. Of the tests listed above, the proposed test owes most to the work of Healey (with respect to inclusiveness) and Pal & Maxwell (especially with respect to accountability). With respect to the consideration of rights, the proposed test goes beyond any of the other tests listed in that it secures the consideration of rights through the inclusion of the Wood-Robinson test, which is built into the basis of assessment and is therefore unlikely to be avoided. The involvement of the relevant public will depend on the willingness of the user of the proposed test to be inclusive, and is therefore not so secure.
  
- Method for resolving divergent interests in the proposed test involves the use of a qualitative ordinal scale of importance (where the assigned category can be modified for likelihood of the impact occurring or if the cumulative impacts are approaching a tipping point). The reasons for this choice must be provided. In some cases the preponderance of importance on one side of the scale or the other will mean that no counting or weighing will be required. In other cases more careful analysis may be needed but it is unlikely to involve counting, and is more likely to involve the actions proposed in Guideline 14, especially the consideration of distributional effects with respect to future generations. Of the tests listed above, the proposed test owes most to Roseth.

This proposed public interest test is a contribution to knowledge about the determination of the public interest, retaining the outcomes focus that is central to the business of planning (in the sense that planning involves the identification of beneficial outcomes and the means of achieving them) whilst avoiding what appear to be the most offensive problems of Utilitarianism.



**Table 10.1 Comparison of the Public Interest Test proposed in this research with other tests found in Planning.**

Questions Tests	What is the correct basis of assessment?	What is correct way to value actions?	How are divergent interests resolved?
<b>Utilitarianism (Sen &amp; Williams 1982)</b>	Individual preferences - Welfarism	Consequentialism – The evaluation of actions solely on the basis of their consequences	Sum ranking– sum the utility of each action for each individuals and rank the actions accordingly
<b>Klosterman's Public Interest Criterion (Klosterman 1980)</b>	Collective and individual benefits and disbenefits	Modified Consequentialism – Consideration of beneficial and detrimental consequences (including the distribution of consequences)	Impacts should be considered in whatever (incommensurable) units are appropriate. Aim is to foster rational analysis and debate
<b>Roseth's procedure for discerning the public interest (Roseth 2009)</b>	Public benefits and detriments (in the broader context of balancing the public interest against private interests)	Modified Consequentialism – Consider impacts on the public + (as the public interest is but one aspect to be considered by the Court) considerations of compliance with regulations, the objectives of plans etc.	Assign importance to each public benefit and public detriment using a qualitative ordinal scale, and determine whether the benefits outweigh the detriments
<b>Healey's discursive discovery of the public interest through engagement with diversity (Healey 2006)</b>	Inter-subjective meanings of the collective good	Modified Consequentialism - Justification of decision in terms of the impacts on various members of 'political communities' + Dialogue and consensus building + Protecting rights to voice, influence, challenge, information and accountability	Recognition and sharing of the claims of others rather than adversarial advocacy
<b>Pal &amp; Maxwell's Public Interest Accountability Framework (PIAF) (Pal &amp; Maxwell 2004)</b>	Interests and rights of individuals (as consumers/citizens), of enterprises (the economy) and of society (social values)	Modified Consequentialism – Distribution of costs and benefits among affected group and general population + Due process + Majority opinion + Common interests + Shared values and normative guidelines	Find a balance among the interests of individuals, enterprises and society and provide transparency and accountability
<b>Public Interest Test proposed in this research</b>	Public (collective) benefits and detriments (including those relating to private interests, especially rights, that require protection in the public interest)	Modified Consequentialism – Impacts on public (collective) interests + Protecting individual rights through the Wood-Robinson Test + Inclusion of the relevant public in issues identification & in the subsequent accounting to the public and public comment.	Assign importance to each public benefit and public detriment using a qualitative ordinal scale of importance (adjusted for likelihood), determine whether the benefits outweigh the detriments, and provide reasons

Source: Summarised from sources as shown, for this research.



## 10.4 IMPLICATIONS FOR THEORY

"In the end, this question of the public interest is the leitmotif that holds together the defining debates of planning theory. ... Yet this public interest is changing. The restructured urban economy, the shifting boundaries between the public and private sectors, and the changing tools and available resources constantly force planners to rethink the public interest. This rethinking is the task of planning theory." (Campbell & Fainstein 1996, p11)

If the rethinking of the public interest is the ongoing task of planning theory, then the first implication of this research for planning theory is the application of the proposed operational meaning to that task. In effect this would require much more attention being given to the transition point between exclusively private interests that should not be considered in the determination of the public interest, and interests that are collective interests in their own right or because they meet the criterion of the Wood-Robinson test. This transition point might vary according to context, but there are undoubtedly patterns and principles that would emerge as the procedure is applied. If the proposed procedures are engaged, the growing body of determinations will increasingly define the transition points and the appropriate weighting to be given to various kinds of interests and rights. The degree of discretion required will be reduced by the identification of patterns and by the examination and assessment of those patterns. This examination is a key role of planning theory. Priority might be given to problematic areas such as those used with the Delphi group in Round 2, namely, which property rights deserve protection in the public interest (property value, access to views, access to sunlight and so on) and whose profitability is a public interest matter (that of a private firm, a private firm that is a major local employer, a government, or a region).

The second implication of this research for planning theory relates to the proposed shift of focus from people in conflict to collective interests in competition. It is a feature of the proposed guidelines and public interest test that, because a determination is made in the name of an individual, organisation or association, the problem of how to speak on behalf of everyone does not arise. Even a decision made on behalf of a government, whilst representing as well as possible the interests of the diverse public, will in the end reflect the values and beliefs of that government. This does not imply that

the government, nor the next government that revises the determination, is not acting in the public interest. Rather it means that determinations of the public interest with respect to a specific proposal in a specific context, and made using the same procedure, will differ in line with the values of those in whose name the determination is made. However, because of the transparency of the decision-making process, and particularly because of the requirement that only collective interests and interests that meet the Wood-Robinson criterion are included, the determinations will be reconcilable in the sense that each party should be able to identify where they differ one from the other. As the determination is made on the basis of only those matters that have been demonstrated to be matters of collective interest, the focus of debate or disagreement should then become the basis for weighting those collective interests. Planning theory, in its role of rethinking the public interest, could play an invaluable role in guiding those weightings, clarifying the causal links between intended outcomes and development strategy, and identifying the likelihood that expected outcomes will materialise.

The third implication of this research for planning theory relates to the theories of the public interest described in Chapter 2, and the relative neglect by those theories of concepts of the public interest that incorporate both collective and private interests. Of the examples of 'combined' approaches presented in section 2.6, one suggests moral rules for including private interests (Flathman 1966), one suggests criteria for giving greater weight to common interests (Banfield 1955), and two give equal regard to collective and private interests (Klosterman 1980; Pal & Maxwell 2004). There has been little discussion in planning theory about these options. The criterion developed by Purchas (1988) in the Wood-Robinson case has been discussed by Crow (2001) but has otherwise received little attention with respect to its implications for the operational meaning of the public interest. The Wood-Robinson test has the potential to recast what Forester (2009) termed the 'process versus outcomes debate' about the correct way to determine the public interest as it recognises that right actions (such as the enforcement of rights) produce good outcomes that require protection in the public interest. This potential deserves more attention from planning theory.



## **10.5 IMPLICATIONS FOR POLICY AND PRACTICE**

It is anticipated that the main beneficiaries of this research will be planning practitioners. There has been no agreed operational meaning of the concept of the public interest and no standardised procedure for determining its substantive content. The proposed public interest test could provide these to practitioners. However, the adoption of the proposed test needs to be facilitated by policies encouraging or requiring its use. The current research has not examined in detail whether the proposed test can be applied within the context of current regulations or would need adjustment. Nor has it been determined whether the current test would be strategically acceptable to the current or future government. A more important first step is for the test to attain academic and practitioner credibility.

In what ways would the adoption of the proposed test alter planning practice? Potentially, the main impact may not be on planners but rather on other stakeholders such as developers, members of the public and elected politicians who currently have few, if any, procedural standards in mind when they make claims about the public interest. The adoption of the proposed test by those stakeholders should produce more considered and defensible claims. It would also facilitate the contestation of those claims because the test can produce greater transparency to the decision-making stage of any claim. Most importantly, the adoption of a standard approach by all of the stakeholders (including the planners) should assist communication between the parties, increase understanding of and respect for the role of planners, and ultimately serve to increase the legitimacy of the planning profession.

## **10.6 LIMITATIONS OF THE RESEARCH**

The robustness and meaningfulness of the evidence base could be a limitation of this research. The main decisions taken in the design of the proposed public interest test were based on the results of the Q method research and the adequacy of that evidence base could be challenged, not in terms of the number of participants (as explained in section 4.4.1 and 4.5.1), but in terms of the quality of the engagement with those participants. Ideally Q Method research involves face to face interviews with participants to explore the



reasoning behind their responses, and this did not occur in this research. To address this weakness the criteria for selecting the method used in the evaluation phase (namely the Delphi process) included the requirements that it must encourage the offering of evaluative comments and reasoning and produce accurate recording of all responses (see Table 7.1). The Delphi process allowed the participants to record their reactions to the decisions that had been taken in designing the proposed procedure, to describe their reasoning when using the procedure and to suggest improvements to it. This evaluation stage resulted in several changes and refinements to the procedure. The use of the Delphi process went some way to overcome the lack of interviews with the Q Method participants.

Another possible challenge to the meaningfulness of the evidence base could be that it consists of accounts of what participants say they would do rather than observations of what they in fact do, in other words, on rhetoric rather than action. This is true in that the research did not collect data on the behaviour of practitioners when making judgements about the public interest, although the decisions of the Land and Environment Court explored in Chapter 8 do reveal much of the reasoning behind those decisions. The focus on rhetoric is justified as this research is about rhetoric, about how people invoke the public interest in argument, and about their subjective beliefs. Q Methodology is designed to explore subjectivity and is appropriate for this endeavour. None the less, the Delphi process participants were asked to make decisions (for example Round 2 Question 4 required participants to classify interests as public or private) and valuable reasoning was reported by some of those participants.

A second possible limitation of this research is the question of its generalisability. It is possible, but unlikely, that the results are only generalisable to NSW and not to other Australian states. What is more likely is that results are not generalisable to other countries because of cultural differences relating to the meaning of 'public' and 'private'. This limitation of the research is acknowledged but it does not detract from the significance of the findings. Instead, it provides an opportunity for future research that tests and adapts the guidelines for use in other legislative contexts.

Another aspect of generalisability is that raised by the Acting Registrar of the Land and Environment Court of NSW, in her correspondence with the researcher (Gray 2010). She noted, "The interpretation of words such as 'the public interest' in one specific legislative context may not be applicable in another legislative context. A formula for determining 'the public interest' in that specific legislative context, similarly, may therefore not be applicable in another context" In section 7.2 it was suggested that procedures could be developed that could accommodate these different legislative contexts. Has this been possible?

The proposed public interest test is not a 'formula'. There are tests that could be described as a formula, especially those that lists factors that must be considered and indicate the points that can be allocated to each according to a scoring system. This research originally intended to develop such a scheme for the public interest and abandoned the endeavour after realising (through experience and through the literature search) that the categories of the public interest cannot be closed (as explained in 8.4.1 above). Instead, the proposed guidelines and procedure were developed with the aim of being sufficiently context sensitive to enable application in different legislative contexts. This was achieved by deliberately avoiding any requirement to include any particular public interest consideration, and through the inclusion in Guideline10 of the warning, "Take care to satisfy any regulatory requirements that apply (such as a requirement that a particular process be used, or that a particular consideration be included)".

As a result of this approach, it is likely that the proposed guidelines and procedure will be applicable to other disciplines such as public administration and public policy.

## **10.7 IMPLICATIONS FOR METHODOLOGY**

### **10.7.1 Q Method**

In section 4.3.2 several Q Method studies were presented which suggested that identifying the discourses on a particular issue could assist in the development of policies or procedures relating to that issue. The studies demonstrated



benefits of identifying features of socially and political acceptable environmental policies (Barry & Proops 1999, p344); features of a good public participation process (Webler *et al.* 2001, p448); and mutually satisfying solutions to a problem that could be explored by parties in conflict (Focht & Lawler 2000, p115). This research did not identify any other research that evaluated this approach to policy or process development.

Dayton (2000, pp95-96) takes a different perspective. He suggests that discourse analysis can be used to reframe the language of policy controversy to increase the likelihood that stakeholders enter a debate or negotiation "at a similar intellectual location", using key terms and concepts consistently, and with compatible goals and decision-making methods.

In this research the Q Method was used to identify discourses with conflicting ideas about the concept of the public interest and the methods one could use to determine its substantive content. The areas of agreement informed the development of the proposed procedure but, as explained in section 7.2, they were not sufficient to deal with all of the decisions that needed to be made. Nevertheless, a proposed procedure was developed which reframes the concept sufficiently to promote meaningful debate about the substance of the public interest. The Delphi process reported in Chapter 9 demonstrated this.

This research demonstrates that discourse analysis, particularly Q Method analysis, can be a valuable analytic tool for procedure development.

### **10.7.2 Delphi process**

The evaluation of the proposed procedure using the Delphi process succeeded on two levels. Firstly, as anticipated, it enabled a structured discussion resulting in constructive criticism and useful suggestions. Secondly, when asked to apply one aspect of the procedure, the Wood-Robinson test, the participants did so in a manner that indicated that the procedure was successful in acting as a *modus vivendi*. In section 9.8 this second feature was described as an unobtrusive measure (Webb *et al.* 2000) of the success of the procedure.

The capacity of the Delphi process to produce unobtrusive measures is not necessarily obvious. After all, the researcher is interacting with the participants



who are fully aware of the researcher's interest in their responses. However, the process is more engaging for participants if some of the data is gathered by way of tasks, and this creates an opportunity for those tasks to be piloted or trialed through the Delphi process. That is, instead of asking participants how they would react to the Wood-Robinson test, they were asked to use it. Their comments were all 'on task', meaning that they were engaged in the application of the test, rather than disputing the features of the test.

Careful consideration needs to be given to the ethical implications of such use to ensure that the informed consent of the participants is not violated. Also, the extent to which the data gathering process is in fact unobtrusive and not likely to be distorted by the researcher's interest and attention is debatable. However, this capacity of the Delphi process for relatively unobtrusive testing of interactive procedures raises interesting possibilities for its use in other research and development projects.

## **10.8 IMPLICATIONS FOR FURTHER RESEARCH**

In addition to testing the guidelines and procedure in other legislative contests (discussed in section 10.6), this research indicates other opportunities for further research.

### **1. Understanding practitioner views on the status of private interests**

Agreement across the discourses that private interests should be included in the determination of the public interest was unexpected. Further research could investigate what reasons practitioners have for admitting private interests into a concept that is essentially about the collective or non-private arena. Are there reasons additional to the need to protect some private interests in the public interest? To what extent is the inclusion of private interests politically strategic? Or is inclusion of private interests necessary because of difficulties in relying on the identification of common interests? These questions are worthy of further investigation.

## 2. Research into the application and success of the Wood-Robinson test

It has not been possible in the time constraints of this research to explore the extent to which planning in the UK has engaged with the Wood-Robinson test and with what results. This would be an interesting and worthwhile project.

## 10.9 CONCLUSION

What makes this attempt to operationalise the concept of the public interest different from previous attempts discussed in Chapters 2 and 3 is the engagement with the conflicting views of 20 planners, 14 property developers, 14 technical specialists, 8 politicians, 7 public servants, 6 environmentalists, 5 members of the public, 4 interest group members and 1 academic who all participated in the Q Method research that laid the foundations of the proposed procedure. In prior research the authors of those definitions appear to have worked in relative isolation, developing their definitions largely according to their own beliefs about how to determine what is "good". This research acknowledges that while numerous design decisions had to be made without the assistance of the cast of 79 listed above, it was their influence that sent the development process in directions that had not been anticipated at the beginning of the research. Their engagement has resulted in an operational definition of the public interest that is far more robust, and more able to accommodate divergent views as a consequence.

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## **APPENDIX 1**

### **MANAGEMENT OF ETHICAL ISSUES IN THIS RESEARCH**

The following ethical issues were identified and managed in the course of this research. The researcher and supervisor submitted documentation to the University of Technology Sydney Human Research Ethics Committee for each stage of the research for approval.

#### **Risk or harm to participants or researcher**

None detected

#### **Relationships between researchers and participants**

Some trialists of the instruments were known to the researcher, but none of the participants whose data is used in the thesis has any relationship with the researcher that could influence the reliability of the data. No inducements were offered to participants.

#### **Other obligations**

No commercial sponsorship or other financial support with obligations was received for this research.

#### **Identification of researcher, supervisor and institution**

All participants were provided with information that identified the researcher, the research, the supervisor and the University of Technology, Sydney. They were also advised how to contact the university, and the UTS Human Research Ethics Committee if the need arose.

#### **Informed consent of participants**

The wording of the consent for the Q Method data was:

CONSENT: I understand that the purpose of this study is to develop a method of determining the public interest. I understand my participation will involve completing a survey which will take about 20-30 minutes. I understand that if I have any comments or concerns I can contact Carolyn Wells on [REDACTED] or Dr Glen Searle on 02 9514 8783. I also understand that I can withdraw my participation at

any time. I agree that the research data gathered may be published in a form that ensures that individual respondents and their views cannot be identified.

(More detailed information was provided by handout or email)

The wording of the consent for the Delphi process was:

CONSENT: Please read the following and then give your consent at the bottom.

I understand that the purpose of this study is to evaluate a proposed method of determining the public interest.

I understand that I will be participating in a group by email. The other group members will not know my identity and I will not know theirs. In each round I will be asked to answer up to 10 questions, some of which will be multiple choice. The results of each round will be presented to the group in the next round. It is anticipated that there will be 5 rounds over 5 weeks.

I understand that if I am unable to send in a reply in time for one round, I am still able to join in the next round. I also understand that I am free to withdraw my participation from this research project at any time I wish, without consequences, and without giving a reason.

I agree that the research data gathered from this project may be published in a form that ensures that individual respondents and their views cannot be identified. I understand that information obtained from participants will be stored securely and destroyed after 5 years.

I am aware that if I have any concerns or comments about the research I can contact:

- Carolyn Wells on [REDACTED] or [REDACTED]@gmail.com
- Prof. Spike Boydell on 9514 8675 or Spike.Boydell@uts.edu.au,

- or if necessary, I can contact the UTS Human Research Ethics Committee, which has approved this research, through the Research Ethics Officer (ph: 9514 9615 or Research.Ethics@uts.edu.au), quoting Approval Number 2005-180A

**Participant privacy and confidentiality**

Where data was collected face to face, the consent information was collected separately, and as there was no identifying information on the paperwork, the data was anonymous (ie participant identity could not be linked to data). Where data was collected on line, the researcher was able to link the identity of the participant to their data. Only non-identifying data was entered for Q method analysis or into later rounds of the Delphi process.

**Data security**

All data has been stored securely by the researcher and will be destroyed in due course (minimum of 5 years after the publication of the research).



## **APPENDIX 2**

### **Q METHOD DATA COLLECTION INSTRUMENTS**

Following are the two versions of the data collection instrument:

1. the PAPER-BASED VERSION used with postgraduate students
2. the ONLINE VERSION used with the industry leaders

In the first version the scale ranges from 'STRONGLY AGREE' to 'STRONGLY DISAGREE'. When the data was first entered into the *PQ Method* software it needed to be reversed so that negative scores would indicate disagreement and positive scores would indicate agreement. The scale used in the second instrument was reversed to avoid the need for such reversal at the data entry stage.

## CONSENT FORM

I, \_\_\_\_\_ agree to participate in the research project 'A Framework for Managing Urban Growth Conflicts on the NSW Coast' (UTS HREC approval number 2005-180), which is being conducted by Carolyn Wells for her PhD degree in urban planning at the University of Technology, Sydney.

I understand that the purpose of this study is to define what is meant by the public interest, and to identify how developments are thought to impact on the public interest. Part of the research will be the design and trialing of a Net Public Benefit Test that will provide a means of comparing the benefits and disbenefits to the public of a plan or proposed development.

I understand that my participation in this research will involve trialing a survey form, which will require me to complete a form, and then have a brief conversation with the researcher about the form.

I am aware that I can contact Carolyn Wells or her supervisor, Glen Searle, if I have any concerns about the research. I also understand that I am free to withdraw my participation from this research project at any time I wish, without consequences, and without giving a reason.

I agree that Carolyn has answered all my questions fully and clearly.

I agree that the research data gathered from this project may be published in a form that does not identify me in any way.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature (participant)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature (researcher or delegate)

### NOTE:

This study has been approved by the University of Technology, Sydney Human Research Ethics Committee. If you have any complaints or reservations about any aspect of your participation in this research which you cannot resolve with the researcher, you may contact the Ethics Committee through the Research Ethics Officer (ph: 02 9514 9615, [Research.Ethics@uts.edu.au](mailto:Research.Ethics@uts.edu.au)) and quote the UTS HREC reference number 2005-180. Any complaint you make will be treated in confidence and investigated fully and you will be informed of the outcome.

### CONTACTS

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\_\_\_\_\_  
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Attachment: Information Sheet

## PLANNING AND THE PUBLIC INTEREST

Thank you for agreeing to participate in this research project on how planners can determine what is in the public interest. All of your responses will be kept confidential. Research publications will not identify participants.

You will be asked to indicate your level of agreement with statements about determining the public interest. Planners deal with many issues that produce decisions that might or might not be in the public interest, including land use zoning, infrastructure planning, urban design, development applications, policies and regulations.

Views about the public interest are diverse and planners have difficulty accommodating so many differing opinions. This project aims to develop systems for incorporating those views into planning decisions.

**Which of the following best describes your role with respect to planning?**  
Please tick one.

- ☐ Planner
- ☐ Politician (federal, state or local government)
- ☐ Technical specialist who works with planners
- ☐ Developer, builder or real estate agent
- ☐ Environmentalist
- ☐ Interest group member  
Please describe interest:.....
- ☐ University academic
- ☐ Legal representative or judge of the court
- ☐ Member of the public



## INSTRUCTIONS

In this survey you will be asked to consider a number of statements about the public interest. The statements represent diverse views about the nature of the public interest.

1. The statements are arranged with one-theme to a page. **PLEASE READ ALL OF THE STATEMENTS ON THE PAGE** to get an idea of the range of opinions covered.
2. Then indicate the extent you agree with each statement.
3. Add your opinion if it is not represented.
4. Move on to the next page.

To what extent do you agree or disagree with each of the following statements about the concept of the public interest?

1. The best way to define the public interest is to say it must exclude private interests

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

2. If decision makers follow due process, are fair and open, and allow for public participation, then the resulting decisions will be in the public interest

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

3. The public interest refers to our collective interests; those things that relate to all of us and will potentially impact on all of us

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

4. The best definition of the public interest is that it is the sum of the private interests of individuals

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....

To what extent do you agree or disagree with each of the following statements about who knows best about what is in the public interest?

5.

Politicians have the best knowledge about the public interest

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
6.

Planners have the best knowledge about the public interest

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
7.

Technical experts have the best knowledge about the public interest

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
8.

The general public have the best knowledge about the public interest

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
9.

Markets are the best indicator of the public interest because they show where people want to live and what they want to buy or rent

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....



