THE RESOURCE MANAGEMENT ACT:

NOW AND IN THE FUTURE

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Overview

Of all OECD countries, New Zealand is the most dependent on its environment for the living it earns in the world economy. Our primary and tourism sectors account for some 80% of our foreign exchange earnings; and they account, directly and indirectly, for about one-third of GDP.

And beyond those sectors, the environment has a wider impact on the wealth of the nation. A high quality environment is part of the pitch to overseas customers by the education, creative, manufacturing and other sectors. Above all, it is an intrinsic part of the national brand and a factor in attracting immigrants and retaining residents.

Of all New Zealand laws, the Resource Management Act has the widest and deepest impact on the interaction between the environment and the economy. This paper examines how that relationship has worked over the first 16 years of the Act's life and how it might work in the future. It seeks to shed light on three main questions:

1. How effectively has the RMA met its goal of enabling economic development in an environmentally sustainable way?

2. How efficiently does the RMA work in terms of the time, effort and costs needed to meet its requirements?

3. How might the RMA need to be changed to meet future economic and environmental demands?

The paper's conclusions, in brief summary, are:

1. The effectiveness of the RMA is patchy. In rural areas it can cope with allocation and management of relatively abundant resources. But it cannot cope well when resources, particularly water, are fully allocated. Nor can it cope with cumulative effects. So, for example, the first few consents in an area for subdivisions or water abstraction have minimal effect on the environment. But multiple consents over time can eventually have a cumulative impact. Yet, under the RMA it is not easy for councils to declare a halt to further consents. And in urban areas, the RMA works well for small, local consents. But it is inadequate for dealing with wide area, long-term and strategic issues of urban development.

2. The efficiency of the RMA has increased, particularly in the past six or so years; and there may be more gains to come from the 2005 amendments. These, for example, put in place mechanisms to upskill council staff and for councils to share knowledge. But some 20 councils were still considered to be under-performing, judged by the results of the latest biennial survey by the Ministry for the Environment. And there are still complaints by consent applicants about variable quality of staff, decisions and timeliness. The continuing lack of national policy statements and environmental standards are widely considered detrimental to the Act's administration.

3. The future of the RMA is highly uncertain. Almost all the development effort that has gone into it has focused on improving process rather than refining purpose. Thus, administration of the Act might have become more efficient but the legislation has failed to respond to greater pressures on the environment from, for example, the intensification of some economic activities or greater demands from

the public for higher standards and more certain sustainability. The Government could help significantly by developing National Policy Statements and National Environmental Standards. But it has been dilatory to say the least.

In particular, public opinion has shifted rapidly in the past year here and abroad to strong support for action on climate change and other sustainability issues. Here, these trends are tracked by the continuous online poll run by the New Zealand Business Council for Sustainable Development.[1] Among recent findings, respondents offered these levels of support for the following views:

- 77% : Climate change is a current problem
- 89% : Managing the waste going to landfills problem now
- 86% : Managing New Zealand's energy needs & sources problem now
- 56% : Emitters should pay
- 66% : All sectors over time must be part of a system to limit & trade emissions

Overseas, heightened consumer demands on environmental issues are triggering some dramatic strategic responses from supermarket chains. For example in the UK, Tesco has launched a programme to calculate and publicise the carbon footprint of all the products it sells and Marks & Spencer has declared its intention of becoming carbon neutral for all its products.

Taken together, these three broad conclusions suggest the RMA, in its current form, will serve New Zealand poorly as we respond to this two-fold challenge of escalating environmental pressures and rising public demands. These challenges are likely to become acute quite rapidly across many sectors.

Agriculture

There are currently two broad views on the sector's future over the next decade. One holds that the world is entering a new 'golden age' for commodities because supply is failing to keep up with fast-rising consumer demand in countries such as China and India. For example, world prices for milk powder have doubled over the past two years and are likely to remain high because of short supply.

One advocate of this view is Cameron Bagrie, chief economist of ANZ National Bank. He told a recent Agricultural Productivity Conference that terms of trade had already improved by six percentage points in the past six months because of rising export prices and falling import prices, equating to a one percentage point rise in GDP. [2]

The second view holds that New Zealand will only reap some of the rewards from this boom because it will face growing competition from developing countries. For example, the OECD forecasts skim milk production will fall 12% in developed countries between 2005 and 2015 but rise 32% in non-OECD countries. Whole milk powder production will be up 7% in OECD members but up 37% in other countries. By 2009, production from non-OECD countries will have overtaken that of OECD members.

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[1] NZ Business Council for Sustainable Development, https://www.shapenz.org.nz/shapenz

[2] Cameron Bagrie, presentation to the May 8, 2007, Agricultural Productivity Seminar in Wellington organised by the NZ Institute of Agricultural and Horticultural Science and the Royal Society.

Seeking to remain competitive, New Zealand farmers will essentially have a choice of two strategies: remaining commodity producers by driving productivity far harder by, for example, increasing stock and fertiliser intensity per hectare; or becoming producers of higher value, more customised dairy, meat and other products.

AgResearch believes it can develop technology that will help farmers with both strategies while at the same time reducing greenhouse gas emissions and other environmental impact of farming practices. As a result, the dairy, meat and wool sectors can double the value of their output by 2020, Dr Andrew West, chief executive of AgResearch, told the recent Agricultural Productivity Conference.[3]

With such growth forecast for agriculture, the environmental pressures will certainly rise. Moreover, urban residents here and consumers abroad will be raising the environmental, food safety and quality standards by which they require farmers to produce. Farmers will have to achieve these if they want to continue to "receive permission" from urban dwellers to operate says John Penno, chief executive of Synlait, a major South Island corporate dairy farmer.

These new demands on New Zealand farmers are coming at a difficult time for them. They have been struggling for some years with these competitive pressures abroad and financial pressures at home. For example, dairy farmers' two largest capital costs -- land and Fonterra shares – have grown quickly in recent years.

The cost of land has risen 15% per year since 2000 to a national average of around $20,000 per hectare. And Fonterra's share price has risen 50% from $3.85 for the 2002/03 season to $5.80 for this season. But dairy farmers' economic surplus has plateaued at around $1,000 per ha over the same period and Fonterra'a payout has been around the $4 kg/milksolids although a higher payout is forecast for this season and next.

Farmers have responded by already intensifying their practices which in turn have had negative environmental effects. The number of cows increased by 34% between 1994 and 2002 while the land area used for dairying grew by just 12%. Synthetic fertiliser use across all sectors grew by 21% between 1994 and 2002, while the use of urea fertilisers soared by 160%.

"There is strong evidence our waterways and lakes are becoming nutrient enriched and degraded from nitrogen, animal faecal matter, and eroded sediment. Many of our key export markets in Europe and Asia will not want products sourced from farms that are polluting the environment," Dr Morgan Williams, the Parliamentary Commissioner for the Environment, concluded in his 2004 study "Growing for Good."[4]

"On every resource front – land, water, labour and capital – food and beverage production is pushing up against volume constraints," the Food & Beverage Taskforce, an industry-government strategic collaboration, said in its report last year. "Environmental standards are limiting the type and form of land and water use in some parts of the country."

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[3] Dr Andrew West, presentation to the May 8, 2007, Agricultural Productivity Seminar in Wellington organised by the NZ Institute of Agricultural and Horticultural Science and the Royal Society.

[4] The Parliamentary Commissioner for the Environment, "Growing for Good," 2004, www.pce.govt.nz

Other segments of the primary sector

Environmental challenges vary widely across segments. For example, steadily declining fishing quotas and growing consumer demand overseas suggest that aquaculture might have new opportunities in fish farming. In an effort to improve the legislative framework to help new projects win consents, Aquaculture Management Areas were introduced in the 2003 amendments to the RMA. But so far not a single AMA has been created.

In horticulture, growers have had to relentlessly pursue quality gains and new varieties in order to continue to compete against lower cost producers elsewhere. Zespri has achieved this with orchard productivity gains, almost total elimination of chemical sprays and the introduction of gold kiwifruit. But the biggest value gains have come from creating and building up its brand, marketing skills and supply chain competence. These enable it to earn a premium of 30% to 100% over non-branded kiwifruit from other countries. High environmental standards and identification with New Zealand are key attributes of the brand.

Forestry faces some major strategic challenges. Although log prices have soared over the past two years, the sector still struggles to move radiata pine further up the value chain into processed, branded and differentiated products. As a result, the sector suffers from highly cyclical prices and profitability, a large overhang of forests coming up to harvesting age and an inability to attract investment to downstream processing.

The sector hopes to boost its revenues by selling credits for the carbon its trees sequester. Three big problems arise, though: it is locked in bitter and unresolved negotiations with the government over Kyoto credits and deforestation charges; its level of new plantings has dropped precipitously because of its row with the government and, until recently, poor product prices; and the sector has a lot to learn yet about the planting, management and trading of permanent forest sinks.

Tourism

After brisk growth in the early years of this decade, the number of international tourists attracted to New Zealand has slowed in recent years. It seems some tourists from our large, high-spending markets such as North America, the UK, Germany and Japan that might have chosen to come here have ended up going to other destinations.

At the same time, travellers' environmental sensitivities are on the rise. Over the past year, for example, two highly influential publishers of travel guides – Mark Ellingham and Tony Wheeler, founders respectively of the *Rough Guides* and *Lonely Planet* guides – have urged people to travel less but stay longer to minimise the environmental impact of flying.

Tony Wheeler went much further in recent comments. He said airlines were pushing an addiction, "binge flying," in much the same way tobacco companies push their products. He advocated a £100 ($270) tax on roundtrip flights within Europe and £250 ($800) to destinations outside Europe.

The European Union is planning to introduce in 2012 carbon charges on flights within European airspace, including that portion of flights from further afield. New Zealand is vulnerable to such shifts in political and traveller attitudes because of its dependence on airline connections. We are the seventh heaviest user of air travel in the world measured by number of departures per 10,000 of population, according to a UK/US academic study.[5]

Responding to such factors, the NZ tourism industry has pledged to increase its efforts on environmental issues in its mid-term revision of its 10-year strategy out to 2015, released recently.[6]

Some tourism operators are already taking steps. For example, InterCity Group, a bus, coach and tour boat operator, said recently it would become a carbon neutral company by 2010. Towards that goal it has already been investing in recent years in tour buses that meet the highest level of European emission standards.

And a rising number of lodging, tour and other operators are putting their facilities through environmental and sustainability reporting programmes such as Green Globe.

As tourism numbers and sensitivities grow, the sector will be seeking more effective ways for handling these environmental pressures through regulatory and market mechanisms. It needs to do so to ensure that tourists get as good an experience as New Zealand's reputation and marketing lead them to believe they will.

Urban life

In recent years Auckland has ranked fifth and Wellington 12th in the annual global quality of city life rankings by Mercer, a US consultancy.

But Auckland, more than Wellington, faces a challenge. Fast population growth over the past decade has strained infrastructure, boosted house prices and reduced the quality of life in the Auckland region. Addressing such issues goes right to the heart of the long-term strategies of the region's councils for obvious economic and social reasons.

Auckland's ambition to become a truly international metropolis depends in part on maintaining the quality of life, which in turn requires bold vision, sound strategies, good regulatory processes and citizen commitment. Clearly, the RMA is a critical tool to help achieve those goals, which in turn will then help attract migrants, and help keep existing residents here. On present forecasts, the region could have a population of around 2m by 2050, a 65% rise from current levels, suggesting the challenges will be formidable.

[5] SASI Group, University of Sheffield, and Mark Newman, University of Michigan, 2006.
[6] www.nztourismstrategy.com

The Brand State

Increasingly in the crowded global market place, countries are becoming powerful brands, argues Peter Van Ham of the Netherlands Institute of International Relations.

The likes of "Singapore and Ireland are no longer merely countries one finds in an atlas. They have become 'brand states', with geographical and political settings that seem trivial compared to the emotional resonance among an increasingly global audience of consumers. Brand states will compete not only among themselves but also with superbrands such as the EU, CNN, Microsoft and the Roman Catholic Church (boasting the oldest and most recognised logo in the world, the crucifix). In this crowded arena, states that lack the relevant brand equity will not survive."[7]

New Zealand is widely considered a successful builder of its national brand, not just in tourism but increasingly in other sectors such as the primary sector and the creative industries. It has used that branding well, for example, to leverage tiny tourism advertising budgets into effective campaigns in North America and Europe. At the outset, the “100% Pure” theme was conveyed mainly by images of an unspoilt land. But in later years the message has been broadened to include theme such as 100% adrenalin and other facets of the tourist experience.

Nonetheless, high environmental standards are the absolutely core value of the national brand. Therefore, if New Zealand fails to deliver on that because of inadequate legal and regulatory frameworks and business practices it will suffer serious damage to its reputation and ability to earn part of its living in the global economy.

An unresolved conflict

In years to come, the New Zealand economy might have developed to the point that all businesses could earn a high premium for their products or services because of the country’s high environmental standards and intrinsic ecological values.

Until then, though, there is clearly a continuing conflict between those companies for whom high environmental standards are a benefit to capitalise on and those for whom the standards are a cost to minimise.

This tension within the business community finds wider expression at the political level in the debate between advocates of individual property rights and advocates of community responsibilities.

Despite all the improvements made to the RMA in the first 16 years of its life, this unresolved conflict lies at the heart of the legislation. Successive governments have fudged the issue, by accident or by design, in two main ways. They have failed to produce strong guidance in the form of National Policy Statements and National Emission Standards; and they have failed to adequately fund the likes of the Environment Court and programmes to ensure higher, more consistent skills within councils.

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[7] Peter van Ham, “The Rise of the Brand State”, *Foreign Affairs*, September/October 2001 edition, Council on Foreign Relations, New York City.

In recent years, the current government has worked on the latter short-coming of resources. But NPSs and NESs remain as elusive as ever.

The impact of these failures was described in a March 2002 article in the Resource Management Journal. Its authors were Professor Ali Memon of Lincoln University's Environmental Management and Design Division, and Peter Skelton, a former Environment Court judge who became an associate professor of resource management law at Lincoln.[8]

They said that Section 5 of the Act, which set out its purposes, has been highly debated and difficult to apply because of lack of clarity as to what sustainability means. This has resulted in a "policy and political lacuna" which has left the courts to decide what it means.

Prof. Memon and Mr Skelton identified two main issues. First, they argued, the Act gave no primacy to bio-physical effects but embraced instead a broad 'integrated' approach in which ecological, economic, social and cultural values are given equal consideration. Second, they claimed that court decisions have backed this approach of basing decisions on an 'overall judgment'.

Simon Upton, the politician who shepherded the RMA through Parliament in 1991, responded in an article he wrote with two colleagues, Helen Atkins and Gerard Willis.[9] They rejected the conclusion by Prof. Memon and Mr Skelton that the Bill had been affected by 'pressure' from the Minister and his officials to adopt a narrower reading of the section.

But, the Upton article said Memon & Skelton were correct in saying the court had changed the intent of Parliament. "In confirming that it over-rode common law property rights to those resources, the judge [Mr Skelton] describes a far-reaching statute that has little in common with 'neo-liberal' theories (which, as we understand them, centre on dispute resolution through private negotiations and common law remedies). The question to be settled – by Parliament if it is not to abdicate its role to the courts – is how far that assertion of regulatory authority should extend. In our view, the understanding of that matter has changed since the Resource Management's enactment in 1991 and recommends itself for serious review."

There is widespread support in the business community for the Upton view of the need to restore the place of property rights in the RMA. For example, the Employers and Manufacturers Association (Northern) argued in its submission on the 2005 amendments that the legislation needed to get back to its core property right and common law principles. Activities should be allowed as long as they met environmental sustainability bottom lines. But this submission departed from Upton's approach by arguing that, rather than making decisions based on the 'overall judgment', more recognition needed to be given to the economic and social benefit of development. Upton had sought to exclude economic and social issues from the ambit of the Act and this approach has recently been supported in the National Party's recently released Bluegreen Vision document.