To what extent do you agree or disagree with each of the following statements about the scale of the public interest?

10. All planning decisions have local impact so local interests of residents and ratepayers are always important  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
11. Local planning decisions should always support state-wide plans and policies for population distribution, infrastructure etc  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
12. The 'national interest', which deals with things such as the national economy and national security, is the most important scale of public interest  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
13. The global scale of public interest is the most important because we are all sharing one planet and we need to cooperate to survive  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
14. We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
15. Public sector decision makers operate at a specific level (local, state, national etc) and should only consider issues relevant to that level of jurisdiction  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....

To what extent do you agree or disagree with each of the following statements about NIMBY (Not In My Backyard) attitudes?

16. Use of the NIMBY label is just a put down and a way of ignoring legitimate objections

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

17. When people support an activity in general but do not want it in their own neighbourhood, they are being unreasonable

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

18. Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

19. There are times when the needs and wants of local residents will conflict with the broader public interest

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

20. We need mechanisms to ensure that local government decisions are made in the public interest, not just in the interests of increasing or protecting local property values or maintaining the status quo for existing residents

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

21. Unless local residents can block unwanted developments, politicians and bureaucrats will 'ride rough shod' over people's lives

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....  
.....  
.....

To what extent do you agree or disagree with each of the following statements about future generations?

22. We must try to consider the needs of future generations

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
23. People who make emotive claims about children’s futures are using them for their own purposes

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
24. Future needs will be the same as current needs

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
25. The world is changing too fast to predict future needs

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree
26. Technology will fix current problems so there is no need to worry about the future

☐ Strongly Agree

☐ Agree

☐ Neutral

☐ Disagree

☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....



To what extent do you agree or disagree with each of the following statements about fairness to others?

27. When planning our own resource use we must consider the resource needs of others in our society

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

28. The reality is that people have to look out for themselves and act in their own best interests

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

29. When deciding planning issues it is important to consider the interest of the poor and powerless in our society

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

30. The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

31. Because land near smelly or noisy activities will be cheaper, some people will always live there

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....  
.....  
.....

**To what extent do you agree or disagree with each of the following statements about Triple Bottom Line outcomes (that is, economic, environmental and social sustainability)?**

- 32. Most important thing is to achieve all three aspects, that is, economic, environmental and social aspects**  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
- 33. Commercial interests are most important because it's in the public interest for people to have jobs**  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
- 34. Environmental interests are the most important because the environment provides the necessities of life**  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
- 35. Social justice issues are most important because we have no right to cause hardship to other people**  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
- 36. The 'Triple Bottom Line' reminds us that too much emphasis on any one of the three might result in not enough emphasis on the others**  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

**If your opinion differs from all of these, please give your opinion here**

.....

.....

.....

To what extent do you agree or disagree with each of the following statements about the relative importance of the public interest?

37. The public interest is just one factor among many that planners need to consider

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

38. Compared with economic and technical considerations, the public interest is hard to decipher and is best down-played in planning decisions

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

39. People who make claims about the public interest are only using it as a smokescreen to push their own point of view

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

40. Public officials have a duty to serve the public interest and without that duty many sub-standard decisions would be made

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

41. Because there are so many powerful commercial interests it is necessary to counter these by arguing for the public interest

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

42. Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....  
.....  
.....



To what extent do you agree or disagree with each of the following statements about public interest vs property rights & other private interests?

43. **It's good that people's rights to develop private property are restricted by regulations that serve the public interest**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
44. **People only make claims about the public interest in order to protect their own private interests**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
45. **If a development has a negative impact on its neighbours or the community then compensation should be paid**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
46. **Paying compensation to neighbours for the negative impacts of a development is a form of bribery**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
47. **Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
48. **People only act in their private interest, not in the collective interest**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree
49. **People who voluntarily pay a surcharge for green energy are acting in the collective interest**  
☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

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**To what extent do you agree or disagree with each of the following statements about public interest testing?**

**50. It is necessary to apply a 'public interest test' to some developments to see whether or not they are in the public interest**

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

**51. Public interest testing is a waste of time because investors will decide whether or not a development goes ahead**

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

**52. Numerical scoring of proposed developments is needed so that public can really understand what its impact will be (financially, environmentally and socially)**

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

**53. Written explanations of decisions are the best way to ensure transparency and hold officials accountable**

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

**If your opinion differs from all of these, please give your opinion here**

.....

.....

.....

To what extent do you agree or disagree with each of the following statements about closed or open categories of the public interest?

54. Things are so complex that it is impossible to predict what public interest issues will arise in a particular development  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
55. When assessing whether a proposal is in the public interest, people need to know in advance what criteria are being used  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
56. Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree
57. It is important that public interest criteria are open (not pre-set) so stakeholders can introduce their own concerns  
☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....



To what extent do you agree or disagree with each of the following statements about the level of agreement needed?

58. Before you can say what is in the public interest there needs to be consensus of opinion

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

59. The best way of planning in the public interest is to plan for a mix of developments that eventually accommodate all views

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

60. The diversity of views in our society mean that the public interest is a phantom and cannot possibly be identified

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

61. To serve the public interest we only need to implement the option that does most to promote important public interest objectives

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

62. If we satisfy majority opinion then we will serve the public interest

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

63. Differences of opinion can be resolved through public interest research and discussion

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

64. Differences of opinion should be resolved by those in authority

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

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To what extent do you agree or disagree with each of the following statements about the importance of public consultation and participation?

65. Public participation gets in the way of making decisions and taking action in a timely manner

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

66. Consultation is undertaken to make the public feel important but the public input is not valuable

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

67. It is important to encourage debate to enable the emergence of community values and build community cohesion

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

68. Unless public contributions are invited the final decision will lack legitimacy and not be accepted by the community

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

69. Meaningful public participation takes time but it's worth it because it can result in better decisions that have wider support

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

70. Public participation in decision-making creates more heat than light

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

71. Public consultation, if taken seriously, can reduce the probability of making decisions that are unjust

☐ Strongly Agree   ☐ Agree   ☐ Neutral   ☐ Disagree   ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....

.....

.....

To what extent do you agree or disagree with each of the following statements about the importance of expert opinion?

**72. Member of the public are not able to assess the technical details of a proposal**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

**73. It is important that expert opinion be obtained before politicians make decisions**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

**74. Research can make an important contribution to understanding what is or isn't in the public interest**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

**75. Consulting experts is often a waste of time because they usually disagree**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

**76. Technical experts should not be used to set values as values need to be set through democratic processes**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

**77. Expert knowledge can be enhanced by the addition of local knowledge**

☐ Strongly Agree    ☐ Agree    ☐ Neutral    ☐ Disagree    ☐ Strongly Disagree

If your opinion differs from all of these, please give your opinion here

.....  
.....  
.....

Thank you



1

CONSENT: I understand that the purpose of this study is to develop a method of determining the public interest. I understand my participation will involve completing a survey which will take about 20 minutes. I understand that if I have any comments or concerns I can contact Carolyn Wells on [REDACTED] or Dr Glen Searle on 02 9514 8783. I also understand that I can withdraw my participation at any time. I agree that the research gathered may be published in a form that ensures that individual respondents and their views cannot be identified.

☐ I AGREE (Please click on the arrow below)

☐ I DO NOT AGREE (Please close this window)

Survey Page 1

**2**

Which of the following BEST describes your role with respect to planning and property development?

- ☐ Planner
- ☐ Property developer, builder or real estate agent
- ☐ Politician (local, state or federal)
- ☐ Public servant (other than planner or developer)
- ☐ Local action group member
- ☐ University academic
- ☐ Legal representative or judge of the court
- ☐ Member of the public
- ☐ Environmentalist
- ☐ Social welfare advocate
- ☐ Technical specialist, please indicate specialty

### INSTRUCTIONS

You will be asked to consider a number of statements about the public interest. The statements are arranged in sets which will appear one at a time.

PLEASE READ ALL OF THE STATEMENTS IN THE SET to get an idea of the range of opinions covered.

Then indicate the extent of your agreement with each statement by selecting one response button for each statement. The possible responses range from STRONGLY DISAGREE (1) to STRONGLY AGREE (5).

If you are unable to decide, or don't have an opinion, please select NEUTRAL (3).

Remember, you MUST select one button for each statement.



3

To what extent do you agree or disagree with each of the following statements about THE CONCEPT OF THE PUBLIC INTEREST?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

The best way to define the public interest is to say it must exclude private interests

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

The best definition of the public interest is that it is the sum of the private interests of individuals

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

4

To what extent do agree or disagree with each of the following statements about WHO KNOWS BEST ABOUT THE PUBLIC INTEREST?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

Politicians have the best knowledge of the public interest

1 2 3 4 5

Planners have the best knowledge of the public interest

1 2 3 4 5

Technical experts have the best knowledge of the public interest

1 2 3 4 5

The general public have the best knowledge of the public interest

1 2 3 4 5

Markets are the best indicator of the public interest

1 2 3 4 5

5

To what extent do agree or disagree with each of the following statements about THE SCALE OF THE PUBLIC INTEREST?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

All planning decisions have local impact so local interest of residents and ratepayers are always important

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Local planning decisions should always support state-wide plans and policies

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

The global scale of the public interest is the most important

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5



6

To what extent do agree or disagree with each of the following statements about NIMBY (Not In My Back Yard) ATTITUDES?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

The NIMBY label is used as a put-down and a way of ignoring legitimate objections

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

There are times when the needs and wants of local residents will conflict with the broader public interest

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Unless local residents can block unwanted developments politicians and bureaucrats will ruin people's quality of life

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

7

To what extent do you agree or disagree with each of the following statements about FUTURE GENERATIONS?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

We must consider the needs of future generations

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

People who make emotive claims about children's futures are using them for their own purposes

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Future needs will be the same as current needs

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

The world is changing too fast to predict future needs

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Technology will fix current problems

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

8

To what extent do you agree or disagree with each of the following statements about FAIRNESS TO OTHERS?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

When planning our own resource use we must consider the resource needs of others in our society

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

People have to look out for themselves and act in their own best interests

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

When deciding planning issues it is important to consider the interests of the poor and the powerless in our society

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Because land near smelly or noisy activities will be cheaper, some people will always live there

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5



9

To what extent do you agree or disagree with each of the following statements about TRIPLE BOTTOM LINE OUTCOMES (that is economic, environmental and social outcomes)?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Economic issues are the most important

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Environmental issues are the most important

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

Social justice issues are the most important

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

10

To what extent do you agree or disagree with each of the following statements about THE RELATIVE IMPORTANCE OF THE PUBLIC INTEREST?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

The public interest is just one factor among many that planners need to consider

1                      2                      3                      4                      5

The public interest is hard to decipher and is best down-played in decision making

1                      2                      3                      4                      5

People who make claims about the public interest use it as a smokescreen to push their own point of view

1                      2                      3                      4                      5

It is important that public officials serve the public interest, rather than partisan or sectoral interests

1                      2                      3                      4                      5

Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account

1                      2                      3                      4                      5

Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest

1                      2                      3                      4                      5

11

To what extent do you agree or disagree with each of the following statements about PROPERTY RIGHTS AND COMPENSATION?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

It's good that people's rights to develop property are restricted by regulations that serve the public interest

1                      2                      3                      4                      5

If a development has a negative impact on its neighbours or the community then compensation should be paid

1                      2                      3                      4                      5

Paying compensation to neighbours for the negative impact of a development is a form of bribery

1                      2                      3                      4                      5

Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest

1                      2                      3                      4                      5



12

To what extent do you agree or disagree with each of the following statements about CLOSED OR OPEN CATEGORIES OF THE PUBLIC INTEREST?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

It is impossible to predict what public interest issue will arise in a particular development

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

When people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

13

To what extent do you agree or disagree with each of the following statements about THE LEVEL OF AGREEMENT NEEDED?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

Before you can say what is in the public interest there needs to be consensus of opinion

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

The diversity of views in our society means that the public interest is a phantom and cannot be identified

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

We serve the public interest if we implement the option that does most to promote important public interest objectives

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5

If we satisfy majority opinion then we will serve the public interest

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5



14

To what extent do you agree or disagree with each of the following statements about METHODS OF RESOLVING DIFFERENCES OF OPINION?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

Differences of opinion can be resolved through public interest research that clarifies issues

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Differences of opinion can be resolved through public debate in meetings and in the media

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Differences of opinion should be resolved by those in authority

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5



**15**

To what extent do you agree or disagree with each of the following statements about PUBLIC CONSULTATION AND PARTICIPATION?

1                      2                      3                      4                      5  
Strongly Disagree    Disagree            Neutral              Agree                Strongly Agree

Public participation gets in the way of making decisions and taking action in a timely manner

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Unless public consultation occurs the final decision will lack legitimacy and will not be accepted by the community

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Meaningful public participation takes time but it's worthwhile because it can result in better decisions that have wider support

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Public participation in decision making creates more heat than light

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

Public consultation, if taken seriously, can reduce the probability of making decisions that are unjust

☐ 1                      ☐ 2                      ☐ 3                      ☐ 4                      ☐ 5

16

To what extent do you agree or disagree with each of the following statements about EXPERT OPINION?

1 Strongly Disagree      2 Disagree      3 Neutral      4 Agree      5 Strongly Agree

Members of the public are not able to assess the technical details of a proposal

1 2 3 4 5

It's important that expert opinion be obtained before politicians make decisions

1 2 3 4 5

Research can make an important contribution to understanding what is or isn't in the public interest

1 2 3 4 5

Consulting experts is often a waste of time because they usually disagree

1 2 3 4 5

Expert knowledge can be enhanced by the addition of local knowledge

1 2 3 4 5

## Understanding ' The Public Interest '

17

If it is found that your response pattern is one that defines a discourse about the public interest, would you be willing to do a short telephone interview?

18

If YES, please provide the following information:

Name

Telephone number

Time of day preferred

19

Would you like to receive (by email) a report on the outcome of this project?

20

If you wish to make any comment about the public interest, or about this survey, please use the space below.



### APPENDIX 3 RELEVANCE OF EACH STATEMENT TO THE RESEARCH ISSUES

The first column shows the statement number in the postgraduate students instrument. The second column shows the statement number used in the leader instrument. A dash (-) indicates that the statement was not used in one of the two instruments.

Statements are grouped. For example, statements numbered S1/L1 to S4/L4 represented the group of statements described as 'Concept of the public interest'. In the paper-based instrument used with the students, each group of statements appeared on a separate page. In the on-line instrument used with the leaders, each group of statements appeared on a different screen.

The third column shows the wording of the statement. Different wording of statements in the two instruments (also discussed in section 4.5.2) is addressed in the footnotes.

The final column shows the relevance of the statement to the research issues (persistent ambiguities about the public interest)

Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>THE CONCEPT OF THE PUBLIC INTEREST</b>			
S1	L1	The best way to define the public interest is to say it must exclude private interests	# 5 Status of private interests – reflects strong preference for common interests
S2	L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	# 6 People and Processes – reflects procedural approaches that focus on due process (wording taken from Pal & Maxwell)
S3	L3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	# 5 Status of private interests – paraphrase of the common interest theories
S4	L4	The best definition of the public interest is that it is the sum of the private interests of individuals	# 5 Status of private interests - paraphrase of the individual interest theories of the public interest

Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>WHO KNOWS BEST ABOUT THE PUBLIC INTEREST</b>			
S5	L5	Politicians have the best knowledge of the public interest	# 6 People and Processes - Paraphrase of the group interest theories, and the pluralist position language described by Williams & Matheny
S6	L6	Planners have the best knowledge of the public interest	# 6 People and Processes - This statement was written by the researcher
S7	L7	Technical experts have the best knowledge of the public interest	# 6 People and Processes - Paraphrase of the managerial language described by Williams & Matheny
S8	L8	The general public have the best knowledge of the public interest	# 6 People and Processes - Paraphrase of the communitarian language described by Williams & Matheny
S9	L9	Markets are the best indicator of the public interest	# 6 People and Processes - Paraphrase of a pluralist aggregation method of resolving conflicting claims, used by individual interest theorists.
<b>THE SCALE OF THE PUBLIC INTEREST</b>			
S10	L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	# 4 Relevant public – spatial dimension – Written by the researcher to reflect the views of resident action groups
S11	L11	Local planning decisions should always support state-wide plans and policies	# 4 Relevant public – spatial dimension – Paraphrase of position of the NSW state planning authority
S12	L12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	# 4 Relevant public – spatial dimension – Written by the researcher
S13	L13	The global scale of the public interest is the most important	# 4 Relevant public – spatial dimension – Paraphrases the view of many environmentalists
S14	L14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	# 4 Relevant public – spatial dimension – Written by the researcher
S15	-	Public sector decision makers operate at a specific level (local, state, national etc) and should only consider issues relevant to that level of jurisdiction	# 4 Relevant public – spatial dimension – Suggested by Wheeler (2006)



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>NIMBY (Not In My Backyard) ATTITUDES</b>			
S16	L15	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	# 4 Relevant public – spatial dimension – Paraphrase of Burningham (2000)
S17	L16	When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable	# 4 Relevant public – spatial dimension – Paraphrase of NIMBY concept
S18	L17	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	# 4 Relevant public – spatial dimension – Written by the researcher to test the level of participants' altruism
S19	L18	There are times when the needs and wants of local residents will conflict with the broader public interest	# 4 Relevant public – spatial dimension – Written by the researcher
S20	-	We need mechanisms to ensure that local government decisions are made in the public interest, not just in the interests of increasing or protecting local property values or maintaining the status quo for existing residents	# 4 Relevant public – spatial dimension – Paraphrase of Wheeler (2006b)
S21 <sup>1</sup>	L19	Unless local residents can block unwanted developments politicians and bureaucrats will ruin people's quality of life	# 4 Relevant public – spatial dimension – Written by the researcher to test the level of participants' altruism

<sup>1</sup> In the Student instrument, statement 21 read, "Unless local residents can block unwanted developments, politicians and bureaucrats will 'ride rough shod' over people's lives".



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>FUTURE GENERATIONS</b>			
S22	L20	We must consider the needs of future generations	# 4 Relevant public – temporal dimension – Paraphrase of argument for intergenerational equity
S23	L21	People who make emotive claims about children's futures are using them for their own purposes	# 4 Relevant public – temporal dimension – Written by the researcher to reflect rejectionist position
S24	L22	Future needs will be the same as current needs	# 4 Relevant public – temporal dimension – Written by the researcher
S25	L23	The world is changing too fast to predict future needs	# 4 Relevant public – temporal dimension – Written by the researcher
S26 <sup>2</sup>	L24	Technology will fix current problems	# 4 Relevant public – temporal dimension – Written by the researcher
<b>FAIRNESS TO OTHERS</b>			
S27	L25	When planning our own resource use we must consider the resource needs of others in our society	# 5 Status of private interests – Paraphrase of an altruistic position
S28	L26	People have to look out for themselves and act in their own best interests	# 5 Status of private interests – Paraphrase of a self-interested position
S29	L27	When deciding planning issues it is important to consider the interests of the poor and the powerless in our society	# 5 Status of private interests – Paraphrase of an altruistic position
S30	L28	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	# 5 Status of private interests – A rationalisation for neglecting issues of equity
S31	L29	Because land near smelly or noisy activities will be cheaper, some people will always live there	# 5 Status of private interests – A rationalisation for neglecting issues of equity

<sup>2</sup> In the Student instrument, statement 26 read, "Technology will fix current problems so there is no need to worry about the future"

Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>TRIPLE BOTTOM LINE OUTCOMES</b>			
S32	L30	The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects	# 2 One or many public interests – Written by researcher to reflect the need for balance among competing objectives
S33 <sup>3</sup>	L31	Economic issues are the most important	# 2 One or many public interests – Refutes the need for balance among competing public interest objectives
S34	L32	Environmental issues are the most important	# 2 One or many public interests – Refutes the need for balance among competing public interest objectives
S35	L33	Social justice issues are the most important	# 2 One or many public interests – Refutes the need for balance among competing public interest objectives
S36	L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	# 2 One or many public interests – Written by researcher to reflect the need for balance among competing objectives
<b>RELATIVE IMPORTANCE OF THE PUBLIC INTEREST</b>			
S37	L35	The public interest is just one factor among many that planners need to consider	# 1 Importance of the public interest – Quote from Benditt (1973, p300)
S38	L36	The public interest is hard to decipher and is best down-played in decision making	# 1 Importance of the public interest – Argument against importance
S39	L37	People who make claims about the public interest use it as a smokescreen to push their own point of view	# 5 Status of private interests – Paraphrase of the position of rational choice theorists
S40	L38	It is important that public officials serve the public interest, rather than partisan or sectoral interests	# 5 Status of private interests – Statement of the trust principle
S41	L39	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	# 5 Status of private interests – Challenges the assumption that commercial interests (a group interest) are the same as the public interest
S42	L40	Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest	# 1 Importance of the public interest – Argument in favour of importance

<sup>3</sup> In the Student instrument, statement 33 read, "Commercial interests are the most important because it's in the public interest for people to have jobs".



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>PROPERTY RIGHTS AND COMPENSATION</b>			
S43	L41	It's good that people's rights to develop property are restricted by regulations that serve the public interest	# 5 Status of private interests – Paraphrase of a pro-restrictions position
S44	-	People only make claims about the public interest in order to protect their own private interests	# 5 Status of private interests – Paraphrase of the position of rational choice theorists
S45	L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	# 5 Status of private interests – Paraphrase of a pro-compensation position
S46	L43	Paying compensation to neighbours for the negative impact of a development is a form of bribery	# 5 Status of private interests – Criticism of compensation systems
S47	L44	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	# 5 Status of private interests – Criticism of compensation systems
S48	-	People only act in their private interest, not in the collective interest	# 5 Status of private interests – Paraphrase of the position of rational choice theorists
S49	-	People who voluntarily pay a surcharge for green energy are acting in the collective interest	# 5 Status of private interests – Argument to refute the position of the rational choice school



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>PUBLIC INTEREST TESTING</b>			
S50	- <sup>4</sup>	It is necessary to apply a 'public interest test' to some developments to see whether or not they are in the public interest	# 6 People and Processes – Paraphrase of Johnstone and Wimbush (2002)
S51	-	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	# 6 People and Processes – Written by researcher to reflect one popular point of view
S52	-	Numerical scoring of proposed developments is needed so that the public can really understand what its impact will be (financially, environmentally and socially)	# 6 People and Processes – Written by researcher to reflect positivist view
S53	-	Written explanations of decisions are the best way to ensure transparency and hold officers accountable	# 6 People and Processes – Paraphrase of Roseth (2009), Pal & Maxwell (2004)

<sup>4</sup> Statements S50 to S53 were discontinued when it was found that participants were very unclear about what a 'public interest test' might look like

Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>CLOSED OR OPEN CATEGORIES OF THE PUBLIC INTEREST</b>			
S54	L45	It is impossible to predict what public interest issue will arise in a particular development	# 3 Restricted criteria – Argument against specifying criteria in advance
S55	L46	When people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker	# 3 Restricted criteria – Argument in favour of specifying criteria in advance
S56	L47	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	# 3 Restricted criteria – Argument in favour of specifying criteria in advance
S57	L48	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	# 3 Restricted criteria – Argument against specifying criteria in advance
<b>LEVELS OF AGREEMENT NEEDED</b>			
S58	L49	Before you can say what is in the public interest there needs to be consensus of opinion	# 6 People and Processes – Reflects an assumption of unitary theories and of rejectionist positions
S59	-	The best way of planning in the public interest is to plan for a mix of developments that eventually accommodate all views	# 6 People and Processes – Written by the researcher to reflect a position that would contradict the need to determine the public interest
S60	L50	The diversity of views in our society means that the public interest is a phantom and cannot be identified	# 6 People and Processes – Paraphrases some of the rejectionist positions, adapted from Lucy (1988)
S61	L51	We serve the public interest if we implement the option that does most to promote important public interest objectives	# 6 People and Processes – Paraphrase of the managerial position
S62	L52	If we satisfy majority opinion then we will serve the public interest	# 6 People and Processes – Paraphrase of a pluralist aggregation method of resolving conflicting claims, used by individual interest theorists.