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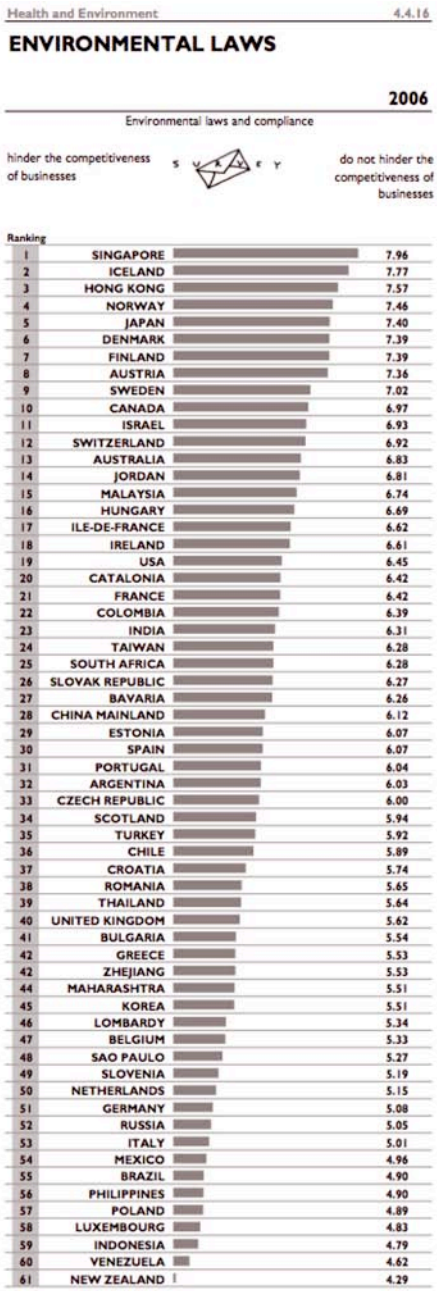
[8] Peter Skelton and Ali Memon, "Adopting Sustainability as an Overarching Environmental Policy," Resource Management Law Journal, Volume X, Issue 1, March 2002.

[9] Simon Upton, Helen Atkins and Gerard Willis, "Section 5 re-visited: a critique of Skelton and Memon's analysis," http://www.arcadia.co.nz/rm/section5.htm

The most vociferous lobbyist for property rights is Federated Farmers, as described in a later section of this paper.

This continuing conflict in New Zealand is in sharp contrast to the consensus approach to environmental issues in, for example, Nordic countries. The difference in business attitudes shows up in studies such as the annual World Competitiveness report by IMD, the Swiss business school.

One question IMD asks in a comprehensive survey of business leaders each year in some 60 countries is how environmental laws and regulations impact competitiveness. Nordic executives see them as a strong positive and New Zealand executives rank them as a strong negative. Similarly, New Zealand companies self-rank themselves low on sustainability.[10]



Health and Environment 4.4.16

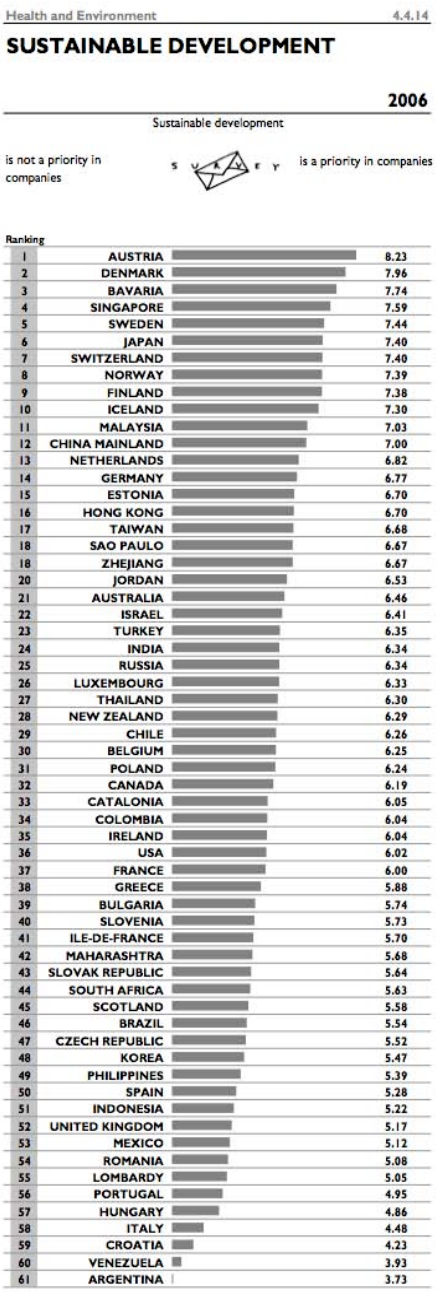
ENVIRONMENTAL LAWS

2006

Environmental laws and compliance

hinder the competitiveness of businesses — SURVEY — do not hinder the competitiveness of businesses

Ranking		
1	SINGAPORE	7.96
2	ICELAND	7.77
3	HONG KONG	7.57
4	NORWAY	7.46
5	JAPAN	7.40
6	DENMARK	7.39
7	FINLAND	7.39
8	AUSTRIA	7.36
9	SWEDEN	7.02
10	CANADA	6.97
11	ISRAEL	6.93
12	SWITZERLAND	6.92
13	AUSTRALIA	6.83
14	JORDAN	6.81
15	MALAYSIA	6.74
16	HUNGARY	6.69
17	ILE-DE-FRANCE	6.62
18	IRELAND	6.61
19	USA	6.45
20	CATALONIA	6.42
21	FRANCE	6.42
22	COLOMBIA	6.39
23	INDIA	6.31
24	TAIWAN	6.28
25	SOUTH AFRICA	6.28
26	SLOVAK REPUBLIC	6.27
27	BAVARIA	6.26
28	CHINA MAINLAND	6.12
29	ESTONIA	6.07
30	SPAIN	6.07
31	PORTUGAL	6.04
32	ARGENTINA	6.03
33	CZECH REPUBLIC	6.00
34	SCOTLAND	5.94
35	TURKEY	5.92
36	CHILE	5.89
37	CROATIA	5.74
38	ROMANIA	5.65
39	THAILAND	5.64
40	UNITED KINGDOM	5.62
41	BULGARIA	5.54
42	GREECE	5.53
42	ZHEJIANG	5.53
44	MAHARASHTRA	5.51
45	KOREA	5.51
46	LOMBARDY	5.34
47	BELGIUM	5.33
48	SAO PAULO	5.27
49	SLOVENIA	5.19
50	NETHERLANDS	5.15
51	GERMANY	5.08
52	RUSSIA	5.05
53	ITALY	5.01
54	MEXICO	4.96
55	BRAZIL	4.90
56	PHILIPPINES	4.90
57	POLAND	4.89
58	LUXEMBOURG	4.83
59	INDONESIA	4.79
60	VENEZUELA	4.62
61	NEW ZEALAND	4.29



Health and Environment 4.4.14

SUSTAINABLE DEVELOPMENT

2006

Sustainable development

is not a priority in companies — SURVEY — is a priority in companies

Ranking		
1	AUSTRIA	8.23
2	DENMARK	7.96
3	BAVARIA	7.74
4	SINGAPORE	7.59
5	SWEDEN	7.44
6	JAPAN	7.40
7	SWITZERLAND	7.40
8	NORWAY	7.39
9	FINLAND	7.38
10	ICELAND	7.30
11	MALAYSIA	7.03
12	CHINA MAINLAND	7.00
13	NETHERLANDS	6.82
14	GERMANY	6.77
15	ESTONIA	6.70
16	HONG KONG	6.70
17	TAIWAN	6.68
18	SAO PAULO	6.67
18	ZHEJIANG	6.67
20	JORDAN	6.53
21	AUSTRALIA	6.46
22	ISRAEL	6.41
23	TURKEY	6.35
24	INDIA	6.34
25	RUSSIA	6.34
26	LUXEMBOURG	6.33
27	THAILAND	6.30
28	NEW ZEALAND	6.29
29	CHILE	6.26
30	BELGIUM	6.25
31	POLAND	6.24
32	CANADA	6.19
33	CATALONIA	6.05
34	COLOMBIA	6.04
35	IRELAND	6.04
36	USA	6.02
37	FRANCE	6.00
38	GREECE	5.88
39	BULGARIA	5.74
40	SLOVENIA	5.73
41	ILE-DE-FRANCE	5.70
42	MAHARASHTRA	5.68
43	SLOVAK REPUBLIC	5.64
44	SOUTH AFRICA	5.63
45	SCOTLAND	5.58
46	BRAZIL	5.54
47	CZECH REPUBLIC	5.52
48	KOREA	5.47
49	PHILIPPINES	5.39
50	SPAIN	5.28
51	INDONESIA	5.22
52	UNITED KINGDOM	5.17
53	MEXICO	5.12
54	ROMANIA	5.08
55	LOMBARDY	5.05
56	PORTUGAL	4.95
57	HUNGARY	4.86
58	ITALY	4.48
59	CROATIA	4.23
60	VENEZUELA	3.93
61	ARGENTINA	3.73

[10] IMD, World Competitiveness Yearbook 2006, Pages 471-2.

RMA in the Past

The inception of the RMA

The Resource Management Act 1991 was shaped by a public and political debate that reflected three main strands of thinking:

- An effects-based approach to environmental regulation that had been evolving since the 1970s in countries such as the USA.

- A neo-liberal, free markets philosophy that sought a fundamental shift from legislation that prescribed what activities were allowed to legislation that proscribed very few while permitting almost all activities as long as their environmental impacts were addressed.

- A growing concern about environmental sustainability, an awareness heightened over several decades by seminal international initiatives such as the 1972 Stockholm United Nations Conference on Environment and Development and the 1987 report from the World Commission on Environment and Development, better known as the Brundtland Commission.

Designing a piece of legislation that satisfied, at least in part, advocates for each of the strands proved to be a major undertaking. The resulting Resource Management Act 1991 was hailed as a world first for its freedom, flexibility and focus on effects-based environmental management.

It combined three key environment management activities:

- Land use planning and control of the built environment under the Town and Country Planning Act 1977.

- Resource allocation and consent processes for the management of the use of certain natural resources from the Water and Soil Conservation Act 1967 and Geothermal Energy Act 1953.

- Environmental regulation functions of the Clean Air Act 1971 and various other acts regulating hazardous materials.

Sixteen years later, it is still admired overseas for its success in bringing a wide range of environmental regulation and processes under one over-arching piece of legislation. Few other countries have attempted such an integrated approach.

RMA Amendments

And over these 16 years, a series of amendments to the Act have improved its processes while maintaining the purpose of the RMA and its subordinate policy statements. The result is a strengthening hierarchy of RMA instruments from the national to local levels.

Among the main amendments:

- The 1993 changes addressed a number of administrative and process issues on key issues such as subdivision. They also recognised the overlap by local government on managing natural hazards and hazardous substances.

- The 1996 changes covered areas such as marine farming, coastal occupation and a range of technical issues.

- The 2003 changes had their origins in a review written by Owen McShane, the environmental policy researcher and lobbyist, for Simon Upton, Minister for the Environment in the 1990s National Government. The subsequent Labour/Alliance government took up some of the issues but devised some different solutions. Many of the provisions related to streamlining RMA processes at all levels including the development of National Policy Statements. Furthermore, Regional Policy Statements and Regional and District Plans were required to reflect those. The government retained RPSs despite some calls to abolish them.

- The 2004 amendments were limited in scope and scale to energy and climate change issues. But by cutting across many aspects of the RMA, they had a large impact on RPSs. The changes required councils to consider "the efficiency of the end use of energy"; "the benefits to be derived from the use and development of renewable energy"; and "the effects of climate change".

- The 2005 amendments, passed after 18 months of consultation and parliamentary work, were by far the most comprehensive to date in the history of the RMA. They were intended to improve:

  - **National leadership** through, for example, a wider variety of processes for developing National Policy Statements; offering submissions on draft Policy Statements as an alternative to the board of inquiry process; enabling National Environment Standards to stop councils setting a more stringent local standard; increasing powers of ministerial call-in for projects of national significance with decisions made by a board of inquiry; allowing for Crown submissions; allowing the appointment of a project co-ordinator or hearings commissioner on complex applications; and requiring a joint hearing if more than one local authority is involved.

  - **Decision making** through, for example: giving consent authorities additional powers such as to seek additional information; allowing decisions on notification to be challenged in Environment Court rather than High Court (yet to become operative); and encouraging referral to independent mediation.

  - **Skills of decision makers** through, for example: a accreditation for chairs of hearing panels by August 2006 and for a majority of panel members by August 2007; a Making Good Decisions programme for council staff; and initiatives to address the shortage of RMA practitioners.

  - **The Environment Court** through, for example, requiring the Court to have regard to the council's decision; and allowing the Court to accept evidence that was submitted at the council hearing and to save hearing time by taking evidence as read.

  - **Local policy and plan making** through, for example: streamlining regional and district plans to address criticism that they were bulky, difficult to understand and took a long time to become operative. The mandatory areas

for plans now cover only objectives, policies and rules (if any). And district and regional plans "give effect to" regional policy statements.

- **Natural resource allocation** through, for example: recognising existing investment when a consent holder applies for a new consent to replace an expiring one; from August 2008 giving existing consent holders priority over new applicants; as a trade-off for being first in the queue, existing consent holders will be assessed on efficiency of use, good industry practice and compliance history; allowing the transfer of discharge permits as long as the transfer does not worsen the effect on the environment.

  Moreover, the Ministry for the Environment was given powers to direct councils to change or prepare plans to address a resource management issue; and councils were given powers to include rules to allocate water, heat and energy from water; heat and energy from material surrounding geothermal water; the capacity of air and water to assimilate the discharge of contamination; and with Ministry of Conservation input regional councils can establish rules relating to the taking of heat or energy from open coastal water and the allocation of space in the coastal marine area.

- **Certainty for consultation and iwi resource planning** through, for example: requiring councils to maintain a record of iwi authorities within their areas and, if requested, groups representing hapu for purposes of the RMA; and the ability for councils to have joint management agreements with iwi authorities and hapu groups on natural or physical resources.

Given the substantial nature of the changes initiated by the 2005 Amendment Act, it will probably take several more years before it is possible to assess comprehensively their impact. For example, such a review should be undertaken in 2008 or 2009, economic analysts LECG recommended in their May 2006 report "Impacts on the business environment of the Resource Management Act" prepared for the Ministry of Economic Development.[11]

In the meantime, though, it is possible to make some preliminary judgments about their strategic impact. In particular, the drive to tie RPSs more tightly into local plans and management could have far-reaching consequences, perhaps even to the point of enabling the RMA to deliver fully integrated resource management.

As Blair Dickie, Programme Manager of the Policy and Strategy Group at Environment Waikato, argues, the 2005 amendments "have clarified regional functions and formalised relationships between policy statements and plans to make integrated management of the natural and physical resources within each region achievable."[12]

This in turn, will create significant new work for councils because taken together the amendments of 2003, 2004 and 2005 have made their existing, first-generation, RPSs obsolete, Mr Dickie argues. With the increased effectiveness of RPSs come increased responsibilities for regional councils.

[11] LECG, "Impacts on the business environment of the Resource Management Act", May 2006, Page 77

[12] Blair Dickie, Environment Waikato, Paper for the New Zealand Planning Institute's 2007 Conference, Page 1

More than ever before, integrated resource management will depend upon the nurturing of excellent relationships within and between local authorities in each region. This is recognised by the new requirements for communication and co-ordination between local authorities, through, for example the triennial agreement process under the Local Government Act 2002. The second generation RPSs, in order to reach their potential, will need to become owned by all local authorities in each region as Policy Statements for each Region.

The recently operative geothermal change to the Waikato RPS incorporates many of the new requirements of the Act. It is an example, Mr Dickie says, of the drive for integrated management between natural resource use now and in the future; natural resources and physical resources and amenity values; social and economic objectives; cultural and spiritual values and approaches to resource management by tangata whenua; and between implementing agencies and the processes within those agencies.

The impact of the Local Government Act 2002

In addition to the changes to the RMA itself, RMA practitioners see another recent major legislative change as having a significant, beneficial impact on their work. This is the Local Government Act 2002, which greatly expanded responsibilities and powers of councils.

In particular, the requirement to produce Long Term Council Community Plans has opened up a new mechanism for a co-operative approach to setting environmental goals in a broader economic and social agenda.

One example is the Greater Christchurch Urban Development Strategy Forum. It was set up in 2004 to help the metropolitan community collaborate with Christchurch City Council, Waimakariri and Selwyn district councils, Environment Canterbury and Transit New Zealand on a draft urban development strategy.

Taking a long-term outlook to 2041, the strategy deals with familiar planning issues such as urban intensification, the location of new housing, the development of town and suburban centres, employment areas and public transport networks.

Based on substantial consultation with the community and other analysis which was completed in November 2006, the strategy proposes that 71% of growth be accommodated in Christchurch City and the remaining 29% in Selwyn and Waimakariri districts.