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>METHODS OF RESOLVING DIFFERENCES OF OPINION<sup>5</sup></b>			
S63	L53	Differences of opinion can be resolved through public interest research that clarifies issues	# 6 People and Processes – Written by researcher to reflect an advantage of research
-	L54	Differences of opinion can be resolved through public debate in meetings and in the media	# 6 People and Processes – Paraphrases dialogic position
S64	L55	Differences of opinion should be resolved by those in authority	# 6 People and Processes – Paraphrase of the managerial position
<b>PUBLIC CONSULTATION AND PARTICIPATION</b>			
S65	L56	Public participation gets in the way of making decisions and taking action in a timely manner	# 6 People and Processes – Written by researcher to reflect a disadvantage of public consultation
S66	-	Consultation is undertaken to make the public feel important but the public input is not valued	# 6 People and Processes – Paraphrase of criticism of public consultation
S67	-	It is important to encourage debate to enable the emergence of community values and build community cohesion	# 6 People and Processes – Paraphrase of the dialogical approach
S68	L57	Unless public consultation occurs the final decision will lack legitimacy and will not be accepted by the community	# 6 People and Processes – Paraphrase of an advantage of public consultation
S69	L58	Meaningful public participation takes time but it's worthwhile because it can result in better decisions that have wider support	# 6 People and Processes – Paraphrase of an advantage of public consultation
S70	L59	Public participation in decision making creates more heat than light	# 6 People and Processes – Common criticism of public consultation
S71	L60	Public consultation, if taken seriously, can reduce the probability of making decisions that are unjust	# 6 People and Processes – Paraphrase of an advantage of public consultation

<sup>5</sup> In the Student instrument, this heading was not used, and statements 63 and 64 were part of the previous group.



Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Relevance of the statement to the persistent ambiguities
<b>EXPERT OPINION</b>			
S72	L61	Members of the public are not able to assess the technical details of a proposal	# 6 People and Processes – Written by researcher to reflect a reason for obtaining expert opinion
S73	L62	It's important that expert opinion be obtained before politicians make decisions	# 6 People and Processes – Paraphrase of an opinion expressed in some judgements of the NSW Land & Environment Court
S74	L63	Research can make an important contribution to understanding what is or isn't in the public interest	# 6 People and Processes – Written by researcher to reflect an advantage of public interest research
S75	L64	Consulting experts is often a waste of time because they usually disagree	# 6 People and Processes – Written by researcher to reflect a commonly expressed opinion of experts
S76	-	Technical experts should not be used to set values as values need to be set through democratic processes	# 6 People and Processes – Written by researcher to reflect a collaborative planning view
S77	L65	Expert knowledge can be enhanced by the addition of local knowledge	# 6 People and Processes – Written by researcher to reflect a limitation of expert opinion

**End of Appendix 3**

#### APPENDIX 4: Z SCORES FOR STATEMENTS THAT DISTINGUISH STUDENT FACTOR 1 FROM STUDENT FACTORS 2 AND 3

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within factor 1.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S36	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	<b>+1.68**</b>	+0.20	-0.56
S27	When planning our own resource use we must consider the resource needs of others in our society	<b>+1.42**</b>	+0.32	+0.55
S57	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	<b>+1.24**</b>	-0.42	+0.72
S42	Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest	<b>+1.19**</b>	+0.35	+0.38
S14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	<b>+1.18*</b>	-0.55	+0.70
S63	Differences of opinion can be resolved through public interest research that clarifies issues	<b>+0.84**</b>	+0.02	+0.18
S37	The public interest is just one factor among many that planners need to consider	<b>+0.79*</b>	+1.57	+1.28
S49	People who voluntarily pay a surcharge for green energy are acting in the collective interest	<b>+0.63**</b>	+0.05	0.00
S46	Paying compensation to neighbours for the negative impact of a development is a form of bribery	<b>+0.37**</b>	-0.54	-0.20
S12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	<b>+0.14*</b>	-0.86	-0.32
S18	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	<b>0.00*</b>	+1.23	-1.82
S2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	<b>-0.04*</b>	-0.50	+1.14
S11	Local planning decisions should always support state-wide plans and policies	<b>-0.05**</b>	+1.09	+0.75



Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S9	Markets are the best indicator of the public interest	-0.33*	+1.25	+0.07
S35	Social justice issues are the most important	-0.39*	-0.95	+0.01
S21	Unless local residents can block unwanted developments politicians and bureaucrats will 'ride rough shod' over people's quality of life	-0.44**	-1.36	+1.18
S72	Members of the public are not able to assess the technical details of a proposal	-0.59*	+1.67	-0.12
S51	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	-0.59**	+0.02	-2.04
S8	The general public have the best knowledge of the public interest	-0.60**	-1.69	+1.05
S58	Before you can say what is in the public interest there needs to be consensus of opinion	-0.62**	+0.36	+0.43
S65	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76*	+0.74	-1.17
S4	The best definition of the public interest is that it is the sum of the private interests of individuals	-0.80**	+0.70	+0.56
S39	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.80**	+0.84	-1.32
S48	People only act in their private interest, not in the collective interest	-0.83**	+0.98	-0.21
S33	Commercial interests are the most important	-0.84**	+0.10	+0.18
S23	People who make emotive claims about children's futures are using them for their own purposes	-0.92**	+0.54	-1.45
S54	It is impossible to predict what public interest issue will arise in a particular development	-0.92**	+1.01	+0.36
S61	We serve the public interest if we implement the option that does most to promote important public interest objectives	-1.07**	+0.03	-0.25
S30	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	-1.08**	+0.14	-0.25



Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S62	If we satisfy majority opinion then we will serve the public interest	-1.09**	-0.23	+0.04
S5	Politicians have the best knowledge of the public interest	-1.33**	-2.13	-2.35
S60	The diversity of views in our society means that the public interest is a phantom and cannot be identified	-1.52**	+0.37	-0.62

End of Appendix 4

# APPENDIX 5: Z SCORES FOR STATEMENTS THAT DISTINGUISH STUDENT FACTOR 2 FROM STUDENT FACTORS 1 AND 3

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within factor 2.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S73	It's important that expert opinion be obtained before politicians make decisions	+1.36	<b>+1.84*</b>	+1.38
S72	Members of the public are not able to assess the technical details of a proposal	-0.59	<b>+1.67**</b>	-0.12
S31	Because land near smelly or noisy activities will be cheaper, some people will always live there	+0.09	<b>+1.40**</b>	+0.19
S17	When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable	+0.09	<b>+1.37**</b>	+0.07
S22	We must consider the needs of future generations	+2.11	<b>+1.26*</b>	+1.81
S9	Markets are the best indicator of the public interest	-0.33	<b>+1.25**</b>	+0.07
S18	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	0.00	<b>+1.23**</b>	-1.82
S54	It is impossible to predict what public interest issue will arise in a particular development	-0.92	<b>+1.01**</b>	+0.36
S48	People only act in their private interest, not in the collective interest	-0.83	<b>+0.98**</b>	-0.21
S39	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.80	<b>+0.84**</b>	-1.32
S20	We need mechanisms to ensure that local government decisions are made in the public interest, not just in the interests of increasing or protecting local property values or maintaining the status quo for existing residents	+1.33	<b>+0.81*</b>	+1.27

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S44	People only make claims about the public interest in order to protect their own private interests	-0.42	<b>+0.80**</b>	-0.59
S65	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76	<b>+0.74**</b>	-1.17
S66	Consultation is undertaken to make the public feel important but the public input is not valued	-1.23	<b>+0.65**</b>	-1.42
S23	People who make emotive claims about children's futures are using them for their own purposes	-0.92	<b>+0.54**</b>	-1.45
S28	People have to look out for themselves and act in their own best interests	-0.56	<b>+0.49**</b>	-0.62
S60	The diversity of views in our society means that the public interest is a phantom and cannot be identified	-1.52	<b>+0.37**</b>	-0.62
S45	If a development has a negative impact on its neighbours or the community then compensation should be paid	-0.21	<b>+0.32*</b>	-0.34
S36	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+1.68	<b>+0.20**</b>	-0.56
S70	Public participation in decision making creates more heat than light	-0.86	<b>+0.18**</b>	-1.15
S67	It is important to encourage debate to enable the emergence of community values and build community cohesion	+1.18	<b>+0.16**</b>	+1.00
S51	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	-0.59	<b>+0.02**</b>	-2.04
S40	It is important that public officials serve the public interest, rather than partisan or sectoral interests	+0.98	<b>-0.12**</b>	+0.83
S43	It's good that people's rights to develop property are restricted by regulations that serve the public interest	+1.14	<b>-0.17**</b>	+0.91
S29	When deciding planning issues it is important to consider the interests of the poor and the powerless in our society	+1.58	<b>-0.17**</b>	+1.36



Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S69	Meaningful public participation takes time but it's worthwhile because it can result in better decisions that have wider support	+1.15	<b>-0.26**</b>	+1.33
S3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	+1.00	<b>-0.30**</b>	+0.88
S57	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.24	<b>-0.42**</b>	+0.72
S2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.04	<b>-0.50*</b>	+1.14
S14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	+1.18	<b>-0.55**</b>	+0.70
S10	All planning decisions have local impact so local interests of residents and ratepayers are always important	+1.12	<b>-0.70**</b>	+0.88
S12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	+0.14	<b>-0.86*</b>	-0.32
S35	Social justice issues are the most important	-0.39	<b>-0.95**</b>	+0.01
S13	The global scale of the public interest is the most important	+0.48	<b>-1.24**</b>	+0.43
S16	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	-0.27	<b>-1.29**</b>	-0.23
S21	Unless local residents can block unwanted developments politicians and bureaucrats will 'ride rough shod' over people's quality of life	-0.44	<b>-1.36**</b>	+1.18
S41	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	+0.30	<b>-1.38**</b>	+0.34
S6	Planners have the best knowledge of the public interest	-0.16	<b>-1.62**</b>	+0.01
S8	The general public have the best knowledge of the public interest	-0.60	<b>-1.69**</b>	+1.05

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S15	Public sector decision makers operate at a specific level (local, state, national etc) and should only consider issues relevant to that level of jurisdiction	-0.78	<b>-1.77**</b>	-1.13
S26	Technology will fix current problems so there is no need to worry about the future	-2.47	<b>-1.80**</b>	-2.70
S47	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.99	<b>-1.89**</b>	+0.62

**End of Appendix 5**

## APPENDIX 6: Z SCORES FOR STATEMENTS THAT DISTINGUISH STUDENT FACTOR 3 FROM STUDENT FACTORS 1 AND 2

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within factor 3.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S21	Unless local residents can block unwanted developments politicians and bureaucrats will 'run rough shod' over people's quality of life	-0.44	-1.36	<b>+1.18**</b>
S2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.04	-0.50	<b>+1.14**</b>
S8	The general public have the best knowledge of the public interest	-0.60	-1.69	<b>+1.05**</b>
S19	There are times when the needs and wants of local residents will conflict with the broader public interest	+1.41	+1.68	<b>+0.89**</b>
S57	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.24	-0.42	<b>+0.72**</b>
S14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	+1.18	-0.55	<b>+0.70*</b>
S34	Environmental issues are the most important	-0.34	-0.42	<b>+0.67**</b>
S54	It is impossible to predict what public interest issue will arise in a particular development	-0.92	+1.01	<b>+0.36**</b>
S9	Markets are the best indicator of the public interest	-0.33	+1.25	<b>+0.07*</b>
S7	Technical experts have the best knowledge of the public interest	-0.96	-1.19	<b>+0.04**</b>
S76	Technical experts should not be used to set values as values need to be set through democratic processes	-0.99	-0.94	<b>+0.02**</b>
S35	Social justice issues are the most important	-0.39	-0.95	<b>+0.01*</b>



Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S72	Members of the public are not able to assess the technical details of a proposal	-0.59	+1.67	<b>-0.12*</b>
S1	The best way to define the public interest is to say it must exclude private interests	-1.62	-1.76	<b>-0.17**</b>
S48	People only act in their private interest, not in the collective interest	-0.83	+0.98	<b>-0.21**</b>
S52	Numerical scoring of proposed developments is needed so that public can really understand what its impact will be (financially, environmentally and socially)	+0.53	+0.62	<b>-0.24**</b>
S12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	+0.14	-0.86	<b>-0.32*</b>
S59	The best way of planning in the public interest is to plan for a mix of developments that eventually accommodate all views	+0.50	+0.35	<b>-0.43**</b>
S36	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+1.68	+0.20	<b>-0.56**</b>
S60	The diversity of views in our society means that the public interest is a phantom and cannot be identified	-1.52	+0.37	<b>-0.62**</b>
S65	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76	+0.74	<b>-1.17*</b>
S39	People who make claims about the public interest use it as a smokescreen to push their own point of view	0.80	+0.84	<b>-1.32**</b>
S23	People who make emotive claims about children's futures are using them for their own purposes	-0.92	+0.54	<b>-1.45**</b>
S56	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	-0.36	-0.32	<b>-1.60**</b>

Number	Statement	Factor 1 Balanced Approach	Factor 2 Market Orientation	Factor 3 Localism
S18	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	0.00	+1.23	<b>-1.82**</b>
S51	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	-0.59	+0.02	<b>-2.04**</b>
S24	Future needs will be the same as current needs	-1.41	-1.47	<b>-2.16**</b>
S75	Consulting experts is often a waste of time because they usually disagree	-1.36	-1.24	<b>-2.22**</b>

**End of Appendix 6**

## APPENDIX 7: Z SCORES FOR STATEMENTS THAT DISTINGUISH LEADER FACTOR 1 FROM LEADER FACTORS 2 AND 3

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within Factor 1.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspectiv e	Factor 3 Anti- Authorit- arianism
L14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	<b>+1.22**</b>	+0.14	-0.08
L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	<b>+0.87**</b>	-0.29	-1.23
L32	Environmental issues are the most important	<b>+0.82**</b>	-0.79	+0.13
L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	<b>+0.77*</b>	+1.21	+0.27
L3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	<b>+0.75*</b>	+1.16	+1.33
L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	<b>+0.68*</b>	+0.30	-0.26
L35	The public interest is just one factor among many that planners need to consider	<b>+0.54**</b>	+1.18	+1.27
L54	Differences of opinion can be resolved through public debate in meetings and in the media	<b>+0.50**</b>	-0.43	-0.81
L28	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	<b>+0.43**</b>	-0.45	-0.37
L19	Unless local residents can block unwanted developments politicians and bureaucrats will ruin people's quality of life	<b>+0.40**</b>	-0.85	-0.50
L57	Unless public consultation occurs the final decision will lack legitimacy and will not be accepted by the community	<b>-0.10**</b>	+0.93	+0.86
L49	Before you can say what is in the public interest there needs to be consensus of opinion	<b>-0.14**</b>	-1.22	+0.74
L13	The global scale of the public interest is the most important	<b>-0.28**</b>	-0.82	-1.28



Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspectiv e	Factor 3 Anti- Authorit- arianism
L55	Differences of opinion should be resolved by those in authority	<b>-0.55**</b>	+0.13	-2.15
L30	The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects	<b>-0.64**</b>	+0.84	+0.57
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	<b>-0.82**</b>	+0.29	+0.87
L47	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	<b>-1.04*</b>	-0.56	-0.16
L17	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	<b>-1.07**</b>	+0.16	+0.51
L22	Future needs will be the same as current needs	<b>-1.17*</b>	-1.82	-1.81
L6	Planners have the best knowledge of the public interest	<b>-1.48**</b>	-0.77	-0.43
L31	Economic issues are the most important	<b>-1.62**</b>	-1.10	-0.44
L9	Markets are the best indicator of the public interest	<b>-1.93**</b>	-1.14	+0.10

End of Appendix 7

## APPENDIX 8: Z SCORES FOR STATEMENTS THAT DISTINGUISH LEADER FACTOR 2 FROM LEADER FACTORS 1 AND 3

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within factor 2.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspectiv e	Factor 3 Anti- Authorit- arianism
L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	+0.77	<b>+1.21*</b>	+0.27
L44	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.84	<b>+0.46*</b>	+1.03
L37	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.38	<b>+0.37**</b>	-0.25
L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+0.68	<b>+0.30*</b>	-0.26
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.82	<b>+0.29*</b>	+0.87
L55	Differences of opinion should be resolved by those in authority	-0.55	<b>+0.13**</b>	-2.15
L46	When people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker	+1.15	<b>+0.11**</b>	+1.51
L21	People who make emotive claims about children's futures are using them for their own purposes	-0.69	<b>-0.17**</b>	-1.07
L12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	-0.87	<b>-0.23**</b>	-1.02
L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	+0.87	<b>-0.29**</b>	-1.23
L56	Public participation gets in the way of making decisions and taking action in a timely manner	-1.31	<b>-0.66*</b>	-1.21
L53	Differences of opinion can be resolved through public interest research that clarifies issues	+0.56	<b>-0.69**</b>	+0.51
L32	Environmental issues are the most important	+0.82	<b>-0.79**</b>	+0.13

Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspectiv e	Factor 3 Anti- Authorit- arianism
L33	Social justice issues are the most important	+0.29	<b>-0.94**</b>	+0.01
L31	Economic issues are the most important	-1.62	<b>-1.10**</b>	-0.44
L9	Markets are the best indicator of the public interest	-1.93	<b>-1.14**</b>	+0.10
L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.14	<b>-1.22**</b>	+0.74
L1	The best way to define the public interest is to say it must exclude private interests	-0.44	<b>-1.33**</b>	-0.15

End of Appendix 8



## APPENDIX 9: Z SCORES FOR STATEMENTS THAT DISTINGUISH LEADER FACTOR 3 FROM LEADER FACTORS 1 AND 2

Statements are sorted in descending order from the highest to lowest z score (most agreement to most disagreement) within factor 3.

\* Indicates significance at  $P < .05$  \*\* Indicates significance at  $P < .01$

Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspective	Factor 3 Anti- Authorit- arianism
L8	The general public have the best knowledge of the public interest	-0.40	-0.07	<b>+1.01**</b>
L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.82	+0.29	<b>+0.87*</b>
L39	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	+1.43	+1.53	<b>+0.86*</b>
L4	The best definition of the public interest is that it is the sum of the private interests of individuals	-0.84	-0.80	<b>+0.86**</b>
L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.14	-1.22	<b>+0.74**</b>
L63	Research can make an important contribution to understanding what is or isn't in the public interest	+1.20	+1.28	<b>+0.71*</b>
L16	When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable	-0.59	-0.22	<b>+0.53**</b>
L45	It is impossible to predict what public interest issue will arise in a particular development	-0.47	-0.79	<b>0.48**</b>
L10	All planning decisions have local impact so local interests of residents and ratepayers are always important	+0.77	+1.21	<b>+0.27*</b>
L43	Paying compensation to neighbours for the negative impact of a development is a form of bribery	-0.63	-0.44	<b>+0.24**</b>
L52	If we satisfy majority opinion then we will serve the public interest	-0.81	-0.80	<b>+0.21**</b>
L48	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.11	+1.13	<b>+0.16**</b>
L32	Environmental issues are the most important	+0.82	-0.79	<b>+0.13**</b>

Number	Statement	Factor 1 Environ- mentalism	Factor 2 Executive Perspectiv e	Factor 3 Anti- Authorit- arianism
L9	Markets are the best indicator of the public interest	-1.93	-1.14	<b>+0.10**</b>
L23	The world is changing too fast to predict future needs	-0.84	-1.06	<b>-0.22*</b>
L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+0.68	+0.30	<b>-0.26*</b>
L31	Economic issues are the most important	-1.62	-1.10	<b>-0.44**</b>
L51	We serve the public interest if we implement the option that does most to promote important public interest objectives	+0.55	+0.81	<b>-0.53**</b>
L36	The public interest is hard to decipher and is best down-played in decision making	-1.48	-1.45	<b>-0.80**</b>
L15	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	+0.51	+0.19	<b>-0.92**</b>
L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	+0.87	-0.29	<b>-1.23**</b>
L64	Consulting experts is often a waste of time because they usually disagree	-1.03	-1.24	<b>-1.74*</b>
L24	Technology will fix current problems	-1.48	-1.61	<b>-2.14*</b> *
L55	Differences of opinion should be resolved by those in authority	-0.55	+0.13	<b>-2.15**</b>
L5	Politicians have the best knowledge of the public interest	-1.36	-1.07	<b>-2.53**</b>

End of Appendix 9

**APPENDIX 10: Z SCORES FOR ALL STATEMENTS FOR ALL DISCOURSES**

This is a complete listing, including statements that do not appear in Appendices 2 to 7.  
Statements are sorted by statement number.