This and the other proposals in the strategy will then flow through into changes in the Regional Policy Statement under the RMA, the Regional Land Transport Strategy, LTCCPs, district plans, Transit New Zealand priorities and other enabling mechanisms. In this way, strategy participants argue, the greater Christchurch region will achieve integrated, inter-generational strategic planning.

The development of new governance and implementation arrangements was crucial to such a new form of collaboration, says Karen Banwell of Christchurch City Council.

“The governance model is based upon a voluntary co-operative approach built on understanding, agreement and commitment. This has been put in place in preference to a mandatory built model. The model maintains the valuable link to the community through partner forums and continued community participation. This will help ensure

continued support from the community through increased understanding and awareness of the outcomes sought."[13]

The province offers a second example of this collaborative approach to developing plans which then progress through statutory RMA backing and processes. The opportunity arose in 2004 when the Environment Court rejected an application by Rangitata South Irrigation Ltd. for a dam and irrigation network fed by the Orari River. In response, Environment Canterbury initiated a community collaboration project that worked with Rangitata South. The end result was a proposal for a fundamentally different and widely supported irrigation scheme.

[13] Karen Banwell, Christchurch City Council, Paper for the New Zealand Planning Institute's 2007 Conference, Page 1

RMA in the Present

Logically, the success of the RMA should be judged by two main criteria: its effectiveness, that is, how well it meets its purpose of contributing to New Zealand's environmental, economic and social sustainability; and its efficiency, that is, how well its processes work.

Effectiveness

Effectiveness is not well measured. The OCED criticised this serious short-coming in its recent, once-a-decade review of New Zealand's environmental performance.

"Differences in technical capacity, knowledge and skills and issues among local authorities translate into differences in environmental management, and businesses complain that the regulatory playing field within the country is not level.

"The policy mix remains focused on regulatory and voluntary approaches with economic instruments underused. National-level aggregates of data and indicators of the environment and environmental pressures are scarce, thus impeding efforts to strengthen outcome-oriented environmental policy-making. Despite recent progress, the polluter pays principle is not yet fully integrated into markets for environmental goods and services."[14]

A similar concern about lack of national data was also raised by a number of the speakers from abroad at the forum in Wellington last March marking the 20th anniversary of the setting up of the Office of the Parliamentary Commissioner for the Environment.

Using the data available, the OECD identified a number of environmental gains for New Zealand over the past decade such as a marked reduction in point-source pollution. But it also highlighted many deteriorating measures of environmental performance such as the quality of numerous waterways from non-point source pollution.

A sense among practitioners that environmental management is sub-optimal was identified in a recent survey conducted by Jeff McNeil and John Holland of Massey University.[15] They sent a 120-question survey to 250 people in senior management positions in local and central government, national organisations, stakeholders and companies with significant environmental engagement, getting a 56.5% response rate.

Some key findings were:

- 61% of respondents said the environmental quality of their regions was overall good
- 44% said water quality and quantity was better than 15 years ago when RMA introduced
- 36% said New Zealand's environment was well-managed

[14] OECD, Environmental Performance Reviews: New Zealand, April 2007, Page 166

[15] Jeff McNeill & John Holland, Massey University, Paper for NZPI's 2007 Conference, Page 4

In essence, these responses were damning the environmental performance with faint praise. The corollary of the responses suggests that significant proportion of practitioners believe that the country's environmental quality is not good; water quality has deteriorated and the environment is not well-managed.

The view of the Environmental Defence Society

The Environmental Defence Society has long campaigned for improved environmental outcomes under the RMA including better landscape protection, improved management of coastal development, and protection of aquatic areas. EDS's agenda for improving the RMA includes:[16]

- The preparation of National Policy Statements on landscape protection, biodiversity protection and water management
- Beefing up the New Zealand Coastal Policy Statement to provide more certainty of outcomes for the coast including the identification of "no-go" areas for development which have high landscape, natural character and/or cultural values
- Elevating climate change to a matter of national importance
- Rewording Section 6 so that outstanding natural landscapes, the natural character of the coastal environment and cultural heritage are protected from 'unnecessary as well as inappropriate subdivision, use and development' (section 6(a))
- Enabling councils to require applicants to enter into covenants to restrict future subdivision of land as a condition of a resource consent.
- Reinforcing the primacy of plans through requiring non-complying activities to have no more than minor impacts on the environment and to give effect to the objectives and policies of the relevant plans.
- Providing for strategic planning in RMA plans to enable cumulative effects to be addressed
- Supporting the introduction of economic instruments
- Beefing up the Department of Conservation's advocacy role under the RMA in respect of conservation on private land

Efficiency

In contrast to the lack of measurement of the Act's effectiveness, the efficiency of 85 local authorities' administration of the RMA and the Environment Court's handling of the judicial aspect is well measured. The Ministry for the Environment released its latest biennial report on council performance in April.[17] It covers the period 2005-06, suggesting that if there are further gains to come from the 2005 RMA amendments,

[16] Raewyn Peart, Environmental Defence Society, email to author, 21 May, 2007
[17] www.mfe.govt.nz/publications/rma/annual-survey

particularly from staff training, they won't show up until the next review covering 2006-08.

The latest survey includes questions about key aspects of RMA processes such as numbers and types of resource consents processed; time taken to process resource consents; charges to applicants for resource consent applications; monitoring, compliance and enforcement; and Maori participation in RMA processes.

Among key facts from the 2005/2006 survey:

- 51,768 resource consents were processed through to a decision, up 7.7% from 48,045 in 1999/00
- 0.69% (357) of resource consent applications processed were declined compared to just under 1% declined 1999/00
- 4.1% (2,129) of resource consents were publicly notified compared to 5.2% in 1996-97 and 5% notified in 1999/00
- 1.5% (768) of resource consents were notified to affected parties only (limited notification)
- 73% of all resource consents were processed within statutory time limits compared to 76% in 1996-97 and 82% in 1999/00
- 1.0% (543) of resource consent decisions were appealed to the Environment Court, unchanged from 1999/00

But there is some variation between councils on the services they provide. For example:

- 100% monitored whether consents are processed within statutory time limits
- 89% defined the environmental effects that must be addressed in resource consent applications for controlled and restricted discretionary activities
- 79% undertook formal monitoring and reporting of consent processing performance
- 76% followed a structured process to check that environmental effects are adequately identified and addressed in assessments of environmental effects
- 61% had internal guidance notes or checklists available to help staff determine when to notify an application
- 59% had internal guidance notes or checklists available to staff on how to identify potentially affected parties

And there were a considerable number of changes and variations to plans during the year. A total of 127 council-initiated and 20-privately initiated plan changes to operative district or regional plans were completed; and 37 variations to proposed district or regional plans were completed.

The Environment Court's performance is also well measured in its annual reports. The Court was set up in 1996, replacing a tribunal. But during the 1990s, the tribunal and then the court failed to cope with their workload. Their caseload more than quadrupled between 1992 and 2001. A report in 2003 found the number of pending cases had grown to some 2,500 with an average waiting time of 23 months from filing to resolution.

Responding to the report, the government introduced a case management system which channelled cases into 'standard', 'complex' and 'hold' tracks to help reduce processing time. Additional funding of $1.2m a year over 2002-06 allowed more judges and commissioners to be hired and administrative and record-keeping systems to be upgraded. By June 2006, the backlog was down to 1,375 cases and the average processing time was six months.

While these data show the Court has improved its performance, the record of local authorities is less impressive. When announcing the results of the latest survey, Minister for the Environment David Benson-Pope said his ministry would work closely with some 20 councils to improve their quality and timeliness.

The variation in performance was been studied deeply, particularly by "Planning Under a Co-operative Mandate," a government-funded research programme hosted by the University of Waikato.

Its 1995-98 study of the quality of plans concluded that regional policy statements and district plans were, by and large, deficient. The second phase of PUCM's work, which covered plan implementation, also found significant deficiencies.

Unsurprisingly, it found that large councils with wealthier constituencies have higher quality plans because of their greater capacity to do the work. When this deeper resource is combined with a strong commitment to the legislation, better implementation is achieved.

"These findings suggest that good environmental outcomes are more likely to be achieved by increasing the size of local government units and promoting economic development than by concentrating on district plans quality alone," PUCM said in a 2002 conference paper.[18]

Since then, the government has chosen not to consolidate the RMA processes in the hands of fewer councils but rather to work with all of them and their association, Local Government New Zealand, in a variety of programmes to codify and share best practices, to upskill staff and to make some process changes through amendments of the Act, notably the 2005 changes.

One example of knowledge sharing is the Quality Planning website, www.qualityplanning.org.nz. It is a partnership between the Ministry for the Environment, Local Government New Zealand, the Resource Management Law Association, the NZ Institute of Surveyors and the NZ Planning Institute.

But these changes have gone only part-way towards the far-reaching reforms of the RMA proposed by its strongest critics, notably some of the business lobby groups. For example, in the run up to the 2005 amendments, EMA (Northern) said processes for plan making and consents were unnecessarily complicated which led to excessive delays.[19]

It said possible solutions included:

- Imposing stricter time limits on Council consent processes
- Amending Sections 30 and 31 to clarify and limit the roles of local and regional government
- Creating a statutory presumption in favour of activities being permitted subject to conditions, to make fewer activities subject to the resource consent processes, and those that are, subject to fewer areas of discretion.

[18] PUCM, "The Quality of District Plans and their implementation: Towards Environmental Quality," Australia-New Zealand Planning Congress, Wellington, April 2002, Page 15

[19] EMA (Northern), submission to the MfE, June 2004, Page 5

In the end, the 2005 amendments were much milder than the EMA had advocated.

And there is continuing concern, shared by business organisations and NGOs alike, that the RMA process is still under-resourced. For example, Geoff Vazey, chief executive of Ports of Auckland, says a bigger budget and staff for the Environment Court would further reduce the time taken to resolve cases and thus the cost to affected parties.

Similarly, Kevin Hackwell, the advocacy manager of Forest and Bird, suggests a contestable fund for councils with small rating bases so they can get the resources they need to do the work, funding for more tools like the Quality Planning website, establishment of a monitoring agency akin to the Education Review Office, and more call-ins by MfE on complex or significant applications.

Furthermore, business lobbyists argue that the introduction in recent years of several mechanisms designed to break logjams in the consenting process has had little or no impact so far.

For example, only two applications have been called in so far. And the provision in plans for Aquaculture Management Areas introduced in the 2003 Amendment Act has yet to result in a single AMA being created. This failure, coupled with other government impediments, has resulted in no new consent applications for marine farms being filed, leaving the sector virtually devoid of new development.

Business attitudes to the RMA

A very pessimistic business view of the RMA and other environmental legislation emerged from the 2006 World Competitiveness Yearbook produced by IMD, the Swiss business school. One element of the rankings was a survey of business people in 61 economies that asked them to rank their countries on a scale of one to 10 on a number of measures.

On the question "is sustainable development a priority or not for your companies?" the New Zealand response ranked businesses here as the 28th least committed to sustainable development out of the 61 economies.

On the question "do environmental laws and compliance costs hinder the competitiveness of your businesses or not?" the New Zealand response ranked the country 61st out of 61 for being the most burdened.

But this negativity is undeserved judging by an in-depth report last year by economic consultants LECG for the Ministry of Economic Development and Ministry for the Environment.[20]

LECG analysed quantifiable costs that firms face for complying with the RMA on consents, plan changes, consulting with councils and community, waiting for decisions, going through hearings, appearing in court and from delays. But it concluded it was difficult to obtain detailed quantitative information from firms, largely because they don't appear to systematically collect it.

[20] LECG, "Impacts on the business environment of the Resource Management Act," May 2006

It also analysed qualitative effects. These are less tangible ones such as the effort to comply with the RMA might detract from a company's productivity, innovation and growth. Furthermore, the RMA might divert effort from a firm's core business and alter its production process; or councils and communities could be unwilling to accept new technologies; or the standards imposed on them might sometimes fail to fit technologies. Similarly, companies may tailor their investments to avoid notification consents; or real and perceived uncertainties of outcome may make them reluctant to invest.

And it identified positive benefits from the RMA such as firms enjoying improved relationships with the community as a result of consultation and satisfaction about better environmental outcomes. And there were benefits when an application was deemed non-notified or when councils were flexible and responsive. For example, Environment Waikato refunds fees if it fails to process non-notified consents in the statutory time.

In LECG's detailed discussions with a cross-section of companies, executives argued that the negative impacts stem more from implementation of the legislation rather than legislation itself. They were also concerned about lack of national direction through lack of National Policy Statements and National Environmental Standards; lack of discipline and skills in some councils; costs and delays from Environment Court hearings; and the complexity of plans which meant they needed to pay for external experts to help them navigate them.

Some companies interviewed had operations on both sides of the Tasman. But their experiences varied widely so LECG was able to draw only a very broad conclusion: companies found the consenting process in Australia was more political and more focused on development but the New Zealand process delivered better environmental outcomes.

To give form and substance to its findings, LECG tested five hypotheses:

1. "The RMA has both direct and indirect impacts on business." Yes, there are both. But firms tend to underestimate the indirect effects of the RMA, both in terms of the costs such as opportunity costs and benefits such as innovation.

2. "The RMA triggers innovation to partly offset cost of compliance." This was hard to prove because it was difficult to separate out the impact of competition on innovation

3. "There's room to improve RMA." Yes, and the report made numerous suggestions.

4. "Different businesses experience different impacts." Yes, small companies bear a bigger brunt compared to large companies because, for example, they have negligible built-in RMA capability and experience and fee structures discriminate against them. But in issues of substance involving the RMA small and big companies face similar issues.

5. "The RMA is necessary although it imposes costs on business." There was broad support for this and the proposition that the RMA provides a good platform for trading off economic, social and environmental considerations.

The data on costs is hard to come by. But they do not appear to be a high priority for business, judging by the Business New Zealand / KPMG Compliance Cost Survey in

2004. The top priority was tax, cited by 41.1% of respondents while health and safety, the Employment Relations Act and the Holidays Act were the top priority for between 7.8% and 13.1%; and environment-related issues, of which the RMA was a subset, was cited as the top priority by only 1.8%. Overall, environmental compliance costs averaged 17.9% of total compliance costs.[21]

Changes business suggested in the LECG report included greater use of national standards, which then needed to be interpreted consistently by councils; only activities with "real environmental impacts" (undefined) should be liable to consenting; write plans and legislation and consents in plain language and based them more on "common sense"; give existing investment more weight particularly, for example, when its site has since been surrounded by subsequent residential development.

Suggested judicial changes included tougher rules in Environment Court on "vexatious" litigants; faster appeals; and the option of going straight to court rather than to a council hearing first.

Suggested council changes included simpler processes; more consistency between and within councils; more early engagement so firms can better understand what's required of them; reducing the big difference in attitudes towards business exhibited by councils; and recognition from councils that sustainable development will be allowed rather than a baseline of no development in some areas in some councils.

The view of Business New Zealand

Phil O'Reilly, chief executive of Business New Zealand offers this manifesto of policy principles for reshaping the RMA:[22]

- Refocus the RMA on achieving a balance of benefits and costs rather than on particular outcomes.

- Ensure, as a general principle, that individuals and companies bear the full costs associated with their behaviour (i.e. costs should be internalised) or individuals will over-consume resources if they can shift costs onto third parties. On the other hand, they should not be required to pay amounts greater than costs individuals and businesses impose, or the result will be a misallocation of resources.

- More clearly defined property rights over resources where there exists significant uncertainty – water permits being a particularly good current example where "rights" appear to have significantly different meanings to users, regulators, and ultimately, the Courts.

- Move towards a market based system for allocating natural resources to encourage efficient resource allocation.

- Allow (as the RMA technically permits) water-taking permits to be transferred amongst users in the same catchment. Some transfers do occur but this practice is not widespread for a number of reasons, including lack of clear

[21] ibid, Page 10
[22] Phil O'Reilly, Business New Zealand, email to author, April 4, 2007

property rights in respect to secure tenure and clear specification. Only by developing clearly defined property rights will trading be enhanced.

- Allow longer consent periods for water taking permits with the possibility of rights in perpetuity and the ability to trade such consents. Though the RMA stipulates that the maximum consent period for a single water taking permit is 35 years, a single permit which lasts only 15 years is unlikely to be long enough for large investors (e.g. hydro-generation) to gain acceptable returns on investment and associated infrastructure development.