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environ-mentalism	Executive Pers-pective	Anti-Authorit-arianism
THE CONCEPT OF THE PUBLIC INTEREST								
S1	L1	The best way to define the public interest is to say it must exclude private interests	-1.62	-1.76	-0.17	-0.44	-1.33	-0.15
S2	L2	If decision makers follow due process, are fair and open, and allow for public participation, then the results will be in the public interest	-0.04	-0.50	+1.14	-0.82	+0.29	+0.87
S3	L3	The public interest refers to our collective interests; those things that relate to us all and potentially impact on us all	+1.00	-0.30	+0.88	+0.75	+1.16	+1.33
S4	L4	The best definition of the public interest is that it is the sum of the private interests of individuals	-0.80	+0.70	+0.56	-0.84	-0.80	+0.86



STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>WHO KNOWS BEST ABOUT THE PUBLIC INTEREST</b>								
S5	L5	Politicians have the best knowledge of the public interest	-1.33	-2.13	-2.35	-1.36	-1.07	-2.53
S6	L6	Planners have the best knowledge of the public interest	-0.16	-1.62	+0.01	-1.48	-0.77	-0.43
S7	L7	Technical experts have the best knowledge of the public interest	-0.96	-1.19	+0.04	-1.40	-1.21	-1.56
S8	L8	The general public have the best knowledge of the public interest	-0.60	-1.69	+1.05	-0.40	-0.07	+1.01
S9	L9	Markets are the best indicator of the public interest	-0.33	+1.25	+0.07	-1.93	-1.14	+0.10

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>THE SCALE OF THE PUBLIC INTEREST</b>								
S10	L10	All planning decisions have local impact so local interest of residents and ratepayers are always important	+1.12	-0.70	+0.88	+0.77	+1.21	+0.27
S11	L11	Local planning decisions should always support state-wide plans and policies	-0.05	+1.09	+0.75	-0.36	-0.03	-0.56
S12	L12	The 'national interest' (eg national economy, national security etc) is the most important scale of the public interest	+0.14	-0.86	-0.32	-0.87	-0.23	-1.02
S13	L13	The global scale of the public interest is the most important	+0.48	-1.24	+0.43	-0.28	-0.82	-1.28
S14	L14	We must consider the needs of anyone at the local, state, national or global level who will be affected by our decisions	+1.18	-0.55	+0.70	+1.22	+0.14	-0.08
S15	-	Public sector decision makers operate at a specific level (local, state, national etc) and should only consider issues relevant to that level of jurisdiction	-0.78	-1.77	-1.13	-	-	-

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>NIMBY (Not In My Backyard) ATTITUDES</b>								
S16	L15	The NIMBY label is used as a put-down and a way of ignoring legitimate objections	-0.27	-1.29	-0.23	+0.51	+0.19	-0.92
S17	L16	When people support an activity in general but do not want it in their own neighbourhoods, they are being unreasonable	+0.09	+1.37	+0.07	-0.59	-0.22	+0.53
S18	L17	Unpopular developments such as waste facilities or power plants have to go somewhere, so there should be state powers to overrule local governments, and federal powers to overrule state governments	0.00	+1.23	-1.82	-1.07	+0.16	+0.51
S19	L18	There are times when the needs and wants of local residents will conflict with the broader public interest	+1.41	+1.68	+0.89	+1.09	+1.63	+1.18
S20	-	We need mechanisms to ensure that local government decisions are made in the public interest, not just in the interests of increasing or protecting local property values or maintaining the status quo for existing residents	+1.33	+0.81	+1.27	-	-	-
S21	L19	Unless local residents can block unwanted developments politicians and bureaucrats will ruin people's quality of life	-0.44	-1.36	+1.18	+0.40	-0.85	-0.50



STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>FUTURE GENERATIONS</b>								
S22	L20	We must consider the needs of future generations	+2.11	+1.26	+1.81	+1.89	+1.90	+1.85
S23	L21	People who make emotive claims about children's futures are using them for their own purposes	-0.92	+0.54	-1.45	-0.69	-0.17	-1.07
S24	L22	Future needs will be the same as current needs	-1.41	-1.47	-2.16	-1.17	-1.82	-1.81
S25	L23	The world is changing too fast to predict future needs	-1.26	-0.69	-1.11	-0.84	-1.06	-0.22
S26	L24	Technology will fix current problems	-2.47	-1.80	-2.70	-1.48	-1.61	-2.14

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>FAIRNESS TO OTHERS</b>								
S27	L25	When planning our own resource use we must consider the resource needs of others in our society	+1.42	+0.32	+0.55	+1.23	+1.27	+1.01
S28	L26	People have to look out for themselves and act in their own best interests	-0.56	+0.49	-0.62	-0.73	-0.96	-0.92
S29	L27	When deciding planning issues it is important to consider the interests of the poor and the powerless in our society	+1.58	-0.17	+1.36	+0.99	+1.44	+1.13
S30	L28	The principle of 'highest and best' use of land means it is inevitable that cheap housing will be replaced with less affordable housing	-1.08	+0.14	-0.25	+0.43	-0.45	-0.37
S31	L29	Because land near smelly or noisy activities will be cheaper, some people will always live there	+0.09	+1.40	+0.19	+0.59	+0.37	+0.29

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>TRIPLE BOTTOM LINE OUTCOMES</b>								
S32	L30	The most important thing is to achieve all three aspects, that is, economic, environmental and social aspects	+1.00	+0.69	+0.77	-0.64	+0.84	+0.57
S33	L31	Economic issues are the most important	-0.84	+0.10	+0.18	-1.62	-1.10	-0.44
S34	L32	Environmental issues are the most important	-0.34	-0.42	+0.67	+0.82	-0.79	+0.13
S35	L33	Social justice issues are the most important	-0.39	-0.95	+0.01	+0.29	-0.94	+0.01
S36	L34	The Triple Bottom Line implies that too much emphasis on any one of the three might result in not enough of the others	+1.68	+0.20	-0.56	+0.68	+0.30	-0.26



STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
RELATIVE IMPORTANCE OF THE PUBLIC INTEREST								
S37	L35	The public interest is just one factor among many that planners need to consider	+0.79	+1.57	+1.28	+0.54	+1.18	+1.27
S38	L36	The public interest is hard to decipher and is best downplayed in decision making	-1.34	-0.94	-0.58	-1.48	-1.45	-0.80
S39	L37	People who make claims about the public interest use it as a smokescreen to push their own point of view	-0.80	+0.84	-1.32	-0.38	+0.37	-0.25
S40	L38	It is important that public officials serve the public interest, rather than partisan or sectoral interests	+0.98	-0.12	+0.83	+1.33	+1.19	+0.84
S41	L39	Because commercial interests are not usually the same as the public interest, we need to ensure that the public interest is taken into account	+0.30	-1.38	+0.34	+1.43	+1.53	+0.86
S42	L40	Our priorities are changing rapidly, particularly due to global warming, so it's more important than ever to understand what is or isn't in the public interest	+1.19	+0.35	+0.38	+1.13	+1.25	+0.86

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>PROPERTY RIGHTS AND COMPENSATION</b>								
S43	L41	It's good that people's rights to develop property are restricted by regulations that serve the public interest	+1.14	-0.17	+0.91	+1.19	+1.27	+0.74
S44	-	People only make claims about the public interest in order to protect their own private interests	-0.42	+0.80	-0.59	-	-	-
S45	L42	If a development has a negative impact on its neighbours or the community then compensation should be paid	-0.21	+0.32	-0.34	+0.87	-0.29	-1.23
S46	L43	Paying compensation to neighbours for the negative impact of a development is a form of bribery	+0.37	-0.54	-0.20	-0.63	-0.44	+0.24
S47	L44	Paying compensation to planning authorities means that developers can buy permission to take actions that aren't in the public interest	+0.99	-1.89	+0.62	+0.84	+0.46	+1.03
S48	-	People only act in their private interest, not in the collective interest	-0.83	+0.98	-0.21	-	-	-
S49	-	People who voluntarily pay a surcharge for green energy are acting in the collective interest	+0.63	+0.05	0.00	-	-	-

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>PUBLIC INTEREST TESTING</b>								
S50	-	It is necessary to apply a 'public interest test' to some developments to see whether or not they are in the public interest	+0.31	+0.58	+0.44	-	-	-
S51	-	Public interest testing is a waste of time because investors will decide whether or not a development goes ahead	-0.59	+0.02	-2.04	-	-	-
S52	-	Numerical scoring of proposed developments is needed so that public can really understand what its impact will be (financially, environmentally and socially)	+0.53	+0.62	-0.24	-	-	-
S53	-	Written explanations of decisions are the best way to ensure transparency and hold officers accountable	+0.54	+0.30	+0.32	-	-	-



STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>CLOSED OR OPEN CATEGORIES OF THE PUBLIC INTEREST</b>								
S54	L45	It is impossible to predict what public interest issue will arise in a particular development	-0.92	+1.01	+0.36	-0.47	-0.79	+0.48
S55	L46	When people are invited to comment on a development they need to know in advance what criteria will be used by the decision maker	+0.79	+0.96	+0.66	+1.15	+0.11	+1.51
S56	L47	Decision makers know the issues well enough to be able to set the public interest criteria before calling for comments	-0.36	-0.32	-1.60	-1.04	-0.56	-0.16
S57	L48	It's important that the public interest criteria are left open (not preset) during consultation so that stakeholders can introduce their own concerns	+1.24	-0.42	+0.72	+1.11	+1.13	+0.16

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
LEVELS OF AGREEMENT NEEDED								
S58	L49	Before you can say what is in the public interest there needs to be consensus of opinion	-0.62	+0.36	+0.43	-0.14	-1.22	+0.74
S59	-	The best way of planning in the public interest is to plan for a mix of developments that eventually accommodate all views	+0.50	+0.35	-0.43	-	-	-
S60	L50	The diversity of views in our society means that the public interest is a phantom and cannot be identified	-1.52	+0.37	-0.62	-0.74	-0.54	-0.67
S61	L51	We serve the public interest if we implement the option that does most to promote important public interest objectives	-1.07	+0.03	-0.25	+0.55	+0.81	-0.53
S62	L52	If we satisfy majority opinion then we will serve the public interest	-1.09	-0.23	+0.04	-0.81	-0.80	+0.21

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>METHODS OF RESOLVING DIFFERENCES OF OPINION</b>								
S63	L53	Differences of opinion can be resolved through public interest research that clarifies issues	+0.84	+0.02	+0.18	+0.56	-0.69	+0.51
-	L54	Differences of opinion can be resolved through public debate in meetings and in the media	-	-	-	+0.50	-0.43	-0.81
S64	L55	Differences of opinion should be resolved by those in authority	-1.13	-0.83	-0.76	-0.55	+0.13	-2.15



STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>PUBLIC CONSULTATION AND PARTICIPATION</b>								
S65	L56	Public participation gets in the way of making decisions and taking action in a timely manner	-0.76	+0.74	-1.17	-1.31	-0.66	-1.21
S66	-	Consultation is undertaken to make the public feel important but the public input is not valued	-1.23	+0.65	-1.42	-	-	-
S67	-	It is important to encourage debate to enable the emergence of community values and build community cohesion	+1.18	+0.16	+1.00	-	-	-
S68	L57	Unless public consultation occurs the final decision will lack legitimacy and will not be accepted by the community	+0.72	+0.31	+0.32	-0.10	+0.93	+0.86
S69	L58	Meaningful public participation takes time but it's worthwhile because it can result in better decisions that have wider support	+1.15	-0.26	+1.33	+1.23	+1.56	+0.86
S70	L59	Public participation in decision making creates more heat than light	-0.86	+0.18	-1.15	-1.02	-0.75	-0.82
S71	L60	Public consultation, if taken seriously, can reduce the probability of making decisions that are unjust	+0.87	+1.15	+0.85	+1.24	+1.20	+0.86

STATEMENT DATA			STUDENT DISCOURSES			LEADER DISCOURSES		
Student Statement Number	Leader Statement Number	Wording of statement (taken from the leader instrument if it appeared there, otherwise from the student instrument)	Balanced Approach	Market Orientation	Localism	Environmentalism	Executive Perspective	Anti-Authoritarianism
<b>EXPERT OPINION</b>								
S72	L61	Members of the public are not able to assess the technical details of a proposal	-0.59	+1.67	-0.12	-0.50	-0.85	-0.17
S73	L62	It's important that expert opinion be obtained before politicians make decisions	+1.36	+1.84	+1.38	+1.01	+1.32	+1.13
S74	L63	Research can make an important contribution to understanding what is or isn't in the public interest	+1.01	+0.90	+1.04	+1.20	+1.28	+0.71
S75	L64	Consulting experts is often a waste of time because they usually disagree	-1.36	-1.24	-2.22	-1.03	-1.24	-1.74
S76	-	Technical experts should not be used to set values as values need to be set through democratic processes	-0.99	-0.94	+0.02	-	-	-
S77	L65	Expert knowledge can be enhanced by the addition of local knowledge	+1.29	+1.34	+1.22	+1.68	+1.54	+1.33

End of Appendix 10

## APPENDIX 11

### EXAMPLES OF PUBLIC INTEREST TESTS

This Appendix describes the following public interest tests used in official decision-making by government in planning and planning-related agencies in Australian states:

1. NSW Right to Information - Public Interest Test
2. South East Queensland Regional Plan - Test to Determine an Overriding Need in the Public Interest
3. NSW Crown Lands Policy for Marinas and Waterfront Commercial Tenures – Public Interest Test
4. Western Australian *Liquor Control Act 1988* - Public Interest Assessment
5. NSW Transport Corridor Outdoor Advertising and Signage Guidelines - Public Benefit Test
6. Roseth (LEC) - Procedure for discerning the public interest in development applications



## **1. NSW Right to Information - Public Interest Test (NSW Office of the Information Commissioner, 2010)**

Freedom of Information (FOI) legislation at the national and state levels in Australia since the 1990s has been in a state of flux. Early versions have been criticised for favouring the exemption of government and public sector documents from release to the public. Subsequent reviews of the legislation have proposed, and in some cases implemented variations to the legislation. The Queensland Office of the Information Commissioner has taken a leading role in the establishment and review of FOI provisions (Queensland Office of the Information Commissioner, 2006). At the time of writing Queensland has introduced, and NSW is preparing to introduce new 'Right to Information' legislation.

The new NSW Right to Information system, under the Government Information (Public Access) Act 2009, requires government agencies to release information unless there is an overriding public interest against disclosure. When deciding whether to release information, agency staff must apply the public interest test (NSW Office of the Information Commissioner, 2010). The test involves three steps:

- a. Identifying the relevant public interest considerations in favour of disclosure such as promoting open discussion of public affairs, enhancing government accountability, enabling more informed public debate, enabling the public to make more informed decisions for example about their own health and safety, assisting individuals to pursue a remedy for perceived injustice.
- b. Identifying the relevant public interest considerations against disclosure such as law enforcement and security, individual rights, business interests of agencies and other persons, secrecy provisions and exempt documents under interstate FOI legislation.
- c. Assessing whether the public interest against disclosure outweighs the public interest in favour of disclosure, giving appropriate weight to each consideration.

Important features -

- Except in certain specified circumstances, there is a presumption in favour of disclosure, such that where the considerations for and against disclosure are evenly balanced the presumption in favour of disclosure stands.
- The list of factors *in favour of disclosure* is not exhaustive. Agencies may identify other factors in favour of disclosure, and other factors in favour of disclosure raised by applicants. The Information Commissioner may also issue guidelines on additional considerations favouring disclosure.
- On the other hand, the list of *factors against disclosure* provided in the Act is exhaustive, and they are the only considerations that may be applied.
- The Act specifies certain considerations that do not form grounds against disclosure (such as causing embarrassment to the government, or concerns that the information might be misinterpreted).
- Agencies must consider the nature and context of the information, and any factors special to the applicant. That is, the decision may be specific to the context.

## **2. South East Queensland Regional Plan - Test to Determine an Overriding Need in the Public Interest - (Queensland Government DIP, 2009)**

This test is to be used when a landowner or developer is seeking a variation to the plan to permit, for example, an urban use in a non-urban area where the zoning would not permit that use. In such a case the applicant needs to establish an overriding need for the development on public interest grounds.

The test specifies that to establish an overriding need for a development in the public interest, an applicant must establish:

- a. the overall social, economic and environmental benefit of the material change of use when weighed against:
  - i. any detrimental impact on natural values of the site; and
  - ii conflicts with the desired regional outcomes of the SEQ Regional Plan, especially in relation to promoting the consolidation of development within the Urban Footprint and preventing land fragmentation in the Regional Landscape and Rural Productions Areas; and
- b. that the community would experience significant adverse economic, social or environmental impacts if the development proposal were not to proceed.

This may require an assessment to determine if the material change of use could reasonably be located in the Urban Footprint.

Matters that do not establish an overriding need are:

- activities with relatively few locational requirements,
- interests in or options over a site. and
- the site's availability or ownership.



### **3. Crown Lands Policy for Marinas and Waterfront Commercial Tenures pursuant to the NSW Crown Lands Act 1989 (NSW Department of Lands, 2005)**

This policy guides the creation of new and renewed tenures for marinas and waterfront commercial facilities on crown land managed by the Department. In most cases this will require the use of a public interest test that is set out in the policy. "The public interest test includes (but is not limited to) consideration of the following matters, and at the discretion of the Crown, may include advertising before a decision is made." (This wording suggests that the inclusion of other matters is likely to be decided by the Department, perhaps at the suggestion of the proponent, but not at the suggestion of members of the public who have no right to be advised of the proposal before it is decided.) The listed matters are:

- Whether the proposal is consistent with the Principles of Crown Land Management (contained in the Act);
- Whether the proposal will provide improved public access to the foreshore and coastal waterways, particularly for the disabled;
- Whether the proposal will facilitate the introduction of new skills, technology or services;
- Whether the proposal represents value for money – including improved risk management, whole-of-life costing, innovation, costs to government and improvements to whole-of-government outcomes;
- Whether the proposal will lead to an undesirable increase in market dominance;
- Whether the proposal would unreasonably interfere with other current or future uses of adjoining Crown land or Crown land within the immediate area;
- Whether the proposal provides positive initiatives to improve environmental protection and management;
- Whether the alternative uses or designs of the proposal should be contemplated before the proposal is accepted by the Crown;
- Whether the proponent has the required probity, financial and operational capacity" (NSW Department of Lands, 2005, 5-6).

#### **4. Public Interest Assessment pursuant to section 38 of the Western Australian *Liquor Control Act 1988* (Western Australia Department of Racing, Gaming and Liquor, 2008a and 2008b)**

These guidelines require applications for new licences or permits (or for the removal of existing licences) to be accompanied by a Public Interest Assessment (PIA) that outlines how the proposed premises will impact on the community and how the applicant will manage such impact. Applications regarding types of premises that typically have a greater impact on the surrounding community (such as hotels, taverns, nightclubs and liquor stores) are expected to address these issues in greater detail than is required in applications for types of premises that typically have less impact (such as restaurants, clubs B&Bs). Matters to be covered include the harm or ill-health that might be caused to people or any group of people due to the use of liquor, the impact on the amenity of the locality and whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity (2008b, 2-4).

Flexibility exists within the test in order to consider the impact of the application in its relevant surrounding community, and “aspects of the public interest as outlined in (the policy) may not be applicable to individual applications”. “To satisfy the public interest test, an applicant will need to consider and find solutions to *any* negative impact that may be suffered by sections of the community through the operation of their licensed premises” (2008a, 1, emphasis added).

#### **5. Public Benefit Test used in the *Transport Corridor Outdoor Advertising and Signage Guidelines* (NSW Department of Planning, 2007)**

These guidelines, which support State Environmental Planning Policy (SEPP) 64, require proponents of new billboards along main roads, railway corridors and on bridges to meet a number of design requirements and to satisfy a 'public benefit test'. The test requires that they explain what arrangements they will make (eg with local councils) to provide an appropriate public benefit in the form of a monetary contribution or in-kind contribution that will benefit local community services and facilities. Relevant services or facilities might include improved traffic safety, transport services, amenity of the transport corridor or school safety infrastructure. The design requirements recognise a number of other public interest objectives including land use compatibility, good urban design principles and visual clutter control, as well as road safety issues including driver distraction, obstruction of the driver's view and safety of pedestrians and bike riders. A proponent seeking approval for their proposed billboard must demonstrate how each of these design requirements is satisfied.



**6. Procedure for discerning the public interest in development applications, set out by Dr John Roseth, former Senior Commissioner of the NSW Land and Environment Court in the case Double Bay Marina v Woollahra Council [2009] NSWLEC 1001.**

This case involved an appeal by Double Bay Marinas Pty Ltd against a deemed refusal by Woollahra Municipal Council of an application to redevelop and extend an existing marina. A group of local residents who objected to the development were also represented in the court.

The matters in contention were:

- ecological impacts, including wave action,
- traffic and parking impacts,
- navigational safety,
- visual impacts, including heritage impacts, and
- the public interest. (Roseth, 2009, at 16)

Roseth's procedure is described at 47-52 and then applied at 53-63. The following summary draws from both of these. The procedure is to:

1. Define the public whose interest is being invoked (at 47). 'The public' is an amorphous term that requires redefinition in every case (at 48). For the interests of objectors to be equated with the public interest, the objectors must be identifiable as a section of the public. The fact that their number may be small does not deny the public nature of their interest (at 49). Roseth determined that the users of the beach were a section of the public, as would be the users of the public facilities for the disabled at the new marina. The marina itself would not contribute to a public interest, but to the private interest of the boat owners who bought strata titles for individual berths. Similarly, the residents were not treated as a section of the public, but as property owners with private interests.
2. Define the benefit towards which a proposal claims to make a contribution or from which it is claimed to detract (at 47 and 50). In the application of this step in the case Roseth lists these (at 58) as:
  - view from the intertidal beach would be detrimentally impacted, (a public detriment),

- the provision of disabled facilities in the renewed marina would be beneficially impacted (a public benefit),
  - the views of ten to twenty dwellings behind the intertidal beach would suffer a significant detriment (a private detriment),
  - the provision of mooring facilities for the future users of the existing marina would benefit (a private benefit).
3. Make explicit the weight given to the public interest relative to other considerations (at 47). At 51, this step is described as 'ranking of the various interests, (which) may require weighing one public interest against another or balancing the public interest against private interests. In the application of this step in the case (at 59-61) Roseth states, "In my opinion, the public interest of preserving the views from the intertidal beach, because of its low accessibility, should be given moderate weight. Even so, it outweighs the public benefit of providing disabled facilities in the new marina, which is likely to be used by a very small number of people "(at 60).

The researcher believes that at this point Roseth has determined that the application to extend the marina is not in the public interest. However he does not stop to note this but goes straight on to the comparison of the public interest with private interests.

"The nature of the benefit and detriment greatly influences the balancing of the private interest of boat owners against the private detriment of the occupants of the affected dwellings. The interest of boat owners is to have more up-to-date accommodation for their boats. The detriment to the occupants of the dwellings is to deprive them of their water view, which is probably the amenity they value highest in their dwelling. It seems to me that better accommodation for one's boat is a convenience, whereas the loss of water views is a devastating (and, in a waterfront dwelling, unexpected) experience " (at 61).

The researcher believes that this step of comparing the public interest with the private interests is a step applicable to the court process, but is not part of the determination of the public interest. On this occasion the more significant private interests (preserving the residents' views) aligned with the public interest and the appeal was dismissed.

If this were not the case then the following advice would apply. "If public interests and private interests are in conflict, other things being equal, the public interest should override the private interest. However, other things are rarely equal, and where a public detriment is minor, a major private benefit may take precedence over it "(at 51). Presumably the opposite (a minor public benefit and a major private detriment) would also override the public interest.



## **APPENDIX 12**

### **SUMMARY OF DATA FROM EARLY TRIALS OF THE GUIDELINES**

#### **Trials using interest group members**

These early trials involved individuals with interests in wind farm location, urban density issues, and maternity service planning.

The questions and comments raised by the participants aided the formulation of the proposed procedures. Of particular interest was the reluctance of some participants to describe the benefits of options proposed by their 'opposition'. They indicated that they were focused on the benefits of their preferred option and the detriments of the opposing options, and they did not want to do what they saw as the work of their opponents, namely listing the benefits of the opposing options. This is more likely to be a response of interest group members than of planners or others with a professional obligation to identify and balance the pro and cons of any options.

#### **Feedback from conference audiences**

- Planning Institute of Australia NSW State Conference, Sydney 2006
- Australian Political Studies Association Conference, Melbourne 2007
- Planning Institute of Australia National Congress Sydney 2008

The 2006 and 2007 presentations described a quantitative approach to scoring and aggregating benefits and detriments. This was not received well by those audiences. It was challenged in statements and questions from the audience. A common criticism was that any quantitative approach to the consideration of benefits and detriments would have all of the weaknesses of 'utilitarian calculus'.

The 2008 presentation described a more qualitative approach. It stressed the need for decision makers to reveal which interests they consider relevant to a particular decision, what importance they give to those interests and what they are proposing to trade off. This qualitative approach to determining the public interest was better received by the conference audience. This audience was also very positive about basing the model on practitioner views and about the practical nature of the advice.

### **Trial using postgraduate students in property and planning August 2009**

The researcher ran a workshop in the UTS Graduate Certificate in Property and Planning Course in August 2009. The workshop involved:

1. The researcher explaining the proposed procedure for determining the public interest, using printed guidelines (blue sheet) and a worked example.
2. Participants providing informed consent and background information (White Worksheet, items 1 to 8).
3. Participants then selecting one of 4 claims about the public interest from the Green sheet.
4. Participants using the guidelines to challenge the selected claim. (Yellow sheet and White Worksheet, items 9 to 12).
5. Participants then providing written comment on the procedure for determining the public interest (White Worksheet items 13 to 17).

Of the 45 participants, 38 complete the worksheet and gave consent for its use in this research (2 did not give consent, 5 did not attempt items 13 to 17).

#### Responses to ITEM 2: Please indicate which course(s) you intend to complete:

Graduate Certificate in Property and Planning - 5

Graduate Diploma in Property Development - 4

Graduate Diploma in Planning - 0

Master of Property Development - 12

Master of Planning - 5

Master of Architecture - 12

TOTAL 38

#### Responses to ITEM 3: Which one of the following options best describes your role with respect to planning?

Planner - 2

Property developer, builder or real estate agent - 14

University Academic - 3

Member of the public - 3

Environmentalist - 1

Technical Specialist - Architect 12, Facility Manager 1, GIS Analyst 1, Lawyer 1

TOTAL 38

Responses to ITEM 13: Are you satisfied with this approach to determining the public interest?

Yes – 20

Unsure – 14

No – 3

No response – 1

TOTAL 38

Responses to ITEM 14: What is the **least** satisfactory aspect of this approach?

(The list below also includes negative comments given in items 13 and 17)

- Doesn't take into account the potential profit margin of developers; a bit unbalanced as the bottom line is more than likely to be financial.
- Too many factors to consider; too many opinions from different people.
- The final judgement is subjective and will be open to disputes and appeals; the outcome cannot satisfy all of society.
- Too time consuming.
- The public/private distinction can be difficult, confused, obscured.
- People may view benefits and detriments differently.
- Some comments about the disadvantages of certain data gathering methods such as:
  - public consultation (different rates of participation, some groups not involved);
  - use of experts (experts can be biased by their own opinions and beliefs);
  - market data (only applies to those who can afford to be in the market).
- Some comments about data gathering methods that should be included (for example, collecting information from other locations (globally) dealing with the same issue)

Responses to ITEM 15: What is the **most** satisfactory aspect of this approach?

(The following list also includes positive comments given in items 13 and 17)

- To initially think of alternative claims from alternative interest groups.
- Seems to be holistic; it's thorough; comprehensive.
- It's logical; the use of reasoning; methodical and systematic; requires rigorous argument to justify a position.
- Adaptable to different situations.



- Range of factors considered; outlines a wider perspective; deals with present and future; encourages participation of all interest groups.
- Gives a balance of public and expert thinking; has public input and professional input.
- Allows for a variety of options to be explored.
- It means people are thinking on the same page, and when people think the same, things start to happen; the parties are given a medium (in which) to discuss.
- Would be a useful tool for stakeholders in the planning system.

NOTE: The following comment could not be classified as positive or negative:  
 "Ignores ideological forces in council".

ITEM 17: If you went to a meeting or workshop and you found that this method of determining the public interest was being used, would you be happy to join in?

Yes – 29

Unsure – 5

No – 0

No response – 4

TOTAL 39

### OVERALL

Level of understanding of the procedure by participants after the 90-minute workshop varied. The confusion sometimes indicated the need for changes to the procedure or the better explanation of the procedure:

- One participant (understandably) thought that because the claims that were used in items 9 to 12 were generalisations about the public interest (that is, relating to all golf course developments, all flood-prone land etc.) that the procedure recommended making such generalised statements rather than considering the public interest on a case-by-case basis.
- One participant thought that listing private interests meant that data on private interests would need to be collected (a potential breach of privacy).

WHAT IS THE PUBLIC INTEREST?  
(Blue sheet)

**A. The public interest is a matter of opinion, preferably supported by reasoning.** Majority opinion about what is in the public interest changes over time, and groups within that society have varying opinions about what is best for society as a whole. No one view is necessarily correct, but some arguments are better than others. This is a process for developing well-reasoned opinion about the public interest.

**B .The public interest is multifaceted.** It would be more accurate to speak of our 'multiple common interests' or of the several public interest considerations that are relevant to a decision. We need to identify the multiple aspects of the public interest.

**C. An option is not in the public interest just because it creates a public benefit.** We need to consider both the benefits and the detriments that an option would create for the relevant public.

**D. The impacts on 'the relevant public' need to be identified.** The relevant public is not only the general public but also subsection of it. Consider local and wider populations, current and future generations, general and special interest groups.

Group	Impact
.....	because of.....
.....	because of.....
.....	because of.....
.....	because of.....
.....	because of.....

**E. Acknowledge the private interests that will be affected and ask if it is in the public interest to protect those private interests,** for example because it is in the public interest to uphold a right or enforce a regulation, or because the public will benefit if the individual can carry out a particular function. Private interests that meet one of these criteria can be treated as public interests, but the reasons for doing so must be explained.

**F. Sort the considerations into public and private benefits and detriments.**

	Public	Private
Benefits	- - -	- - -
Detriments	- - -	- - -

**G. Weigh up the significance of the considerations in the left hand (public) column.** The weightings will be subjective, based on your values or those of the organisation you represent.

**H. Repeat steps D to G for each option and identify the option that has the best net outcome.** The public interest is best served by selecting the option with the best net outcome when considering public benefits and public detriments.

**(WHITE) WORKSHEET FOR  
CHALLENGING A CLAIM ABOUT THE PUBLIC INTEREST**

1. This worksheet is part of research being conducted in the School of the Built Environment, University of Technology, Sydney by Carolyn Wells, PhD candidate ( ) under the supervision of Professor Spike Boydell (02 9514 8675).

I agree to participate in this project, I understand that my participation is voluntary, that I can withdraw if I wish, and that data about whether or not this approach works may be published in a form that does not identify me.

Name.....Signature.....Date .... / .... / ....

2. Please indicate which course(s) you intend to complete:

- ☐ Graduate Certificate in Property and Planning
- ☐ Graduate Diploma in Property Development
- ☐ Graduate Diploma in Planning
- ☐ Master of Property Development
- ☐ Master of Planning

3. Which one of the following options best describes your role with respect to planning (please tick one):

- ☐ Planner
- ☐ Property developer, builder or real estate agent
- ☐ Politician (local, state or federal)
- ☐ Public servant (other than planner or developer)
- ☐ Interest group member or local action group member

(Please describe .....)

- ☐ University academic
- ☐ Member of the public
- ☐ Environmentalist
- ☐ Technical specialist (Please describe.....  
.....)



4. Have you ever had a need to consider what would best serve the public interest in a planning or property matter? Yes No (Circle one)
5. If yes, please describe the nature of the situation (eg "when drafting an application for the development of a ..." or "when preparing a submission opposing a plan for ...").....  
.....  
.....
6. How would you define "the public interest"?.....  
.....  
.....  
.....
7. Which of the following methods do you think should be used to decide whether a particular development option serves the public interest better than another? (Tick all those you would recommend):
- ☐ Invite the public to make submissions
  - ☐ Examine market data
  - ☐ Obtain expert opinion
  - ☐ Obtain a decision from elected representatives
  - ☐ Conduct a poll to determine majority opinion
  - ☐ Use planning regulations and standards
  - ☐ Arrange for public consultation and participation
  - ☐ Listen to (or read) presentations from opposing parties
  - ☐ Have the Land and Environment Court decide
  - ☐ Other (please describe).....  
.....
8. Underline the 2 methods in the list above that you think would produce the most valid result (that is, the ones that would most closely represent the public interest).

**Please stop here until directed to proceed**

9. Select one topic from the **green** sheet and write the topic here:
- .....
10. With respect to the claim made about this topic, what are the strongest 3 challenges could you make to this claim? Use the **yellow** sheet to get ideas.
- ☐ .....
- .....
- .....
- .....
- .....
- ☐ .....
- .....
- .....
- .....
- .....
- ☐ .....
- .....
- .....
- .....
- .....
11. What alternative claim about the public interest would you suggest?
- .....
- .....
- .....
- .....
12. If you were required to do further research to find the option that best serves the public interest in this matter, which 2 methods from the list in question 7 do you think would give the most valid results?
- ☐ .....
- ☐ .....

**When you have completed questions 9 to 12  
please turn over and complete final page**

**NOW CONSIDER THE APPROACH DESCRIBED ON THE BLUE SHEET**

13. Are you satisfied with this approach to determining the public interest?  
.....  
.....  
.....

14. What is the least satisfactory aspect of this approach?.....  
.....  
.....

15. What is the most satisfactory aspect of this approach?.....  
.....  
.....

16. How would you now define “the public interest”? (If your opinion has not changed then write “Same as before”).....  
.....  
.....  
.....  
.....  
.....  
.....

17. If you went to a meeting or workshop and you found that this method of determining the public interest was being used, would you be happy to join in? If not, why not?  
.....  
.....  
.....  
.....  
.....  
.....

Thank you for your participation.



**TOPICS**  
**(Green sheet)**

Please select one of the following topics to use for questions 9 to 12  
where you will be challenging the claim made in the right hand column

<b>TOPIC</b> Write this in Question 9	<b>CLAIM ABOUT THE PUBLIC INTEREST</b>
<b>Golf clubs estates</b>	The development of residential estates in conjunction with golf clubs is in the public interest as they increase the variety of housing available.
<b>Preparation for sea level rise</b>	Governments would be serving the public interest if they began preparing now for sea level rise by raising levels of roads and bridges in low lying coastal areas and increasing land available for development on higher ground.
<b>Development of land in flood prone areas</b>	Governments should allow the continuing development of land at risk of eventual inundation due to sea level rise, because it is in the public interest to protect the rights of property owners to develop their land.
<b>Urban consolidation at railway stations</b>	Urban consolidation around railway stations is not in the public interest because it increases the congestion on the few roads that cross the rail line and therefore has an affect on the flow of traffic in surrounding suburbs.

## CHALLENGING CLAIMS ABOUT THE PUBLIC INTEREST (Yellow sheet)

When you encounter a claim about the public interest you can use this system to challenge the claim.

**A. Reasoning** Is the claim well reasoned or are there obvious gaps in the reasoning?

**B. Range of factors considered** Does the claim recognise multiple facets of the public interest or is it trying to narrow the range of aspects considered?

**C. Acknowledgement of detriments as well as benefits** Is the claim recognising the detriments as well as the benefits created by its preferred option? Conversely, if the claim is stating that something is not in the public interest, does it recognise the benefits of the option it rejects as well as the detriments?

**D. Relevant public** Does the claim recognise all sections of the relevant public and the impacts the preferred option will have on them?

**E. Private interests** Check if the claim is treating some private interests as public interests and ask if that is justified. Conversely, ask if there are private interests that should be treated as public interests?

**F. Benefits and detriments** Does the claim fairly allocate issues to the categories of 'benefits' or 'detriments' or does it claim as benefits things that others see as 'detriments' or vice versa?

**G. Weightings** What weightings seem to be given to different aspects and are these reasonable? Is it suggested that the weightings are anything but subjective, and is that valid?

**H. Options** Are any other options being considered? Are there other options that would produce a better net benefit outcome?

**I. Trade offs** Use the above analysis to identify the trade-offs that are implicit in the claim. A trade-off occurs where all or some of one benefit or advantage is relinquished in favour of another that is regarded as more desirable. Most claims about the public interest are silent on the trade-offs that they would involve. Successful challenges to a public interest claim often expose the implicit trade-offs as being unacceptable.

### PROCEDURE FOR DETERMINING THE PUBLIC INTEREST

Carolyn Wells, School of the Built Environment, University of Technology Sydney

This document sets out a procedure for determining what best serves the public interest when creating or evaluating a policy, plan or proposal. The procedure is broken down into 10 steps and each step is exemplified using a hypothetical zoning problem to show how it could be managed by determining which option best serves the public interest.

The public interest is perhaps the only criterion for judging proposals where private interests are put to one side. Only those matters that affect anyone and everyone are to be considered. Invoking the public interests, as a method of persuasion, gains validity and legitimacy only in so far as it does exclude interests that are only private.

Other methods give equal, and sometimes greater status to private interests:

- Stakeholder analysis includes any stakeholder with an interest regardless of the public or private nature of the interest. One of the strengths of stakeholder analysis is its inclusion and management of private interests.
- Social impact assessment aims to include all social impacts, and while these are often impacts on the population in general they can also be impacts of a private nature, such as on a particular interest group, or those with a particular financial interest.
- Cost Benefit Analysis is typically conducted from the perspective of the investors, and includes the costs and returns to the investors as well as to others
- Triple Bottom Line accounting includes private interests, especially in relation to economic matters. Economic sustainability is typically that of the company.
- Public participation in dialogue and consensus building brings the private interests of members of the public into play. Public input is not confined to public interest matters, and private interests are frequently raised.
- Political decision-making heeds the demands of powerful lobby groups, especially big business, and attempts to accommodate conflicting business interests. Despite the principle that government decisions are made in the public interest, they typically take private interests into account when arriving at those decisions.
- Balancing of public and private interests, a practice required of planners, public officials and governments, obviously includes private interests, and just as obviously, requires that the public interests (that are being balanced against those



private interests) not include private interests, otherwise the private interests would be counted twice.

Only concepts that are essentially public in nature (such as public interest, public good, common good) attempt to separate public from private and focus on the former. Planning theory has largely rejected the notion that the public interest is an aggregation of private (individual or group) interests, and the struggle to operationalise the concept of the public interest in planning has to a large part been a struggle to separate the public from the private. Some attempts have focused on deciding when a person or group of people are part of the public rather than a group of people with a private interest<sup>1</sup>. Other attempts focus on the interest itself<sup>2</sup>.

This research<sup>3</sup> argues that the process of determining the public interest involves:

- separating private from public interests;
- judging which private interests can be included because their protection is itself a matter of public interest;
- identifying how a proposal will beneficially or detrimentally impact on public interests;
- deciding what relative importance should be given to those impacts; and
- recognising the trade-offs that are involved.

Therefore, in this research

'A public interest' refers to an interest of potentially anybody (sometime during their life). In this respect it is an interest that is common to everybody and so is sometimes called a 'common interest'. It might not be valued equally by all sections of the public.

'Public interests' refers to the many public interest considerations or factors that need to be considered when acting in the public interest.

'The public interest' is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in that same matter. Something will serve the public interest if, on balance, it creates more

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<sup>1</sup> For example, Roseth (2009) asks: Are those with the private interest an identifiable section of the public, in which case the interest is public in nature, or do they act in a private capacity?

<sup>2</sup> For example, Banfield (1955) asks: Are the ends of the private interest community regarding or pertaining to the role of a citizen?; and the Wood-Robinson principle (Crow 2001) asks: Does the private interest require protection in the public interest?

<sup>3</sup> This research identifies areas of agreement among discourses about the concept of the public interest in NSW planning and property development and develops an operational meaning based on those areas of agreement.

public benefit than public detriment. The option that does the maximum good or the least harm for the public is the one that best serves the public interest.

Following this approach, the balancing test that is used in determining the public interest involves assessing whether the importance of the public detriments is greater than the importance of the public benefits. This is distinctly different from balancing the interests of stakeholders to achieve a 'fair' outcome. In the former, a public interest might or might not be championed by an interest group, but this does not influence the importance of the interest or the impact of a proposal on it.

The uncoupling of public interests from interest groups (and their lobbying skills and resources) is an important aspect of the proposed procedure. As noted in the definition above, a public interest might not be valued equally by all sections of the public. Where an interest group is promoting a public interest, it does so because it values that public interest more highly than certain other people do. If the process of determining the public interest focuses on interest groups then it is likely that attention will be on people in conflict rather than on interests in common.

Therefore, while the identification of public interests needs to be informed by stakeholder input and the engagement of community members, these are not necessarily the best people to undertake the process of determining the relative importance of those public interests. On the contrary, that determination should be conducted by people who are:

1. trained in the method (or able to learn and adopt the method);
2. able and willing to use information provided to them (as distinct from basing their judgments on their existing knowledge and position); and
3. able to make a decision that reflects the values of the organisation in whose name the decision is being made, be it a government agency, an interest group, a political party or whatever. Where consultants are asked to research and report on the impact of a proposal on the public interest, they can be thought of as having the specialist skills necessary to represent the diverse public (in much the same way as an Ombudsman has the skills to protect the public interest).

The procedure for determining the public interest is set out in the following tables. It involves careful reasoning and judgment. It also requires considerable skill. It sets a standard for judging claims about the public interest. If a claim does not achieve the standard then the standard can be used to challenge that claim.



Procedure	Example (hypothetical)
<p><b>Step 1. Describe a specific problem that you wish to consider in terms of the public interest.</b></p>	<p>The Mangrove Shire Council is developing a new Local Environment Plan (LEP) for the town of Bayside. The partly cleared land between the town and the coast is currently zoned 'Urban Expansion'. Owners of the land use some of the cleared areas for grazing. Given the risk of future sea level rise and flooding, and the fact that this zone is no longer available under the state government's new zoning system, an environmental lobby group has suggested that this land be rezoned E3 Environmental Management (for risk management purposes). The Council asks the planning department to report on whether this change would be in the public interest. Other land is available elsewhere for urban expansion.</p>
<p><b>Step 2. To identify the public interest issues, involve a wide range of people who might be impacted by the proposed change and use a variety of data gathering methods. Target groups that have a special interest in the proposed change. Think about the local and the wider population, and current and future generations.</b></p>	<p>The Mangrove Shire planners compile information on the area that would be affected, including its physical characteristics and current use. They conduct a coastal/flood hazard risk assessment. They seek expert advice, and review similar situations in NSW and interstate.</p> <p>They widen the range of possible uses of the low-lying land to include SP3 Tourism and RU1 Primary Production. They consult the groups that are likely to be impacted, including current owners, neighbours and local tourism operators.</p> <p>They then put a discussion paper on exhibition and call for public comment. They also hold public meetings and encourage community groups to invite a council representative to their meetings. A summary of the evolving discussion is printed in the local newspaper.</p>
<p><b>Step 3. When calling for input don't limit the range of matters that you will consider. That is, you can list the public interest matters you are aware of, but also indicate that you will consider any other matter relevant to the public interest.</b></p>	<p>When calling for comment the Mangrove Shire planners indicate that they are seeking information about:</p> <ul style="list-style-type: none"> <li>- the impact of each option on the general public including visitors to the area;</li> <li>- environmental matters;</li> <li>- risks and safety issues;</li> <li>- the effects on future generations; and</li> <li>- other uses to which the land could be put.</li> </ul> <p>They say they will also consider <u>any other matter that can be shown to be relevant to the public interest.</u></p>



Procedure	Example (hypothetical)
<p><b>Step 4. Judgments about the public interest should be made by a group of people who have the expertise to represent either the public or an organisation in whose name a determination of the public interest is made.</b></p>	<p>A panel is formed to assess the issues. The panel consists of a representative from the Council's planning branch, engineering department and environment branch, as well as an elected councillor, and members of the public who sit on council consultative committees. Their first meeting is devoted to understanding the procedure for determining the public interest.</p>
<p><b>Step 5. Identify the issues and categorise each as a public or private interests, and as creating a benefit or a detriment.</b></p> <p>An interest is a <b>public interest</b> if it impacts on the population as a whole, or on potentially anyone at some stage of their life.</p> <p>An interest is a <b>private interest</b> if it impacts on a person or company in a private capacity and the benefits or detriments are privately owned.</p>	<p>The panel decides that <b>each option (E3 Environmental Management, SP3 Tourism and RU1 Primary Production):</b></p> <p>Prevents social and economic costs to the community that would occur if land subject to future flooding were to be developed with permanent structures and infrastructure (public benefit).</p> <p>Benefits the environment by allowing marine ecosystems to migrate landwards with sea level rise (public benefit).</p> <p><b>E3 Environmental Management zoning:</b></p> <p>Could diminish the property use rights of land owners if grazing is not permitted in future (private detriment)</p> <p>Causes loss of potential land sale profit for the landowners if the land is not used for urban expansion (private detriment)</p> <p><b>SP3 Tourism zoning:</b></p> <p>Needs to ensure that only temporary structures are built and that buildings and infrastructure are easily removed as inundation advances (this is a management issue rather than a beneficial or detrimental impact)</p> <p>Enables the provision of youth recreational facilities such a skate board area, and bike paths (public benefit)</p> <p>Could diminish the property use rights of land owners if grazing is not permitted in future (private detriment)</p> <p>Causes some loss of potential profit the landowners if the land is not used for urban expansion (private detriment)</p> <p>Increases spending by tourists at businesses in the town and district and creates jobs (private benefit)</p> <p>Causes income loss to competing tourism businesses for most of the year (private detriment)</p> <p><b>RU1 Primary Production zoning:</b></p> <p>Enables land owners to continue their agricultural businesses (private benefit)</p>

Procedure	Example (hypothetical)
<p><b>Step 6. For each private interest, ask whether the private interest in question requires to be protected in the public interest (Wood-Robinson test).</b></p> <p>This might be because:</p> <ul style="list-style-type: none"> <li>- it involves a right or responsibility, the enforcement of which will benefit potentially anyone;</li> <li>- all members of a category (eg an occupation, an industry, a gender) could be impacted, or</li> <li>- the flow on effects will be so generalised as to affect everybody.</li> </ul>	<p>Four private interests are listed above. The panel decides that:</p> <p><u>Loss of potential profit from land sales for the landowners</u> if the land is not used for urban expansion – <b>No</b>, this private interest does not require protection. Private profits are not a matter for the public interest. Land speculation is at the investor's own risk.</p> <p><u>Loss of income to competing tourism businesses</u> for most of the year – <b>No</b>, this private interest does not require protection. While it might be in the public interest for a sector to be profitable, the profitability of a particular business is an exclusively private matter.</p> <p><u>Increase tourism income to the town in general</u> – As this income accrues to individuals it can be argued that this is not a public interest matter. <b>If</b> the extent of the flow-on effects is such that widespread public benefits are like to result (eg the retention of a significant number of young people in the town because of significantly increased job opportunities) then <b>Yes</b>, it can be treated as requiring protection in the public interest.</p> <p><u>Possible loss of property use rights</u> – <b>Yes</b>, this private interest relates to a right, and it is in the public interest for rights to be protected where possible. That is, there is a common interest in protecting rights that justifies the inclusion of this in a determination of the public interest.</p>
<p><b>Step 7. For each public benefit or detriment, and for each private benefit or detriment that passes the Wood-Robinson test, assign an importance.</b> Use a qualitative ordinal scale such as not important/ of little importance/ important/ very important, and give reasons for your choice. If the claimed effect is unlikely, or contradicted by expert opinion, assign less importance. If cumulative impacts are reaching a tipping point, assign more importance.</p>	<p>See next 3 pages for the assessment sheet for each option</p>

**OPTION: E3 Environmental Management zoning**

<u>PUBLIC BENEFITS</u>		Importance	Reason
<input type="radio"/> Prevents development of land that will become flood prone or inundated  <input type="radio"/> Allows ecosystem migration		V. Important	<input type="radio"/> Prevents social and economic costs for future generations  <input type="radio"/> Only small area of land involved
		Minor	
Additional Private Benefits	Does the public interest require that this private interest be protected?		
<input type="radio"/>			<input type="radio"/>
			<i>If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.</i>

<u>PUBLIC DETRIMENTS</u>		Importance	Reason
<input type="radio"/>			<input type="radio"/>
Private Detriments	Does the public interest require that this private interest be protected?		
<input type="radio"/> Loss of landowners' property use rights	Yes	Important	<input type="radio"/> Important to protect rights if possible
<input type="radio"/> Loss of potential profit for the landowners on sale of land	No	Nil	<input type="radio"/> This is an exclusively private interest
<b>Conclusion:</b> On balance, E3 Environmental Management zoning is in the public interest in that the public benefits outweigh the public detriments. However, the erosion of property rights should be avoided if possible. That is, there is possibly an alternative approach that better serves the public interest.			