- Support the Bill of Rights (Private Property Rights) Amendment Bill, including its provision (clause 4) that: 'no person is to be deprived of the use or enjoyment of that person's property without just compensation'.

- Use the power of the state to take (even with appropriate compensation) as a last resort, backed up with a high threshold test: that the taking is necessary for an essential public good.

- Support voluntary industry-led (self) regulation, unless particular exceptional circumstances require an industry-specific approach.

- Oppose mandatory product stewardship impositions on manufacturers; rather support voluntary market driven initiatives.

- Oppose waste management levies which are simply a tax over and above the economic and environmental cost of disposing of waste.

- Support voluntary industry-led and market driven approaches to waste management where systems and processes reflect the needs and wants of both businesses and their paying customers.

Farmer attitudes to the RMA

"At the heart of most farmers is an ethic of land stewardship. The sustainable management ethic of the Resource Management Act has morphed into a process and an industry that seeks to micro manage farm activities, protect every living piece of native vegetation and lock up the potential of well managed farming landscapes. The Act is failing to recognize or enable landowners' key role in managing our natural resources and conservation values on farm land."[23]

This is the central issue farmers have with the RMA, Matt Harcombe, a senior adviser at Federated Farmers, told the NZ Planning Institute's 2007 annual conference. They believe RMA processes devalue or, worse, challenge the skills and commitment farmers want to bring to good stewardship of the land.

In a subsequent discussion with this author, Mr Harcombe offered these top six priorities for RMA changes:[24]

- There is an urgent need to drive changes to the legislation and implementation of section 6 by showing strong leadership in researching and applying voluntary and regulated methods that place and where necessary

[23] Matt Harcombe, Federated Farmers, NZPI 2007 Conference Paper, Page 1
[24] Harcombe, email to author, April 23, 2007

compensate the landowner as the most important party in the protection and management of biodiversity, landscape and heritage on private land.

- Consultation with landowners prior to plan notification is of critical importance. If at all possible this must be done in a way that acknowledges individual property priorities and attempts to give ownership of the plan changes/variations to landowner driven initiatives.

- Removing the Department of Conservations advocacy role is critical to the future success of any proposed section 6 protection. There must be collective agreement of what role the Department will play from the outset and Councils must address prior to notification, defined conservation outcomes for the district or region.

- A number of opportunities exist to improve process, including greater use of facilitated pre-hearing meetings and mediation, consistency of staff dealing with applicants, reducing the use of Section 92, greater use of limited notification, consideration of staff delegation and status of rural activities such as farm culverts.

- There is potential to delineate subdivision status of merged properties and those implementing farm succession plans as a means of maintaining a vibrant, growing rural economy.

- Retaining the public's enjoyment of rural areas is important, but overly prescriptive approaches to achieving this will be at the ultimate expense of public access over private land and the landowner's ability to continue to maintain an economically viable enterprise.

These issues have emerged from a review of the RMA that Federated Farmers is working on as one of its major advocacy initiatives.

The public and the RMA

A sharp debate continues in the country over the extent to which members of the public can get involved in consent issues.

The argument for reduced public involvement comes mostly from business groups. They point out that standing to submit on consent applications remains widespread in New Zealand. This creates unreasonable consultation requirements on applicants and excessive opportunities for rent seeking behaviour by unaffected parties. The remedies, they propose, are tighter rules on standing and bonding for legal costs.

There is no recent data on how pervasive vexatious behaviour is. MfE's 1996-97 survey of RMA performance asked councils to attempt to identify applications that attracted such a response. In aggregate for the country, the total was 2.6% of applications. But subsequent biennial surveys omitted the question so there is no comparative data.

The argument for more public input is made typically by NGOs. For example, Kevin Hackwell, advocacy manager of Forest and Bird, says: "The RMA is a 'citizens act'. It relies on public participation to inform the decision-making process. The community provides expertise and information about which the council and neighbours may be unaware.

"The Act's processes are designed to make it relatively easy for ordinary members of the public to participate when they are impacted by proposed developments. You don't need a lawyer to make a submission on a resource consent, to appear before a council hearing or even before the Environment Court. The Court mediation processes are informal and very well facilitated, and the Court itself is relatively informal."[25]

When public consultation works well, even complex projects can have a relatively speedy and smooth journey through the consent process. One example is the 12 months it took Newmont Mining in 2003-04 to get consents to build the Favona underground gold mine near Waihi on the Coromandel.

Ports of Auckland had a similarly positive experience when it got consents to dredge Auckland's shipping channel to accommodate new, deeper draught container ships. But it took a very extensive consultation exercise in order to ensure the public was fully informed. This minimised the objections based on false assumptions about the project, says Mr Vazey.

Despite that success he believes there is a case for tightening rules. One example would be to reduce to a maximum of six weeks after a decision, the deadline by which any appeal must commence.

In an effort to improve the quality of public participation, the government has added new sources of help for community groups. The MfE's Environmental Legal Assistance Fund provides up to $30,000 to environmental and social NGOs and iwi and hapu. Since its inception in 2001 around $1m a year has been dispensed to some 200 groups. Similarly, MfE's Education and Advisory Services Fund, also started in 2001 to help community groups engage in resource and environmental management, has disbursed $1.4m to 43 organisations.

Nonetheless, there is scepticism among some academics that such efforts to encourage public participation have much impact on the overall process. One critic is Jennifer Dixon of the University of Auckland who has also been deeply involved in the long-running PUCM research project into the RMA.

Attempts to introduce more democratic and public participatory processes into resource decisions through the RMA have been "impaired by technocorporatist legal formalism," she wrote with a colleague in a recent journal article.[26]

In other words, council staff, politicians, lawyers, the courts and business interests have dominated the process, crowding out the public. Only 4% of consents are notified, the vast majority being settled by applicants, officials and politicians without the public. As a result, "The reduced emphasis on socio-economic effects within land-use development plans has impeded the promotion of sustainable spatial development strategies."

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[25] Hackwell, email to author, April 12, 2007

[26] Tony Jackson and Jennifer Dixon, *The New Zealand Resource Management Act: an exercise in delivering sustainable development through an ecological modernisation agenda*, Environment & Planning B: Planning and Design, Vol 34, Issue 1, page 107.

RMA in the Future

In the 16 years since the RMA became law, the country has devoted far more effort to improving the RMA process rather than refining its purpose.

Thus, the large body of amendments enacted in 2005 could well deliver faster and easier decisions over the next few years. But will they be the right decisions? Will they meet the goals of the original Act? And if they do, are those goals still valid? Or have the issues generated by the intricate nexus of economic, environmental and social factors changed so much we need to re-think what we're doing and how?

Take the challenge of water allocation. It was easy to do on a first-come first-served basis when the RMA started because there was plenty of water available. In Canterbury, for example, barely 20% of its water was allocated 20 years ago. But today some of its catchments are over-allocated and the demand is still rising, particularly for irrigation for the dairy industry.

Or take the challenge of economic growth. Over the past decade, GDP has grown by 30%, passenger car traffic has grown 28%, agricultural production 23% and industrial production by 13%. Water use and municipal waste generation have grown roughly in line with GDP while carbon dioxide emissions have grown 24% and sulphur oxides by 28%.

The national dairy herd rose 28% from 4.2m cows to 5.4m in 2005 while the use of nitrogenous fertilisers, almost entirely by the dairy industry, rose 186% from 1996 to 2004.

And Auckland's population has expanded so fast over the past 15 years its growth rate would rank, if it were a US city, about fifth behind the likes of Las Vegas and Phoenix. But unlike those cities that build infrastructure in advance of their needs, Auckland cobbles it together as it is needed, growing it in small increments.

Through this period of rapid growth, the RMA has delivered much of what it was designed to do. It has brought to decision-making environmental principles and goals and an obligation to consider future generations. As a result it has heightened knowledge of and increased focus on issues such as ecosystem resilience, biodiversity, coastal management and water quality and availability.

This hasn't been easy, particularly politically, given the low starting point in terms of commitment to sustainability. But while there has been progress, it has focused more on how to manage natural resources in a sustainable way, and even that has some very big gaps such as dealing with water allocation in Canterbury.

Sustainable management, though, is only a stepping-stone to sustainable development. The latter requires a far more integrated approach that brings together environmental, economic and social drivers. And we're still low on the learning curve of the skills required.