**OPTION: SP3 Tourism zoning**

PUBLIC BENEFITS			Importance	Reason
<ul style="list-style-type: none"><li>Prevents development of land that will become flood prone or inundated</li><li>Allows ecosystem migration</li><li>Enables the provision of youth recreational facilities</li></ul>			V. Important	<ul style="list-style-type: none"><li>Prevents social and economic costs for future generations</li></ul>
			Minor	<ul style="list-style-type: none"><li>Only small area of land involved</li></ul>
			Important	<ul style="list-style-type: none"><li>Such facilities are scarce in Bayside</li></ul>
Private Benefits		Does the public interest require that this private interest be protected?		
<ul style="list-style-type: none"><li>Increases tourist income for the town in general</li></ul>	No	If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		<ul style="list-style-type: none"><li>Only a small number of seasonal jobs will be created. This is not sufficiently important to require protection.</li></ul>

<u>PUBLIC DETRIMENTS</u>		Importance	Reason
<ul style="list-style-type: none"> <li>Loss of farmer property use rights</li> <li>Loss of potential profit for the landowners on sale of land</li> <li>Loss of income for some competing tourism businesses</li> </ul>	Does the public interest require that this private interest be protected?		
	Yes	Important	<ul style="list-style-type: none"> <li>Important to protect rights if possible</li> </ul>
	No	Nil	<ul style="list-style-type: none"> <li>This is an exclusively private interest</li> </ul>
	No	Nil	<ul style="list-style-type: none"> <li>This is an exclusively private interest</li> </ul>
<p><b>Conclusion:</b> On balance, SP3 Tourism zoning is in the public interest in that the public benefits outweigh the public detriments. However, the erosion of property rights should be avoided if possible. That is, there is possibly an alternative approach that better serves the public interest.</p>			

**OPTION: RU1 Primary Production zoning**

<u>PUBLIC BENEFITS</u>		Importance	Reason
<ul style="list-style-type: none"> <li>Prevents development of land that will become flood prone or inundated</li> <li>Allows ecosystem migration</li> </ul>		V. Important	<ul style="list-style-type: none"> <li>Prevents social and economic costs for future generations</li> </ul>
Private Benefits	Does the public interest require that this private interest be protected?	Important	<ul style="list-style-type: none"> <li>Only small area of land involved</li> <li>Important to protect rights if possible</li> </ul>
	<ul style="list-style-type: none"> <li>Enables land owners to continue their existing land use</li> </ul>		

<u>PUBLIC DETRIMENTS</u>			Importance	Reason
<div></div>				<div></div>
Private Detriments	Does the public interest require that this private interest be protected?			
		If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		
<p><b>Conclusion:</b> On balance, RU1 Environmental Management zoning is in the public interest in that the public benefits outweigh the public detriments. However, it does not address some of the other benefits (eg youth recreational facilities) that the other options offer. There is possibly an alternative approach that better serves the public interest.</p>				

Procedure	Example (hypothetical)
<p>Step 8. Using the descriptions of importance, judge if the PUBLIC BENEFITS outweigh the PUBLIC DETRIMENTS</p> <p>Explain your conclusion.</p>	<p>See the conclusion about each option at the bottom of each assessment form.</p>
<p>Step 9. Search for the best option by comparing options, and repeating this process for other options, including</p> <ul style="list-style-type: none"> <li>• the status quo and</li> <li>• an option that modifies the proposal to increase the benefits and reduce the detriments.</li> </ul>	<p>The panel decides that the option of using the RU1 Primary Production zoning is preferable to the option of using an E3 Environmental Management zoning, as the RU1 option has more public benefits and no public detriments.</p> <p>Comparing the RU1 option with the option of using SP3 Tourism zoning is more difficult. SP3 offers more benefits and also some detriments. The panel decides that if no other options are available, then an SP3 zoning would better serve the public interest because the recreation facilities are important public benefits for the town and outweigh the detriment of a loss of property use rights.</p> <p>The status quo (retain Urban Expansion zone) is not available. The panel notes that for landowners who are wishing to sell their land, the closest thing to the status quo would be a R2 Low Density Residential zoning. See next page for the assessment form for this option.</p> <p>The panel members also decide to create another option that maximises the benefits and minimises the detriments. They suggest that primary production and low impact tourism be allowed on previously cleared land where inundation or serious flooding is not likely in the next 50 years. They call this the MIXED ZONE option. An assessment form for this option is on the page after next.</p>



**OPTION: R2 Low Density Residential**

<u>PUBLIC BENEFITS</u>		Importance	Reason
<input type="radio"/>		Nil	<input type="radio"/> This is an exclusively private interest
Private Benefits	Does the public interest require that this private interest be protected?		
<input type="radio"/> Enables landowners to realise the potential profit on the sale of their land	No If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		
<u>PUBLIC DETRIMENTS</u>		Importance	Reason
<input type="radio"/> Allows the development of land that will become flood prone or inundated		V. Important	<input type="radio"/> Creates social and economic costs for future generations  <input type="radio"/> Only a small area of land involved  <input type="radio"/>
<input type="radio"/> Prevents or inhibits ecosystem migration as sea walls or other flood barriers will be required over time		Minor	
Private Detriments	Does the public interest require that this private interest be protected?		
<input type="radio"/>	If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		
<b>Conclusion:</b> On balance, R2 Low Density Residential zoning is <u>not</u> in the public interest because the public detriments outweigh the public benefits.			

**OPTION:** Mixed zoning (allows primary production or low impact tourism on previously cleared land, and environmental conservation of uncleared land)

<u>PUBLIC BENEFITS</u>			Importance	Reason
<ul style="list-style-type: none"> <li>Prevents development of flood prone land</li> <li>Allows ecosystem migration</li> <li>Enables the provision of youth recreation facilities</li> </ul>			V. Important	<ul style="list-style-type: none"> <li>Prevents social and economic costs for future generations</li> </ul>
			Minor	<ul style="list-style-type: none"> <li>Only small area of land involved</li> </ul>
			Important	<ul style="list-style-type: none"> <li>Such facilities are scarce in Bayside.</li> </ul>
<b>Private Benefits</b> <ul style="list-style-type: none"> <li>Enables land owners to continue their existing land use</li> <li>Enables landowners to realise some potential profit on the sale of their land</li> <li>Increases tourist income for the town in general</li> </ul>	Does the public interest require that this private interest be protected?		Important	<ul style="list-style-type: none"> <li>Important to protect rights if possible</li> </ul>
	Yes	If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.	Nil	<ul style="list-style-type: none"> <li>This is an exclusively private interest</li> </ul>
	No		Nil	
	No		Nil	<ul style="list-style-type: none"> <li>Only a small number of seasonal jobs will be created. This is not sufficiently important to require protection.</li> </ul>

PUBLIC DETRIMENTS			Importance	Reason
<div>○</div>			Nil	<div>○</div> <div>This is an exclusively private interest</div>
Private Detriments <div>○ Loss of income for some competing tourism businesses</div>	Does the public interest require that this private interest be protected?			
	No	If yes, describe the importance and give a reason. If no, insert 'Nil' and give a reason.		
Conclusion: On balance, the Mixed Zone option is in the public interest as it creates several public benefits and no public detriments.				

Procedure	Example (hypothetical)
<p><b>Step 10. Explain your conclusion and acknowledge what it implies in terms of what benefits are being traded-off for other benefits that are judged to be more important (or what detriments are being tolerated instead of other detriments that are judged to be less tolerable).</b></p>	<p>After examining these options, the panel noted that the R2 Low Density Residential zoning option (or any other residential zoning option) would not be in the public interest.</p> <p>The <b>Mixed Zone option</b> is judged by the panel to be the option that <b>best serves the public interest</b> as it provides more public benefits than any other option, and no public detriments.</p> <p>The panel reports its conclusion, describing how the options were assessed. They note that the Mixed Zone option does involve a trade off, namely that by allowing grazing and tourism uses on land that is already cleared, they are foregoing the environmental benefits of zoning all of the land E3 Environmental Management. They argue that the social and economic benefits of the Mixed Zone option are more important than the additional environmental benefits that could be gained by an E3 zoning of cleared land.</p>

### References quoted in the footnote on page 2

Banfield, E 1955, 'Note on Conceptual Scheme', in M Meyerson and E Banfield, *Politics, Planning and the Public Interest*, Free Press, New York.

Crow, S 2001, 'What price a room with a view? Public interest, private interest and the Human Rights Act', *Journal of Planning and Environment Law*, December, pp. 1349-1359.

Roseth, J 2009, *Double Bay Marina v Woollahra Council* [2009] NSWLEC 1001 available at <http://www.lawlink.nsw.gov.au/lecjudgments/2009nswlec.nsf/00000000000000000000000000000000/11f891202c2c0d56ca2575d500839480?opendocument>



**APPENDIX 14**  
**SURVEY INSTRUMENTS SENT TO THE DELPHI PROCESS**  
**PARTICIPANTS**

The Delphi process was conducted through an online survey facility. Copies of the survey instruments sent in each round follow.

# Determining the public interest - Round 1

1

## CONSENT

**Please read the following and then give your consent at the bottom.**

I understand that the purpose of this study is to evaluate a proposed method of determining the public interest.

I understand that I will be participating in a group by internet. The other group members will not know my identity and I will not know theirs. In each round I will be asked to answer up to 10 questions, some of which will be multiple choice. The results of each round will be presented to the group in the next round. It is anticipated that there will be 5 rounds over 5 weeks.

I understand that if I am unable to send in a reply in time for one round, I am still able to join in the next round. I also understand that I am free to withdraw my participation from this research project at any time I wish, without consequences, and without giving a reason.

I agree that the research data gathered from this project may be published in a form that ensures that individual respondents and their views cannot be identified. I understand that information obtained from participants will be stored securely and destroyed after 5 years.

I am aware that if I have any concerns or comments about the research I can contact:

- Carolyn Wells on [redacted] or [redacted]@gmail.com
- Prof. Spike Boydell on 9514 8675 or Spike.Boydell@uts.edu.au,
- or if necessary, I can contact the UTS Human Research Ethics Committee, which has approved this research, through the Research Ethics Officer (ph: 9514 9615 Research.Ethics@uts.edu.au), quoting Approval Number 2005-180A

**Please click on the button below.**



**Yes I consent to being involved in this research**

## **WELCOME**

This group has been formed for the purpose of evaluating a proposed definition of the public interest and a proposed process for determining what course of action best serves the public interest.

The group consists of:

- planners
- current and former local government councillors
- property developers / builders / real estate agents
- consultants offering planning related skills
- environmentalists

## **READING MATERIAL**

You should have received an email with a document titled "Procedure for Determining the Public Interest". Please have a copy of that document with you during each round.

Email Carolyn at [REDACTED]@gmail.com if you need a copy.

**In this round we will be focusing on the definition of the public interest and steps 1 to 4.**

## **2**

### **DEFINITION OF THE PUBLIC INTEREST**

The public interest is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in the same matter. Something will serve the public interest if, on balance, it creates more public benefit than public detriment. The option that does the most good or the least harm for the public is the one that best serves the public interest.

**Do you accept this definition?**

- ☒ Yes I can accept this definition
- ☐ No I cannot accept this definition



3

**IF YOU DO NOT ACCEPT THIS DEFINITION** please give your reasons and the changes that you want to make to the definition.

**IF YOU DO ACCEPT THIS DEFINITION** please give any suggestions you have for improving it.



4

**WILL THE GROUP ACCEPT THIS DEFINITION?**

I predict that (select one):

- ☐ Most of the group will accept this definition
- ☐ The group will be split
- ☐ Most of the group will not accept this definition

5

**COMPARING STEP 2 AND STEP 4**

Step 2 is about identifying the issues while Step 4 is about making a judgment.

It is suggested that when identifying the issues a wide range of people should be involved, but making a judgment should be done by a smaller group of people who have the expertise to represent the diverse public or to represent the organisation in whose name the determination of the public interest is being made.

Is this an arrangement that you support? (Select one)

- ☐ Yes, I support this arrangement
- ☐ This arrangement would be appropriate in some circumstances but not others
- ☐ No, I do not support this arrangement

6

**PLEASE EXPLAIN your response to Question 5**

suggesting an alternative arrangement if necessary.

7

**STEP 3 - NOT RESTRICTING THE PUBLIC INTEREST ISSUES**

An important feature of the public interest is that the relevant factors will vary from case to case. There is a legal dictum that 'the categories of the public interest are not closed'.

Therefore at step 3 it is recommended that if, for example, someone is calling for submissions about what best serves the public interest in a particular matter, and they wish to list 'terms of reference', they should indicate that they will also accept other matters relevant to the public interest.

If you wish to comment on this please do so. Silence will be taken as agreement.

8

**ANY OTHER QUESTIONS OR COMMENTS?**

**END OF ROUND 1**

## Determining the public interest - Round 2

### WELCOME TO ROUND 2

This Round opened on Friday 7th May and will close Tuesday 11th May (or earlier if all participants respond before then).

**Thank you for your input to Round 1.** 10 participants responded in Round 1. Those who missed Round 1 can still join in Round 2.

First we will look at your responses from Round 1, then we'll examine steps 5 and 6.

### THE GROUP'S RESPONSES IN THE PREVIOUS ROUND

#### DEFINITION OF THE PUBLIC INTEREST

You were asked if you agreed with the proposed definition of the public interest.

All 10 respondents accepted this definition. However one respondent could only "barely accept" it. His concerns were that:

1. the definition is weak in contrasting public with private interests (more on that below), and
2. the balancing of benefits and detriments "erects a utilitarian calculus and this suffers from the well-established weaknesses of utilitarianism". (We'll return to this in a later round.)

9 of the 10 respondents predicted that the group would accept the definition and one predicted that the group would be split - so **congratulations** - that's pretty well spot on!



**A QUESTION ABOUT THE DEFINITION ASKED IN ROUND 1**

One respondent asked:

In this definition of the public interest, does 'general public' mean all persons residing in the local government area, or does it sometimes mean all persons residing in the locality of the particular proposal?

Carolyn's response:

In the preliminary reading, Step 2 refers to 'people who might be impacted by the proposed change' and 'groups that have a special interest in the proposed change'. It suggests that you 'think about the local and the wider population, and current and future generations'. In other words, try to identify all those who will be impacted. For some proposals this might be relatively local, but in other matters it might be regional, national or global.

Any comments on this?



## COMPARING STEP 2 AND STEP 4

You were asked if you agreed that when identifying issues a wide range of people should be involved, but making a judgment should be done by a smaller group of people who have the expertise to represent either the public or the organisation in whose name the determination of the public interest is being made.

6 agreed and 4 said it would depend on the circumstances. For example, if there were wide-ranging disparities among the interest groups then there should be more workshops to work through the issues. Or if the organisation lacks credibility, then it's best that it not be the sole determiner of the public interest.

Do you think we should (please select one of the following):

- ☐ Stick with the original approach
- ☐ Say that a wide range of people should be involved in identifying issues, and the decision making stage should include representatives of the key interest groups
- ☐ Say that a wide range of people should be involved in identifying issues, and the inclusion of some of these people in the decision making process is a matter for the decision making authority

## STEP 3 - NOT RESTRICTING THE PUBLIC INTEREST ISSUES

Step 3 recommends that if, for example, someone is calling for submissions about what best serves the public interest in a particular matter, and they wish to list 'terms or reference', they should indicate that they will also accept other matters relevant to the public interest.

Comments included:

- "Sometimes it is important to be clear about the parameters within which the decision making is occurring. Failure to do so can be very disengaging, particularly if those parameters are immutable!"
- and
- "Matters or terms of reference should be provided as examples, however, people may feel limited and/or biased by terms of reference."

Thank you for those comments.

**NEW TOPICS - STEPS 5 AND 6 - CLASSIFYING INTERESTS**

3

**STEP 5 - DIFFERENCE BETWEEN PUBLIC AND PRIVATE INTERESTS**

Please indicate if you agree with the following definitions, and provide any suggested improvements:

1	2
Agree	Disagree

An interest is a **public interest** if it impacts on the population as a whole, or on anyone at some stage of their life.

1	2
Additional Comment	
<div></div>	

An interest is a **private interest** if it impacts on a person or company in a private capacity and the benefits or detriments are privately owned.

1	2
Additional Comment	
<div></div>	



CLASSIFICATION OF INTERESTS

Please read steps 5 and 6 of the procedure.

For each of the following interests, indicate how you would classify it by clicking on one of the 3 buttons. It would, of course, 'depend on the details', but please indicate the most likely category.

- 1

Public interest
- 2

Private interest that requires to be protected in the public interest
- 3

Private interest that does NOT require to be protected in the public interest

A landowner's property value

- 1
- 2
- 3

Additional Comment

A property owner's view

- 1
- 2
- 3

Additional Comment

A property owner's access to sunlight

- 1
- 2
- 3

Additional Comment

**CLASSIFICATION OF INTERESTS**

For each of the following interest please indicate the category in which you would most likely classify it (by clicking on one of the 3 buttons):

**1**  
**Public**  
**interest**

**2**  
**Private interest that**  
**requires to be protected**  
**in the public interest**

**3**  
**Private interest that**  
**does NOT require to be**  
**protected in the public interest**

Profitability of a private business

**1**

**2**

**3**

Additional Comment

▲

□

▼

Profitability of a private business that is a major local employer

**1**

**2**

**3**

Additional Comment

▲

□

▼

Growth of Council/Shire income or government tax income

**1**

**2**

**3**

Additional Comment

▲

□

▼

Regional economic growth

**1**

**2**

**3**

Additional Comment

▲

□

▼

6

ANY OTHER QUESTIONS OR COMMENTS?



END OF ROUND 2



## Determining the public interest - Round 3

### WELCOME TO ROUND 3

This Round opened on Friday 14th May and will close Tuesday 18th May (or earlier if all participants respond before then).

**Thank you for your input to Round 2.** 11 participants responded in Round 2. If you missed Round 2 you can still join in Round 3.

First we'll review the discussion so far, then we'll move on to new topics.

### THE GROUP'S RESPONSES IN THE PREVIOUS ROUND

#### COMPARING STEP 2 AND STEP 4

**6 voted for Option 1:** Stick with the original approach (that is, say that a wide range of people should be involved in identifying issues, but the decision making stage should be done by a smaller group of people who have expertise to represent either the public or the organisation in whose name the determination of the public interest is being made).

**3 voted for Option 2:** Say that a wide range of people should be involved in identifying issues, and the decision making stage should include representatives of the key interest groups.

**2 voted for Option 3:** Say that a wide range of people should be involved in identifying issues, and the inclusion of some of these people in the decision making process is a matter for the decision making authority.

This result confirms a finding of the original research, that the major discourses about the concept on the public interest in the NSW property and planning sphere have opposing views on the value of public participation. However I am persuaded by the comment, "Take an approach that does not appear to be dogmatic". With this in mind, I will incorporate your advice on when public participation in the decision making stage might or might not be appropriate into the final version of the procedures.

## STEP 5 - DIFFERENCE BETWEEN PUBLIC AND PRIVATE INTERESTS

**7 agreed and 4 disagreed with the definition of a public interest** (a **public interest** is one that impacts on the population as a whole, or on anyone at some stage of their life). The phrase "anyone at some stage of their life" caused some concern. It's meant to be a way of including specific age groups as part of the general public, but clearly needs more careful explanation.

**9 agreed and 2 disagreed with the definition of a private interest** (a **private interest** is one that impacts on a person or company in a private capacity and the benefits or detriments are privately owned). The term 'privately owned' caused concern, and a suggested alternative is "where the impacts are of primary benefit or detriment to an individual or individuals rather than to the public".

Thank you.

**CLASSIFICATION OF INTERESTS** using the Wood-Robinson test. ('Both', below, means private interest requiring protection in the public interest.)

You indicated that you would most likely classify these interests as:

A landowner's property value: 0 public, 3 both, 8 private

A property owner's view: 0 public, 3 both, 8 private

A property owner's access to sunlight: 2 public, 8 both, 1 private

**And for the second group:**

Profitability of a private business: 1 public, 1 both, 9 private

Profitability of a private business that is a major local employer: 1 public, 6 both, 4 private

Growth of Council/Shire income or government tax income: 9 public, 2 both, 0 private

Regional economic growth: 11 public, 0 both, 0 private

**I conclude that in a specific context, and with the opportunity for discussion, this approach could lead to a consensus decision.**

1

On page 1 of the preliminary reading, it is suggested that 'The public interest is perhaps the only criterion for judging proposals where private interests are put to one side.' You will now understand that it is only private interests that are exclusively private, and don't need protection in the public interest, that are put aside. Several other approaches that include exclusively private interests (stakeholder analysis etc) are then described.

Were you convinced by this argument? Please give reasons if you were not.

**NEW TOPICS - STEPS 7 AND 8 - ASSIGNING IMPORTANCE AND REACHING A CONCLUSION**

2

**QUALITATIVE DESCRIPTIONS OF IMPORTANCE**

Please refer to Steps 7 in the Preliminary Reading.

Step 7 of the procedure calls for a qualitative description of importance of each public interest. It advises use of a qualitative ordinal scale such as not important/ of little importance/ important/ very important, and giving reasons for the choice. 'If the claimed effect is unlikely, or contradicted by expert opinion, assign less importance. If cumulative impacts are reaching a tipping point, assign more importance.'

This step of the procedure, and the next, aim to improve the transparency of decision-making. Such decision-making is based on individual and/or organisational values that should be revealed.

Do you agree with this approach?



**REACHING A CONCLUSION**

Please read Step 8 in the Preliminary Reading.

Step 8 require that a judgment be made about whether the PUBLIC BENEFITS outweigh the PUBLIC DETRIMENTS, based on the descriptions of importance provided in step 7.

It is expected that this

1. would NOT involve the addition of numerical weights
2. would involve reasoning and explaining
3. might result in no clear result (where the benefits are of similar importance to the detriments)
4. must demonstrate that the conclusion was reached without the inclusion of exclusively private interests.

Do you agree with this approach?

**ANY OTHER QUESTIONS OR COMMENTS?**

**END OF ROUND 3**

## Determining the Public Interest - Final Round

### WELCOME TO ROUND 4

This Round opened on Thursday 20th May and will close on Tuesday 25th May (or earlier if all participants respond before then).

This will be the last interactive round, but I will send you the results of this round. Your input so far has been very valuable in identifying issues with the procedure and suggesting solutions. Thank you.

There are still 5 'live issues', where some participants have problems with the approach. Each of these is presented below. In each case the issue is described, then a number of suggested responses are listed. Please select all those that you agree with. Then add any additional suggestions in the box provided.

#### 1

### EXCLUDING PRIVATE INTERESTS

At least one participant is unhappy that the procedure excludes private interests (if they don't require protection in the public interest). That person argues that 'the cumulative effect of private interests can be argued to be public in nature' and the determination of the public interest 'should be inclusive of all views'.

**Please select the arguments you agree with in the list below. You can select as many as you like. Please add any other arguments in the box.**

- ☐ Private interests will be considered at a later stage in the assessment process when the public interest is balanced against private interests.
- ☐ Many assessment criteria include private interests, and it is important to have one (namely the public interest) which does not.
- ☐ To be a public interest it must be a shared interest. There is an inescapable collective dimension.
- ☐ It is the nature of the interest rather than the number of the people who have the interest that is important - we all have a private interest in winning the lottery, but that does not make it a public interest.

- ☐ The procedure is wrong - everyone is a member of the public and so everyone's interests are public interests.
- ☐ The procedure is wrong - if the majority of the relevant public share an interest then it becomes a public interest.
- ☐ The procedure is wrong - it would be political suicide to exclude the interests of some members of the local public.
- ☐ Other, please specify

---

2

## CLASSIFICATION OF INTERESTS AS PUBLIC OR PRIVATE

One participant was surprised by the responses in Round 2. 'If a property owner's access to sunlight is a private interest that needs protection in the public interest, then surely ... the same owner's view is in the same category'. And, 'if it is in the public interest for there to be a regime that allows private businesses to generate profit, then that should apply regardless of whether they are a major local employer or not. ... Size does not change the nature of the public/private distinction'.

**Please select the arguments you agree with in the list below. You can select as many as you like. Please add any other arguments in the box.**

- ☐ There is a difference between access to sunlight (a health issue) and having a view (a luxury).
- ☐ The difference is in the public importance of the issue as (to quote the judge in the Wood-Robinson case) 'overshadowing ... is far more likely to be ... resisted in the public interest than interference with a view'.
- ☐ What is important is the impact on the whole community - a few workers being displaced will not have as much impact on the collective wellbeing of the community as will most of the working population being displaced.
- ☐ The public benefits when business profit flows on to become economic development. Therefore the profitability of all businesses should be protected in the public interest.
- ☐ There may be an occasion to protect private property values in the public interest: for example to stabilise a market, to provide a higher value rates base to increase council income and therefore support public infrastructure and services.
- ☐ The criticism is correct - there is no difference between sunlight and views, or between small and large businesses.



☐ Other, please specify

3

CLASSIFYING AN IMPACT AS A BENEFIT OR DETRIMENT

One participant noted that traditionally, regional economic growth has been viewed as a public benefit, but in recent times it has become apparent that modern industrial society has exceeded the capacity of the Earth to provide resources and assimilate waste. Therefore, in its present form, economic growth might be a public detriment.

The same could be said about population growth. How should the procedure handle this?

Please select the arguments you agree with in the list below. You can select as many as you like. Please add any other arguments in the box.

- ☐ When a change is likely to have both positive and negative effects it should be broken down into its parts, for example, 'the benefits of population growth such as increased range of services that can be supported' and 'the detriments of population growth such as increased congestion and strain on infrastructure'.
- ☐ Where a change is likely to have both positive and negative effects it should be classified as either a benefit or a detriment, whichever is the larger.
- ☐ Other, please specify
- 

4

QUALITATIVE JUDGMENTS ARE SUBJECTIVE

The proposed procedure suggests the use of qualitative descriptions of importance and a conclusion based on reasoning rather than calculation. One participant expressed concern that the final conclusion 'may be subjective, inconsistent and open to challenge and appeal'.

**Please select the arguments you agree with in the list below. You can select as many as you like. Please add any other arguments in the box.**

- ☐ The substantive content of the public interest is only ever a matter of subjective opinion. There is no objective truth about what it is. The procedure should reflect that.
- ☐ Any procedure, even one that uses checklists and scores, can be criticised for being subjective in the way it is constructed and used.
- ☐ It is true that any conclusion will be open to challenge. The procedure provides a framework for such challenges, for example if detriments have been overlooked. It also provides a defensible process that would help in responding to challenges.
- ☐ An understanding of what best serves the public interest will be enhanced by public debate, which in turn will be enhanced if those individuals and organisations who make statements about the public interest explain how they reached their conclusions.
- ☐ I share the concern about subjectivity. There must be another, less subjective way to determine the public interest.
- ☐ I share the concern about inconsistency. Wouldn't it be better to say that all similar cases should be treated the same way?
- ☐ Other, please specify \_\_\_\_\_

**5  
BREAKING A DEADLOCK**

What do you do if you end up with a result that is tied, where the importance of the benefits equals the importance of the detriments?

**Please select the arguments you agree with in the list below. You can select as many as you like. Please add any other arguments in the box.**

- ☐ Require the individual or panel to continue to add (less significant) impacts until it is clear that the proposal is or isn't in the public interest.
- ☐ Modify, or put conditions on the proposal to increase the benefits or decrease the detriments.
- ☐ Conclude that the proposal is borderline.
- ☐ Other, please specify \_\_\_\_\_

**OVERALL OPINION OF THE PROCEDURE**

Please select those statements that describe your opinion of the proposed procedure for determining the public interest.

- ☐ I want to start using it now.
- ☐ I want to wait until the procedure is fully documented before I apply any of the ideas.
- ☐ The procedure would not be acceptable in my work environment.
- ☐ The procedure might be acceptable in my work environment.
- ☐ I would not want to use this procedure.
- ☐ The procedure is too complicated for general use.
- ☐ The procedure omits important steps.
- ☐ The procedure requires the user to reveal too much about the values behind the decision.
- ☐ The procedure produces the wrong result.
- ☐ Please explain and/or provide another statement



## APPENDIX 15

### RESULTS OF THE DELPHI PROCESS

The Delphi process focused on several different aspects of the procedures. These are set out in Chapter 9 in Table 9.1, showing in which round each aspect is introduced, discussed and closed. This appendix describes that process in more detail, and presents the results of the multiple choice items, as well as reporting the complete set of comments made by participants.

Potential respondents were each allocated an identification code (R1 to R13, see Table 7.2). Respondents' comments are presented in the order they were received.

#### ROUND 1

**Question 1** sought the **CONSENT** of the participants. The 10 who participated in Round 1 gave their consent at this point. The 11<sup>th</sup> who joined in Round 2 gave consent by email.

**Question 2** asked if participants agreed with the proposed **DEFINITION OF THE PUBLIC INTEREST**, namely, "The public interest is defined as the stake that the general public has in a matter, as distinct from the private interests that individuals, companies or groups have in the same matter. Something will serve the public interest if, on balance, it creates more public benefit than public detriment. The option that does the most good or the least harm for the public is the one that best serves the public interest."

All 10 of the respondents agreed with this definition and the following comments were made:

R13: I'm not sure that the term 'on balance' is required. I would suggest removing it, and simply say " Something will serve the public interest if it creates more public benefit than public detriment."

R6: I can barely accept the definition. The first sentence is fine. The second and third are silent on the extent of private interest. The definition is strong on establishing a measure of the degree of public benefit, but weak on

contrasting with private interest; to a certain extent "public" can be understood only by differentiating from the private sphere. My second point is that the second two sentences erect a utilitarian calculus and this suffers from the well-established weaknesses of utilitarianism.

R7: In this definition general public means all persons residing in the local government area (or sometimes all persons residing in a particular locality the subject of a particular proposal?) *(This was treated as a question about the relevant public and answered in Round 2 Question 1)*

**Question 4** asked if the respondent thought that the group would accept this definition of the public interest. 9 of the 10 respondents thought that the group would accept the definition and the 10<sup>th</sup> thought that the group would be split. No respondent thought that most of the group would not accept the definition.

**Question 5 COMPARED STEPS 2 AND 4 OF THE PROCEDURE** and asked whether respondents supported the suggestion "that when identifying the issues a wide range of people should be involved, but making a judgment should be done by a smaller group of people who have the expertise to represent the diverse public or to represent the organisation in whose name the determination of the public interest is being made."

6 of the 10 respondents supported this arrangement, and the remaining 4 said it would be appropriate in some circumstances but not in others. No respondent said that they did not support it.

**Question 6** invited comments on this arrangement. 9 of the 10 respondents commented. Comments from those who supported the arrangement were:

R12: It is the role of the Planner (as expert and professional) to place themselves in other people's shoes (during the "issues" phase) but at the judgement phase is to weigh up and balance competing issues - one that serves the greatest public interest.

R6: There are two critical considerations. First, making these judgements is not a task for amateurs. The responsible people should be both trained and experienced in this field, just like other professionals. It is an expert field

requiring an understanding of the craft, including case histories, theory and causation among other aspects. Second, all kinds of people could have opinions, but accountability sharpens one's attention. The people who are accountable for making the decision will have a better appreciation of the pros and cons.

R2: Identifying issues that might result from planning decisions is a fraught area – the consequences of decisions can (and will) be overstated, understated or not even contemplated. The wider the range of people involved in identifying potential issues, the more likely that particular issues are recognised. However, the task of giving appropriate weight to and determining the likelihood of any particular consequence requires both expertise and objectivity to determine where the public interest lies. The smaller decision-making group also makes it less unwieldy and more likely to reach a consensus judgement. For this method to retain public trust there have to be efforts made to keep the process transparent and accountable rather than tokenistic. 'The public' has to be able to see and understand how a decision is made.

R7: Those making the judgement would need to be persons with delegated authority from the elected entity OR under specific circumstances, such as substantive objection or non complying proposals the elected body should make the decision

R3: The public interest is a difficult concept to define and even more difficult to ascertain. The best approach to ascertaining what is in the public interest are those who are detached from the process and who are trained in balancing people's interests.

Comments from those who said that it would be appropriate in some circumstances but not in others were:

R1: Taking an approach that does not appear, or indeed be, dogmatic.

R13: Of course, this is a vexed question. If the organisation has little credibility, making it the sole determinator of the public interest would unlikely be acceptable to 'the public'. On the other hand, having a wide range of people



involved, can also be unwieldy. I think though, that option two is the best, allowing for one or the other, depending on the circumstances.

R9: If there are wide ranging disparities between how the site is valued then it may be appropriate to facilitate more discussions and possibly workshops to work through the issues with those representing the various interests, rather than rely on a panel to make a judgement. Have hearings for example. This is done through the RPDC amendment process in Tasmania.

R8: i think any group will have differing views due to personal long held views dictated by personal, religious/moral and political beliefs

**Question 7** was about **NOT RESTRICTING PUBLIC INTEREST ISSUES**, and invited comment on the suggestion that “if, for example, someone is calling for submissions about what best serves the public interest in a particular matter, and they wish to list ‘terms of reference’, they should indicate that they will also accept other matters relevant to the public interest.”

Participants were invited to comment if they wished to do so, and that “Silence will be taken as agreement.” 5 comments were received:

R10 Sometimes it is important to be clear about the parameters within which the decision making is occurring. Failure to do so can be very disengaging, particularly if those parameters are immutable!

R6 Yes I agree with this. The public interest is NON-RATIONALIST and cannot be prescribed (although it can be supremely RATIONAL).

R2 Hooray!

R8 Who decides and under what authority is ‘public interest’ applied?

R3 Matters or terms of reference should be provided as examples; however, people may feel limited and/or biased by terms of reference.

Two of these comments (R10 and R3) were reported in Round 2 and the discussion of this aspect was closed at that point.

**Question 8** invited any other questions or comments. 4 were received:

- R13 A very interesting topic and lots of good information presented for consideration. Very worthwhile indeed.
- R9 The sub-regional LRMP process in BC in Canada during the 90s was a very good attempt at considering "the public interest" in determining what land ought to be taken out of forest production and into BC Parks. The methodology was based on consensus building and round tables.
- R6 I think the synergy that is possible from a consultative discussion with well chosen people is very conducive to clarifying the public interest. (This is not resiling from the point made above that ultimately the judgement is best made by experts who are subject to some degree of accountability).
- R7 In determining the public interest the determining authority should ensure that the widest possible consultation and communication mechanisms are in place to make possible the greatest possible participation and civic engagement. In a democracy this is vital to inclusion and social cohesion.

**End of Round 1**

## ROUND 2

**Question 1** related to **A QUESTION ABOUT THE DEFINITION ASKED IN ROUND 1** (by R7) about the spatial extent of the relevant public. "In this definition of the public interest, does "general public" mean all persons residing in the local government area, or does it sometimes mean all persons residing in the locality of the particular proposal?"

Participants were invited to comment on the researcher's response, namely, "In the preliminary reading, Step 2 refers to "people who might be impacted by the proposed change" and "groups that have a special interest in the proposed change". It suggests that you "think about the local and the wider population, and current and future generations". In other words, try to identify all those who will be impacted. For some proposals this might be relatively local, but in other matters it might be regional, national or global." 6 respondents submitted comments:

R2 Good response.

R13 I think this explanation is about as 'tight' as it can be, as clearly, who the 'general public' is - will vary broadly, as you suggest, from case to case.

R6 I largely agree with Carolyn's response, but I can't imagine very many development proposals of the scale in the case study for which the interested "public" would be entirely "local". At a minimum, "the public" includes all the residents of the local government area, tourists who might visit the locality, and all citizens of the State in terms of having confidence in the development approval system. Also, in any development proposal that does significant environmental damage, including filling wetlands, the effects ripple throughout the natural systems, even internationally. Everything is connected to everything else, and although I know that this is unhelpful to your quest.

R11 Agreed, in the same way that "community" can be both physical groupings and interest groupings.



R3 The definition of the "public interest" will be construed within the scope and purpose of the Act. The public interest, therefore, should include concepts relating to ESD such as inter-generational equity. However, whether the public interest can include the wider population when impacts are localised, is debatable.

R5 I see a definition for private interest is proposed below. I think many proposals have both private and public interests, however to be "in the public interest" the public interests need to outweigh the private interests. It may also be beneficial to consider possible and likely consequences of a proposal not proceeding and whether there are any other potentially more appropriate alternatives.

This discussion was closed at this point.

**Question 2** gave feedback on Round 1 Questions 5 and 6 **COMPARING STEP 2 AND STEP 4** (that is, involving the public in identifying the issues, but using a selected group in the decision-making stage). Participants were provided with 2 of the comments (from R9 and R13, both of whom had indicated that the arrangement would be appropriate in some circumstances but not in others), and asked to select one of 3 options:

6 of the 11 respondents selected "Stick with the original approach".

3 of the 11 respondents selected "Say that a wide range of people should be involved in identifying issues, and the decision making stage should include representatives of the key interest groups".

2 of the 11 respondents selected "Say that a wide range of people should be involved in identifying issues, and the inclusion of some of these people in the decision making process is a matter for the decision making authority".

When these results were reported in Round 3, this thread of the debate was closed with the following remarks from the researcher: "This result confirms a finding of the original research, that the major discourses about the concept on the public interest in the NSW property and planning sphere have opposing views

on the value of public participation. However I am persuaded by the comment, "Take an approach that does not appear to be dogmatic". With this in mind, I will incorporate your advice on when public participation in the decision making stage might or might not be appropriate into the final version of the procedures."

**Question 3** introduced a new aspect of the procedure, namely **STEP 5 – DIFFERENCE BETWEEN PUBLIC AND PRIVATE INTERESTS**, and examined the proposed definitions of a public interest and a private interest.

With respect to a public interest, it was proposed "An interest is a public interest if it impacts on the population as a whole, or on anyone at some stage of their life." 7 of the 11 respondents agreed and 4 disagreed with this definition. Comments received were:

R13: 'Some stage of their life' seems a bit open ended. Can this be given a more defined time frame in relation to the project and its temporal impact?

R6: The public interest is not based upon the effect upon "anyONE". There is an inescapable collective dimension.

R3 The two concepts of 'public' and 'interest' both need to be defined for the purpose of the legislation or matter which is before the decision-maker. In some instances, if the 'public' is limited to a group to which membership is limited, this should be made clear.

R5: "Impacts" could suggest needs to be high level of certainty, however often uncertainties especially at proposal stage and a need to apply precautionary principle. "Population as a whole", though able to be interpreted at various scales, could be suggesting broader scales eg State or higher. I'm not sure if I'd strictly disagree, however suggest considering possible nuances eg "if it has the potential to impact on the public now or in the future"

With respect to a private interest, it was proposed "An interest is a private interest if it impacts on a person or company in a private capacity and the benefits or

detriments are privately owned.” 9 of the 11 respondents agreed and 2 disagreed with this definition. Comments received were:

- R5 Seems to be implicit concept of relative benefit outweighing the relative detriments. Not sure if I'd strictly disagree, however unsure about the implications of "owned". Potential for narrow interpretation based on tenure eg private landholder proposes a conservation covenant for a significant area of land with high biodiversity value that they own. Perhaps consider "of primary benefit to an individual or individuals rather than to the public"
- R1 (*Received by email*) With regard to the topic, I am unsure and tend to disagree on the basis that the delineation and transition point between public and private interest is often not well defined. There is constant overlapping of public and private interest as a matter of course, therefore the statement that reads “private + private + private = private” does not necessarily apply.

These results were presented in Round 3 and the discussion of these definitions was closed at that point (although the issue of distinguishing public from private continued to be addressed in other threads.)

**Questions 4 and 5** introduced a new topic, namely the **CLASSIFICATION OF INTERESTS AS PRIVATE OR PUBLIC**. Participants were asked to classify issues into one of three categories. The results were as shown in the following table:

**Appendix 15 Table 1: Responses to Round 2 Question 4**

	Public interest	Private interest that requires to be protected in the public interest	Private interest that does not require to be protected in the public interest
A landowner's property value	0	3	8
A property owner's views	0	3	8
A property owner's access to sunlight	2	8	1



4 respondents offered comments:

R13 A property owner's view

I think the general rule of thumb is that currently 'you are not entitled to a view' if someone decides to block this. This is probably a reasonable thing and should remain.

A property owner's access to sunlight

This has general health and well-being implications and thus should be considered in the public interest.

R6 A landowner's property value

My answer is very conditional. The protection of private "property rights" is a pivotal foundation of a modern industrial society and this protection should be overruled only in the overwhelming public interest, and with compensation. However, people's views about what is a "property right" vary widely. I favour the traditional approach that a landholder must be protected against trespass on private real estate but not against changes in the regulatory environment, even though these do influence and affect a property's value (usually at the margins).

A property owner's view

Again a conditional answer. The view can be just as much an attribute of a property as almost any other aspect, but this does not mean that every owner is entitled to be surrounded by zero development forever.

A property owner's access to sunlight

Similar answer to the above.

R9 A landowner's property value

There may be an occasion to protect private values in public interest: for example to stabilise a market, to provide a higher value rate base to increase council income and therefore support public infrastructure and services.

R5 A landowner's property value

Could potentially be any of these three depending on the circumstances eg 1 if State is the landowner and the land is managed in the public interest eg national park, 2 if swimming pool in remote town owned by private business

but managed in public interest eg used by school groups, 3 if speculative development primarily benefiting an individual and there are better alternatives. I chose 2 given the potential to impact on the public eg American sub-prime mortgage and impacts on land values and economy

A property owner's view

Again would vary according to the circumstances eg Wet Tropics World Heritage Area owned by the State with international tourism infrastructure eg Kuranda skyrail. I thought about whether a view is or is likely to be valued by the public, and that enjoyment of a view by an owner and the public wouldn't necessarily be mutually exclusive. I chose 3 in the end on the assumption that the benefits of the view are privately owned.

A property owner's access to sunlight

Again some difficulty choosing without a scenario eg partial or total loss of access to sunlight. I chose 2 based on public health- impacts on a person in a private capacity however probably an implicit right to access sunlight (though removing all access would seem somewhat uncommon).

**Question 5** repeated this process for 4 new interests related to economic profitability and growth, as shown in the following table.

**Appendix 15 Table 2: Responses to Round 2 Question 5**

	Public interest	Private interest that requires to be protected in the public interest	Private interest that does not require to be protected in the public interest
Profitability of a private business	1	1	9
Profitability of a private business that is a major employer	1	6	4
Growth of Council/Shire income or government tax income	9	2	0
Regional economic growth	11	0	0

3 respondents provided comments:

R13 Profitability of a private business

Generally speaking, of course.

R6 Growth of Council/Shire income or government tax income

A conditional answer. As a general principle, yes, the capacity of governments to levy taxes must be protected and this is a matter of high public interest. This does not validate every tax nor does it specify that the revenue must rise in a particular year

Regional economic growth

I am very conflicted in giving this answer. I believe that "economic PROSPERITY" is very much in the public interest and it is the duty of governments to facilitate prosperity and economic-well-being for their electorate and residents. However, as a scientist, I hold strongly to the view that "economic GROWTH" is now against the public interest because modern industrial society has exceeded the capacity of the Earth to your resources and assimilate wastes. In other words, if GROWTH happened to



be a sustainable route to prosperity, its promotion would very much be in the public interest, but for technical reasons outside your exercise is now profoundly detrimental.

R5 Profitability of a private business

Depends on scenario eg private business with 1 employee vs 10 000 employees that sustains a whole town/community important in State/national economy/public interest. I chose 3 on balance given relative profitability for a private business does not necessarily influence public interest intrinsically, though would depend on how profits spent eg donations for public sporting facilities

Profitability of a private business that is a major local employer

Refer to above

Growth of Council/Shire income or government tax income

Assuming the government is acting in the public interest

Regional economic growth

Assuming this is in the public interest eg not outweighed by public detriment in terms of adverse environmental impacts

When these results were presented in Round 3 the researcher concluded that they showed that "in a specific context, and with the opportunity for discussion, this approach could lead to a consensus decision". The following comment was provided as an addendum to a response to Round 3 Question 1:

R6 I must admit to being surprised by some of the answers of my colleagues. If a property owner's access to sunlight is a matter of private interests that needs protection in the public interest, then surely to protect the same owner's view is in the same category. The fact that traditionally - in case law - sunlight has been considered more important than views doesn't affect the basic principle. And again, if it is in the public interest for there to be a regime that allows private businesses to generate profit, then that should apply regardless of whether they are a major local employer or not. The five respondents who have given an answer for the fifth question different from the fourth place themselves open to being seduced by big business as distinct from small business. Size does not change the nature of the public/private distinction. (In any case, the larger the business, the more likely that the purchasing and profits will benefit a non-local community, though that is another matter). The

exercise should have shown, and the answers have partly shown, that the distinction between public and private should be drawn between profitability of an enterprise (private) and regional economic development (public), not between different sizes of that enterprise.

**Question 6** invited any other questions or comments. 3 comments were received:

R13 Again, an interesting set of issues. One could of course, say 'it all depends' to each - so I've tried to answer as you suggested 'in general terms' to all of them.

R6 In your item 2 above, and referring to the three options, I hold strongly that interest groups should not be admitted to the decision-making forum except as observers say in a public gallery of a council. Even technical experts should be called upon as witnesses. The task of making decisions in public affairs belongs to a body that is constituted to serve in the public interest. No interest group can NECESSARILY represent the public interest. There is no particular reason why the interest of a group is in the public interest. Even the interest of a council or other government is not necessarily the public interest, although one is optimistic that most of the time their deliberations are aiming at that end.