The pressure to learn them is increasing fast. Globally, issues such as climate change are heightening consumers' awareness. Their shifts in values and consumption patterns will flow right back to our farms, forests, seas, tourism destinations, urban manufacturing centres and anywhere else that we earn our living

from the global economy. They will demand a much higher environmental performance from us. And we will have to deliver.

Similarly here in New Zealand we will demand higher standards from each other. Many more people will want growth in economic opportunity, activity and reward but only if it can be delivered through better environmental practices.

What tools do we need to do the job?

Strategic Planning

Arguably, the most critical tool is strategic planning. To meet our future needs we have to be capable of dealing with multiple factors and the complex interaction between them, and deal with them over long periods of time and large distances.

In theory, there is a strategic planing hierarchy under the RMA that runs from national policy statements and environmental standards, through regional policy statements to regional and district plans. And that suite of instruments is reinforced by the likes of Long Term Council Community Plans and regional land transport strategies from local government and the likes of energy supply, energy efficiency, climate change, sustainable water plans of action and other policy suites from central government.

But in practice, there are many gaps and barely-tested elements in this hierarchy. National policy statements and environmental standards remain long promised but seldom delivered; we have yet to see whether the 2005 amendments to the RMA will cause the second generation of Regional Policy Statements to be more effective than the first; and attempts have barely started to tie community consultation into a more collaborative approach to developing regional and local strategies.

Thanks to these continuing deficiencies, the links between policy, strategies, plans and consent decision-making can still be weak or even absent. This can sometimes create a big gap between the vision and principles of the RMA and the outcomes it delivers.

This is particularly true when the RMA is trying to cope with complex issues such as biodiversity; geographically dispersed issues such as growth of urban areas, development of rural landscapes and coastlines or water use and pollution in catchments; or subjective issues such as amenity values, natural character and heritage.

These complex strategic issues are compounded by two further challenges of how to handle cumulative effects and resource allocation.

Cumulative effects

The first house on a coastline or first water take from a river has minimal effect on them. So might the tenth or hundredth. But at some point the effects accumulate to the point they do have a negative impact. The last straw breaks the camel's back.

Yet often it is easier to get the hundredth consent rather than the first because the RMA handles cumulative effects very inadequately.

Resource allocation

The RMA inherited its 'first-come, first-served' basis for resource allocation from its predecessor legislation. That was simple and worked when resources were abundant. But the scarcer they get, the more desirable it is economically and environmentally to make more complex judgements about their allocation.

Here are two examples of how these two issues pose enormous challenges to New Zealand. The first is here and now; the second arriving imminently.

The example of Canterbury water

Canterbury has 58% of NZ's allocated water; and 70% of NZ's irrigated land. Water use has increased significantly over the past 20 years. It has now reached limits of sustainability of the current methods of extraction in many catchments. Growth in demand has been driven mostly by conversion to irrigated farming, with resulting deterioration of water quality.

In 1985, 150,000ha of land were consented for irrigation. In 2006, 560,000 ha were, a 270% increase. The region has an estimated 1m ha of land that would benefit from irrigation if the water can be found.

These pressures are acute in a number of catchments such as the Rakaia-Selwyn. Its groundwater first order allocation limit is 208.5m cu m/year. In 1980, only 50 cu m had been allocated but by 2004 the number of consents in total exceeded the first order limit. This is an example of how resource allocation and cumulative effects compound each other.

These excess demands were exacerbated by dry winters during 2000-2005 which resulted in low recharge of aquifers that feed lowland streams, a problem heightened by increasing levels of abstraction from groundwater.

The first step Environment Canterbury took was to review all consents in the Rakaia/Selwyn groundwater zone. Proposals have now been made for metering all takes, annual allocation limits, allocation reductions in times of low recharge and stream depletion conditions where there is a hydraulic connection to a river or stream.

But the Environment Court made this remedial action more complicated. It over-turned a decision by Environment Canterbury to decline a consent application for water from Linton Dairies because the first order limit for the catchment had already been breached. The Court ruled, however, that the applicant would only be taking 2% of the catchment's water. Since E-Can can only measure flows in the catchment within +/- 5% the court said E-Can could offer no conclusive evidence that Linton Dairies would have an adverse impact.

This and some similar cases brought to crisis point two critical issues for E-Can:

- Water allocation: 20 years ago, shortly before the RMA was conceived, only 20% of Canterbury's water was allocated. Now it is fully allocated in some catchments. First come, first served works when there is plenty to allocate but not now there isn't. Now there's a need to move to a merit-based approach that assesses the productivity of the use of the resource and its

environmental sustainability. E-Can says this is complicated but doable. And it is preferable to a price-based, market mechanism which only tells you the maximum price a user is prepared to pay. It doesn't optimise the water use or productivity.

- Catchments: Under current RMA processes, it takes too long to get a plan variation, particularly when a catchment becomes at risk. And during that exercise, the local authority is still required to process new consent applications. For example, while Environment Canterbury was reviewing the existing 600 or so consents in the Rakaia-Selwyn catchment, it had to process another 70 new ones. This is a "gold rush" effect. The closer a resource gets to full allocation, the bigger the stampede of people trying to lay a claim to it. Thus, local authorities need the powers to put applications on hold while they deal with catchment issues such as putting in minimum stream flows and other control mechanisms.

To try to deal with these issues using its existing powers, Environment Canterbury is taking a four-pronged approach:

- regional: a strategic study of water storage in a sustainability framework; integrated management of run-of-river, groundwater and storage across the region.
- catchment: setting sustainable limits for surface and groundwater systems; consent reviews to address cumulative effects; the development of community-based management plans.
- sub-catchment: telemetered data for water use groups; co-ordinated landowner stream improvement; land use controls for water quality management
- farm property: plans for auditable water use and quality management; economic drivers through charges and incentives

"There is a shift in Canterbury from adversarial regulatory-driven processes to more collaborative non-statutory processes with the outcomes being given statutory backing," says Dr Bryan Jenkins, chief executive of Environment Canterbury.[27]

The example of climate change

The government began adapting the RMA to deal with climate change in its 2004 amendment bill. This struck out regional council's powers to control discharge of greenhouse gases and their powers to consider climate issues in relation to resource consents. It was replaced by section 7 that requires councils to take particular regard to the efficiency of the end use of electricity, the effects of climate change and the benefits from development and use of renewable energy.

Subsequently, the Ministry for the Environment has drawn up a priority list of things it will do to help councils plan for climate change. It will clarify 50 and 100 year sea level forecasts; it will issue guidance notes for storm water, flood protection and other infrastructure; and it will draw up model district plans incorporating climate change provisions.

Government can give guidance in ways like this and its tools for direct action have been strengthened through the 2005 amendments to the Act. For example, a

[27] Bryan Jenkins, NZPI 2007 Conference Paper, Page 1

National Policy Statement on an aspect of climate change could direct that specific provisions be directly included in all regional policy statements and regional and district plans without public notification or hearing.

Furthermore, the RMA figured prominently in the government's discussion papers on climate change released in December 2006. For example, it was cited as one possible mechanism for dealing with climate change issues for agriculture and forestry. For example, it suggested it could use RMA standards to control agricultural greenhouse gas emissions and land use changes.

Similarly on energy, it said the RMA might be used as a way of direct regulation of greenhouse gases from electricity generation in the absence of other mechanisms such as price-based, cap and trade and to promote investment in new generation through fuels that generate lower emissions.

If the government chose to use some of these mechanisms, it would be adding another considerable layer of complexity to the RMA. This in turn could make the goal of truly integrated decisions on resource use even more elusive unless the RMA was fundamentally overhauled.

The Commons

This further development of the purpose of the RMA would take it deeper into the territory with which it has dealt so poorly so far. This is the commons, resources such as water, air, coasts and landscapes that for time immemorial have been commonly held by society and freely used.

To date, the RMA has helped New Zealanders begin to learn how to allocate and manage those resources. But we are clearly struggling to meet mounting pressures on them. And, crucially, the sustainability challenges ahead dwarf anything we have attempted so far.

So it is fundamentally important that we get right the economic, environmental, societal, legislative and regulatory frameworks. The choice of outcome is simply expressed: The tragedy or triumph of the commons.

If it is a tragedy we will seriously impair our global reputation and our ability to earn a living in the world economy.

If it is a triumph, we can look forward to a prosperous, sustainable future.

ENDS