R5 I found the questions difficult and this no doubt reflects the challenges involved. I suspect the responses may be somewhat varied based on individual experiences and likely scenarios. It may be worth testing on a specific proposal to see if this yields consistent responses (perhaps this is the next step). No doubt I will wake up in the morning and want to make changes. However it highlights to me the importance of gathering as much information as possible, testing the subjective weightings with other practitioners, and documenting the reasoning so it can be tested at a later time if need be.

**End of Round 2**

### ROUND 3

Round 3 presented the results of the previous round and then introduced three new threads.

**Question 1** asked participants if they were convinced by the argument presented on page 1 of the **PRELIMINARY READING** that "The public interest is perhaps the only criterion for judging proposals where private interests are put to one side."

7 of the 8 participants in this round commented:

R7 Yes convinced

R12 Yes

R1 I believe this argument is valid.

R6 Yes.

R8 Most likely in the methodology of the process that statement stands supported, however there are always possibilities that private interests effect the public interest and also in the reverse. In some ways, the cumulative effect of several private interests can be argued to be public in nature!

R9 Yes

R5 Yes



**Question 2** introduced a new thread, namely the use of **QUALITATIVE DESCRIPTIONS OF IMPORTANCE** in the proposed procedure. It was explained that this was intended to improve transparency of decision-making so that individual and/or organisational values are revealed. Participants were asked to comment on whether they agreed with this approach.

All of the 8 respondents in this round provided responses:

- R7 Basing on values is acceptable but needs to be augmented by adherence to protocols both developed by the organisation and imposed at law or through external guidelines
- R12 Yes - however concerned that each public interest being "scaled" could be open to manipulation. I.e. Questions of benefit or detriments could be skewed towards a desired outcome.
- R1 I believe this approach is valid.
- R6 Yes. Although it suffers from the rationalist and utilitarian defects that I mentioned in my first post, I understand that there has to be some metric, or the planner is left with an entirely relativist and rather useless Guideline. One of my staff under my guidance applied this method to a real-life case and the report had the great benefit of bringing to the surface the significant issues and ranking them. After this was done, the weight of analysis made the decision quite obvious. Some issues were exposed as being fatal to the application.

*Clarification of the method mentioned was sought by email from this respondent who replied:*

"One of my staff, a qualified planning officer, was required to assess an application for residential development in a remote headland. She applied a method similar to my understanding of Step 7 on page 6 (*of the Preliminary Reading*): identify the attributes needing assessment, then develop a matrix which mapped and ranked the significance of each attribute. I wouldn't have said that it grappled with the question of whether the private interest needs to be protected in order that the public interest is served, as the project was able to be

portrayed as a more classic public versus private interest confrontation.

The method was very good in forcing the assessing officer (and readers) to identify the critical issues and differentiate the ones that could be accommodated by mere conditions from those that were of deal-breaking nature.

I mention this as a case study not because it is the only one I can think of but because it was a particularly substantive analysis."

R8 Yes

R13 Yes - although the key issue is the revelation of individual or organisational values, which are obviously critical to informed decision-making. Although this is clearly something that cannot be 'programmed' into the decision-making processes, it is obviously very important to the participants to 'know where they stand' vis-a-vis both sets of values.

R9 Yes.

R5 Yes, though I suggest considering potential to present options side by side/in a more compact form where decisions need to be made "en masse" eg zonings for a new planning scheme with 1000s of lots. Might also need to include a section for summarising and analysing public submissions for consideration in the decision making process (in Qld legislation requires Minister to formally consider all properly made submissions)

**Question 3** introduced another new topic, namely Step 8 in the Preliminary Reading, **REACHING A CONCLUSION** (that is, making a judgement about whether the public benefits outweigh the public detriments). It was explained that this:

1. would NOT involve the addition of numerical weights,
2. would involve reasoning and explaining,
3. might result in no clear result (where the benefits are of similar importance to the detriments), and
4. must demonstrate that the conclusion was reached without the inclusion of exclusively private interests.

Comments were received from all 8 of the respondents in this round:

- R7    1. Numerical weighting can sometimes have value for decision making.  
      2. Agree  
      3. Maybe but aspects of the "importance" descriptions could be given varying ratings, depending on the particular circumstance, if a decision has to be reached.  
      4..Agree
- R12   Concerned that judgement may be subjective, inconsistent and open to challenge and appeal.
- R1    I believe this approach is valid.
- R6    Yes. *This respondent requested by email that the researcher add the following:* The survey today has highlighted that a distinction can be drawn between private interest (profitability) and the public interest (economic development). The public interest happens when profit flows on to economic development. It is the public interest to establish a regime that allows this to happen.
- R8    Yes, except that in point 4, I believe that "without" should be "with" if one wants to truly inclusive of all views!
- R13   Yes. By this stage, there should be sufficient information, both qualitative, and 'descriptive quantitative' to see where the majority views lie. Of course,



the process cannot guarantee there will be a clear result one way or the other.

R9 YES

R5 Yes though with respect to 3 (*no clear result*) a subjective decision still needs to be made on the balance and justified.

**Question 4** invited **ANY OTHER QUESTIONS OR COMMENTS**. 3 responses were received:

R8 Nope!

R13 Are there any plans to 'force' participants to continue until they achieve a result - if the initial outcome is 50/50? It seems as though such a process might be more attractive if it contained a means of resolving a deadlock. Just a thought...but probably a can of worms into the bargain!

R5 Wish you all the best in finishing your PhD and commend you for tackling such a challenging and important topic. Would welcome any further information and thoughts on potential applicability to Qld/broader government policy implementation.

**End of Round 3**

## Round 4

Round 4 addressed the 'live' threads from the earlier rounds, and also introduced three new matters. In each case a statement or question was provided and a number of 'arguments' were listed. Some of these arguments had been provided by respondents in earlier rounds, some were arguments favoured by the researcher, and some were arguments with which the researcher disagreed. The participants were asked to select all of those arguments that they agreed with and were invited to add any other argument.

**Question 1** canvassed the matter of **EXCLUDING PRIVATE INTERESTS** that do not pass the Wood-Robinson test and reported the concerns expressed by R8 in response to Round 3 Questions 1 and 3. The introduction explained, "At least one participant is unhappy that the procedure excludes private interests (if they don't require protection in the public interest). That person argues that "the cumulative effect of private interests can be argued to be public in nature" and the determination of the public interest "should be inclusive of all views"."

**Appendix 15 Table 3: Responses to Round 4 Question 1**

Argument	Number who agreed
Private interests will be considered at a later stage in the assessment process when the public interest is balanced against private interests.	2 of 9
Many assessment criteria include private interests, and it is important to have one (namely the public interest) which does not.	4 of 9
To be a public interest it must be a shared interest. There is an inescapable collective dimension.	8 of 9
It is the nature of the interest rather than the number of people who have the interest that is important - we all have a private interest in winning the lottery, but that does not make it a public interest.	5 of 9
The procedure is wrong - everyone is a member of the public and so everyone's interests are public interests.	0 of 9
The procedure is wrong - if the majority of the relevant public share an interest then it becomes a public interest.	0 of 9
The procedure is wrong - it would be political suicide to exclude the interests of some members of the local public.	0 of 9

2 comments were received:

R13 A comment: Perhaps the unhappy participant misunderstood the question!  
The 'procedure is wrong' bullets are crazy!

R6 The idea that the public interest is "balanced" against private interests needs heavy qualification. Public decision-makers are responsible only for protecting the public interest. By definition, people look after their own private interests. As we have seen, it is in the public interest is for people to be able to pursue their private interest in peace and security, but as soon as the interest ceases to be a collective one then it is private. The implication in some of the options above that a large number of private interests could override or outweigh a simple public interest is dangerous ground. Also, some of the above are quite wrong, notably the 5th and 7th. Numbers aren't the test, it is the collectivity that is the criterion.

**Question 2** addressed the **CLASSIFICATION OF INTERESTS AS PUBLIC OR PRIVATE** and used R8's earlier comment (reported in the results for Round 2 Question 5 above). "One participant was surprised by the responses in Round 2. "If a property owner's access to sunlight is a private interest that needs protection in the public interest, then surely ... the same owner's view is in the same category". And, "if it is in the public interest for there to be a regime that allows private businesses to generate profit, then that should apply regardless of whether they are a major local employer or not. ... Size does not change the nature of the public/private distinction".

The list of arguments and the number of respondents who selected each argument are shown in the table below:



**Appendix 15 Table 4: Responses to Round 4 Question 2**

Argument	Number of respondents who agreed
There is a difference between access to sunlight (a health issue) and having a view (a luxury).	6 of 9
The difference is in the public importance of the issue as (to quote the judge in the Wood-Robinson case) "overshadowing ... is far more likely to be ... resisted in the public interest than interference with a view".	3 of 9
What is important is the impact on the whole community - a few workers being displaced will not have as much impact on the collective wellbeing of the community as will most of the working population being displaced.	5 of 9
The public benefits when business profit flows on to become economic development. Therefore the profitability of all businesses should be protected in the public interest.	0 of 9
There may be an occasion to protect private property values in the public interest: for example to stabilise a market, to provide a higher value rates base to increase council income and therefore support public infrastructure and services.	4 of 9
The criticism is correct - there is no difference between sunlight and views, or between small and large businesses.	2 of 9

3 comments were received:

- R7 The whole community is impacted over time by the cumulative effect of decisions. Protection of views is important for all those enjoying them. View sharing in some locations is vital for community cohesion.
- R6 Sunlight and views are both attributes of property. It is in the public interest that people have peaceable enjoyment of their property without its attributes being eroded by neighbours' actions. This is part of the common law that goes back for six centuries. The only difference is that views are slightly more subjective and less measurable but even that is a fairly thin argument to make. Another way to look at it is that under common law, a person is entitled to peaceable enjoyment. The common law does not however protect the environment for its own sake. Under common law, a person may destroy the plants and animals on their property if it suits them. Where do

views and sunlight fit? They are clearly attributes that a human landholder is entitled to enjoy rather than attributes internal to the property that are under the control of the landholder. Turning now to the size of business question, the test that we saw in the previous question of collectivity is useful here. It is in the public interest for there to be a profitable business sector, but that does not translate into profitability of ALL businesses or even ANY business. The potential profitability of the business sector is a matter of public interest, the profitability of all businesses is not.

R11 I think perhaps in just focussing as we have on the discussion of public interests, the bigger picture of the remainder of the development assessment has been forgotten, ie all the remainder of the assessment that considers those private interests.

**Question 3** introduced a topic that was new to the group, namely **CLASSIFYING AN IMPACT AS A BENEFIT OR DETRIMENT**. The introduction used R6's response to Round 2 Question 5. "One participant noted that traditionally, regional economic growth has been viewed as a public benefit, but in recent times it has become apparent that modern industrial society has exceeded the capacity of the Earth to provide resources and assimilate waste. Therefore, in its present form, economic growth might be a public detriment. The same could be said about population growth. How should the procedure handle this?"

The list of arguments and the number of respondents who selected each argument are shown in the table below:

**Appendix 15 Table 5: Responses to Round 4 Question 3**

Argument	Number of respondents who agreed
When a change is likely to have both positive and negative effects it should be broken down into its parts, for example, "the benefits of population growth such as increased range of services that can be supported" and "the detriments of population growth such as increased congestion and strain on infrastructure".	8 of 9
Where a change is likely to have both positive and negative effects it should be classified as either a benefit or a detriment, whichever is the larger.	1 of 9

4 comments were received:

R7 The likely cumulative effects of various levels of population growth should be articulated

R6 I think the second option commits the utilitarian fallacy that you can weigh up these things in some kind of rational or mathematical manner. The best way to approach some of these complex public policy questions is to seek to establish what is the public interest. To discover this is not always easy, as seen these two examples, and we elect politicians and appoint public servants to work through such issues on our behalf. Because such issues change with time and in any case are very complex, one cannot be prescriptive about the public interest. Put in other words, it is a mistake to think that there is a public interest which can be discerned by balancing benefits and costs. Rather the public interest is the holy grail or standard to which policy-makers and decision-makers strive as they conduct analysis. This should be a process of enquiry and analysis with the public interest as the guiding star rather than a calculus with the public interest as a clinical outcome at a point in time.

R11 *(After selecting the first option above)* Hmm, an interesting point - not one we are likely to see in the legislation in a hurry though! Would be great if it was. Almost requires a whole new set of evaluation tools though.

R9 Consumption needs to be factored into the equation.



**Question 4** dealt with the concern that **QUALITATIVE JUDGEMENTS ARE SUBJECTIVE** raised by R12 in Round 3 Question 3. “The proposed procedure suggests the use of qualitative descriptions of importance and a conclusion based on reasoning rather than calculation. One participant expressed concern that the final conclusion “may be subjective, inconsistent and open to challenge and appeal””.

**Appendix 15 Table 6: Responses to Round 4 Question 4**

Argument	Number of respondents who agreed
The substantive content of the public interest is only ever a matter of subjective opinion. There is no objective truth about what it is. The procedure should reflect that.	4 of 9
Any procedure, even one that uses checklists and scores, can be criticised for being subjective in the way it is constructed and used.	7 of 9
It is true that any conclusion will be open to challenge. The procedure provides a framework for such challenges, for example if detriments have been overlooked. It also provides a defensible process that would help in responding to challenges.	9 of 9
An understanding of what best serves the public interest will be enhanced by public debate, which in turn will be enhanced if those individuals and organisations who make statements about the public interest explain how they reached their conclusions.	8 of 9
I share the concern about subjectivity. There must be another, less subjective way to determine the public interest.	1 of 9
I share the concern about inconsistency. Wouldn't it be better to say that all similar cases should be treated the same way?	0 of 9

2 comments were provided by respondents:

R13 Comment: Even quantitative procedures have 'qualitative' assumptions and values behind them. A quantitative judgement is no less subjective, in most respects, than a qualitative one. In many senses, it can be more subjective, as it gives a false sense of reliability - whereas it is often based on very limited value judgements about how to frame questions, what information to give to support people answering them, and the ordinal system provided for people to respond.

R6 I don't agree with the relativist, postmodern nature of the first option. However, I accept that there is a fine line between a relativist position and the view that one can't be rigidly prescriptive about the public interest. The language I would choose is that the public interest as a matter of judgement. There are rules, there are absolutes, there are time-honoured traditions of ethics and social justice and there are certainly scientific standards of environmental management. But weighing all of these with appropriate levels of significance is a matter of informed judgement. The benefit of the matrix process that you outlined last week is not its quantitative nature but the process that it obliges the analyst to follow: a process of enquiry and evaluation.

**Question 5** introduced the concern expressed by R13 at the end of Round 3 about **BREAKING A DEADLOCK**, and asked, "What do you do if you end up with a result that is tied, where the importance of the benefits equals the importance of the detriments?"

**Appendix 15 Table 7: Responses to Round 4 Question 5**

Argument	Number of respondents who agreed
Require the individual or panel to continue to add (less significant) impacts until it is clear that the proposal is or isn't in the public interest.	2 of 9
Modify, or put conditions on the proposal to increase the benefits or decrease the detriments.	4 of 9
Conclude that the proposal is borderline.	4 of 9

2 comments were received:

R13 A comment: A deadlock is an unwelcome outcome that cannot be predicted. The panel should do all possible to resolve the issue, by undertaking (1) above. A borderline outcome that leads to an arbitrary selection of one option over another will not enhance the credibility of the process. For that reason, I suggested in the previous round that there should be some way of breaking the deadlock, otherwise everyone will be unhappy. (1) above, is the only fair way to attempt to do this.

R6 The question is framed in utilitarian language but overlooking that, many or most government decisions present a choice between unsatisfactory alternatives and it is a matter of judgement as to which should be selected. This answer I know is not very helpful. The best that can be achieved is for the decision-maker to do their homework, consult technical experts, consult the community as widely as possible or reasonable, and to accept the result of that process as the best that human cognition can achieve at this point of time.

**Question 6** sought the participants' **OVERALL OPINION OF THE PROCEDURE.**

The list of arguments and the number of respondents who selected each argument are shown in the table below:



**Appendix 15 Table 8: Responses to Round 4 Question 6**

Argument	Number of respondents who agreed
I want to start using it now.	1 of 9
I want to wait until the procedure is fully documented before I apply any of the ideas.	7 of 9
The procedure would not be acceptable in my work environment.	1 of 9
The procedure might be acceptable in my work environment.	5 of 9
I would not want to use this procedure.	0 of 9
The procedure is too complicated for general use.	1 of 9
The procedure omits important steps.	0 of 9
The procedure requires the user to reveal too much about the values behind the decision.	0 of 9
The procedure produces the wrong result.	0 of 9

3 comments were received:

R13 As with any evaluation process (qual or quant) its ultimate worth will depend on the quality of the inputs. Also, from many of the responses, the entire idea of public interest appears to be somewhat vexed, and people just have to get used to the idea that people's individual, private interests do not belong as part of the evaluation of the public (ie. the greater) good! I guess the difficulty with that is determining what private interests, together, represent a public good, such as protection of land values. But to equate protecting sunlight with views, well that's just symptomatic of some of the thinking that proves this will be a valuable tool. But it will require that much-dreaded 'paradigm' shift in planning and development thinking. !

R6 The procedure should be written up as a pithy guideline and made widely available. Although I take issue with some of the mathematical language, which seems to verge towards the intellectually barren economic metric of weighing benefits and costs, I think a reasonably prescriptive checklist needs to be provided for decision-makers. It should be accompanied by some notes, which explain the philosophical underpinnings and the

weaknesses of the market-based and Gallup poll-based conceptions of the public interest.

- R11 There was a very interesting debate at the Writer's Festival on freedom of information and the public right to know which got into this debate. Qualitative evaluations benefit greatly from the use of frameworks and this would be a great tool to add to the collection.

#### **End of Round 4**

## APPENDIX 16

### GLOSSARY

Terms are used in this thesis as defined here, unless otherwise indicated in the text. Where no source is quoted, the definition is that which best describes the usage made of the term in this thesis.

Altruism *n.* – behaviour that takes account of the interests of others, usually treated as in opposition to egoism, selfishness and individualism (Oxford Dictionary of Sociology).

Benefit *n.* – anything that is for the good of a person or thing. Antonym: 'detriment'.

Balancing test *n.* – a process to identify, weight and balance conflicting decision considerations to determine the optimum balance among those considerations.

Collective interest – see 'common interest'

Common interest *n.* – an interest of all or most of the population, whether or not they are aware of that interest. For example, "The survival of crop-pollinating insects is a matter of common interest because our food supply depends on it". Synonym: 'collective interest'.

Community *n.* – the web of personal relationships, group networks, traditions and patterns of behaviour that develop against the backdrop of the physical neighbourhood and its socio-economic situation (Flecknoe & McLellan 1994, 8; cited by Warburton 1998, p15).

Concept of the public interest *n.* – (as distinct from the substantive content of the public interest) is the meaning assigned to the term 'public interest', and the associated process that could be used to operationalize the term.

Consensus *n.* – general agreement or concord.

Detriment *n.* – anything that that causes loss, damage, or injury to a person or thing. Antonym: 'benefit'.



Discourse *n.* – an extended interactive communication dealing with some particular topic. The interactive aspect is central, as the term comes from the Latin word '*discursus*', meaning 'running to and fro, or 'conversation' (Oxford English Dictionary online). The different patterns that exist on the same topic are sometimes referred to as 'discourses' on that topic (Barry & Proops 1999; Webler *et al.* 2001), as 'perspectives' (Focht & Lawler 2000; Mattson *et al.* 2006) or as 'frames' (Dayton 2000). The term 'discourses' is used in this research.

Expert *n.* – a person who has special skill or knowledge in some particular field; a specialist; an authority.

Interest *n.* – involvement or 'stake' holding. A person's interest in a matter arises from the possibility that the matter will affect their 'stake'. Part of this might be a private interest, which arises from their private circumstances (such as their job, investments or affiliations) and part might be a public interest, which they share with other members of the general public regardless of their private circumstances.

Modus vivendi *n.* – an agreement between those who differ, which bypasses areas of difficulty for the sake of a contingency.

Moral values *n.* – ideas and beliefs that inform judgements about the distinction between right and wrong.

Objective *adj.* –

1. belonging to the object of thought rather than to the thinking subject (Macquarie Dictionary) as in – 'an objective point of view assigns interests to members of the public';
2. based in fact, independent of opinion, as in – 'Claims about the public interest might be informed by objective facts, but the trade-offs between public interest considerations will inevitably be subjective'.

Operational meaning of the public interest *n.* – the meaning that is derived from understanding the process by which a statement about the public interest was arrived at; a set of operating procedures.

Planning *n.* – a practice involving the identification of outcomes and the means of achieving them; Spatial planning – the practice of identifying spatial arrangements that are in the social interests of the community at large, and the means of achieving them

Pluralism *n.* – philosophy, theory or system that recognises more than one part, source or value.

Plural interests *n.* – non-aligning interests of different groups or individuals.

Private *adj.* – belonging to some particular person or persons; belonging to oneself; being one's own; as in 'private property'.

Private interest *n.* – the interest of an individual or group that arises from their private circumstances.

Public *adj.* –

1. of, relating to, or affecting the people as a whole or the community, state, or nation; as in 'public affairs';
2. done, made, or acting for the people or community as a whole; as in 'a public official'.

(The) public *n.* – a group of people having an interest in common that is public in nature, rather than being of a private nature (for example, this would include the users of a public facility, but not those employed to maintain that same facility).

Public good *n.* – a publicly owned facility (such as a lighthouse), a community service (such as a fire brigade) or the condition of a common-property resource (such as ecosystem integrity) (Dryzek 1990, p98).

(A) public interest *n.* – one of the many interests shared by the general public.

(The) public interest *n.* –

1. the stake that the general public has in a matter, as distinct from the private interests that individuals have in that same matter;
2. the best balance of multiple public interests with respect to a matter in a particular time and place.

Public interest test *n.* – A set of criteria against which an action or decision is judged to determine whether or not it serves the public interest.

Right *n.* – that which is due to anyone by just claim (Macquarie Dictionary, 2005).

Rule *n.* – command to act or not act in certain ways; often involving classifications of people and situations that determine permissions and entitlements (Stone 2002, p262).

Subjective *adj.* –

1. belonging to the thinking subject (Macquarie Dictionary) as in – ‘a subjective point to view is the view of the person who has the interest’;
2. based in opinion, as in – ‘Claims about the public interest might be informed by objective facts, but the trade-offs between public interest considerations will inevitably be subjective’.

Substantive content of the public interest *n.* – (as distinct from the concept of the public interest) the practices and policies that serve the public interest. Flathman (1966) calls this the ‘descriptive meaning of the public interest’.

Trade-off *n.* – the act of relinquishing all or some of one benefit or advantage in favour of another that is regarded as more desirable (or agreeing to accept some detriments in order to avoid other detriments that are regarded as less desirable).

Transparency *n.* – (of a government or other organisation) the policy or practice of making all operations clearly manifest, and of being accountable to the public for all such operations (Macquarie Dictionary, 2005).

Unitary *adj.* – relating to, characterised by, or based on unity (Macquarie Dictionary, 2005) and consensus.