



# **TOWARDS SUSTAINABLE DEVELOPMENT**

**The Role of the Resource Management Act 1991**

*PCE Environmental Management Review No.1*

*Office of the*  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
**Te Kaitiaki Taiao a Te Whare Pāremata**

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## ***Introduction***

The Parliamentary Commissioner for the Environment (PCE) has maintained an active interest in the Resource Management Act 1991 (RMA) during its development and since its enactment. The PCE started a Local Government Review Programme in 1994 because there was little effort made by central government to disseminate good practice guidance to local authorities on the implementation of the Act<sup>1</sup>.

**The purpose of this review is to raise strategic issues about the role of the RMA in continuing to contribute to the goal of sustainable development<sup>2</sup> and to propose some actions to advance the RMA's contribution to this end.**

While there has been extensive media coverage of perceived RMA deficiencies, there has been little informed debate on:

- the best means of achieving better environmental performance;
- the strategic implications for New Zealand in making any fundamental changes that could weaken what is seen internationally as a visionary piece of legislation; and
- what changes to the RMA are required to achieve better environmental outcomes.

The current process of RMA review involving Government announcements that the Act “will be amended”, the commissioning of a ‘lightning rod’ *Thinkpiece* by the Minister for the Environment, and a circumscribed submission process on the *Thinkpiece*, is inadequate. The Minister’s *Thinkpiece* is not, and was not, intended to provide robust analysis of the issues. There has been little time to consider options that would enhance the Act so it can contribute to the goal of sustainable management of the environment.

## ***The purpose of the RMA is sustainable management***

The RMA is an innovative vehicle that the Government is using to advance sustainable management<sup>3</sup> of natural and physical resources (s 5 RMA).

**One of New Zealand’s strategic weaknesses is that the concept of sustainable**

**management does not appear to be well understood.** A consequence of this<sup>4</sup> is an inability to clearly define desirable environmental outcomes. In other instances a ‘business as usual’ approach may signal an unwillingness to work towards the goal of sustainable management.

Recent investigations show that some resource consent applicants continue to demonstrate limited understanding of community environmental management needs including those of *tangata whenua*<sup>5</sup>. There are opportunities under the RMA to consult with communities to achieve constructive environmental results.

**The consultation provisions are one of the strengths of the Act - yet they are sometimes seen as simply increasing the cost of the resource consent process.** The whole matter of who is an affected person is clearly one area of significant tension. In part, this is exacerbated by a lack of clarity of understanding of the inherent differences between individual rights and environmental rights. The Canadian province of Ontario has recognised this fundamental difference in its Environmental Bill of Rights. New Zealand has no equivalent environmental bill of rights.

## ***Strengths of the RMA***

The strengths of the RMA in advancing sustainable management include:

- recognition of the importance of the goal of sustainability in the purpose of the Act;
- opportunities to achieve desired environmental outcomes through a variety of approaches;
- opportunities to integrate various forms of knowledge ie technical, indigenous and community;
- the potential for integrated management of the environment to occur; and
- the participation of people and communities in the environmental management of their area.

There are some fundamental aspects of the RMA that assist in promoting sustainable management of natural and physical resources. These include:

- recognition of intrinsic values;

- potential for the establishment of ecological ‘bottom lines’;
- inclusion of people and communities as part of the environment; and
- publication of the desired environmental outcomes of communities.

### ***Restrictions of the RMA***

Progress towards sustainable management is restricted by some aspects of the RMA. These include:

- the effects-based approach in regional and district plans. This is a new approach that is initially difficult to comprehend and to use as a basis of decision making;
- the lack of accountability of some councils in fulfilling their responsibilities under the RMA. The intent of the RMA can be thwarted by councillors and staff who ignore community preferences for resource management<sup>6</sup>;
- the difficulties in managing cumulative effects;
- the lack of environmental performance targets and the difficulty of linking visions in strategic plans to the RMA planning regime<sup>7</sup>; and
- the limitation of the Act to effectively address resource use efficiency.

The approach to promoting sustainable management being developed in New Zealand is reactive, based mostly on the management of environmental effects rather than on setting environmental performance targets and articulating visions to improve the nature and efficiency of resource use in line with sustainable development.

### ***Sustainable development***

The challenge for New Zealand is to maintain a real commitment to achieving sustainable management (as is stated in the *Environment 2010 Strategy*<sup>8</sup>) and making a commitment to move beyond sustainable management to sustainable development. New Zealand does not seem committed to sustainable development in spite of having signed the Rio Declaration in 1992 and being a member of the Commission on Sustainable Development<sup>9</sup>.

In Europe, the United Kingdom and Australia, sustainable development has been widely adopted as a national goal and governments

are actively assisting communities to work towards it. A framework for sustainable development, currently being used in the United Kingdom, embraces simple yet powerful concepts that embody the core of sustainable development, ‘*getting more, from less, for longer*’.

Examples of this include:

- improving energy efficiency through:
  - the use of new technology;
  - improving building insulation standards, and
  - greater use of public transport;
- improving urban water use through:
  - user pays; and
  - a focus on water demand management and reuse;
- reducing solid waste quantities through:
  - reducing packaging; and
  - encouraging reuse and recycling.

**If we do want to move towards more sustainable development, then the RMA is only one of a number of pieces of legislation that can or should contribute to this goal.** Other instruments and mechanisms will assist or be required to advance the concept. These include: economic instruments, regulation, voluntary agreements and education - particularly the latter.

There is a major risk for New Zealand’s ‘clean and green’ image and our competitive advantage if international groups eg the OECD and our trading partners see New Zealand resiling from its bold commitment to sustainable management under the RMA and from its responsibilities under international agreements.

### ***Capacity to implement the RMA***

**The RMA is a complex piece of legislation. From its enactment in 1991, there was little effort made to manage the big changes in approach it required.** In contrast to the recent release of proposals for a code of social responsibility, where around \$1.4 million was spent in promoting and explaining the proposals, little money was spent explaining the RMA code of environmental responsibility to communities, resource users or to the councils with a leading role in implementing the Act.

Central Government gaps in implementation include:

- not providing any national policy statements or national environmental standards to assist local government in the implementation of the RMA apart from the mandatory coastal policy statement and guidelines for the management of air and water quality;
- giving little assistance to local government on how to write policies and plans based on the management of effects;
- giving little assistance to local government on how to assess s 6 “matters of national importance” and s 7 “other matters” (eg outstanding natural features and landscapes; significant indigenous vegetation and habitat of indigenous fauna, and significant heritage features).

This lack of investment by the Government has probably cost local authorities, businesses and communities millions of dollars.

Some councils are now downsizing their staff as plan preparation (in their areas) draws to an end. Such actions do not recognise the real capacity needed to administer the RMA, implement the plans and to achieve compliance with the resource consents that are issued. Compliance with, enforcement of and monitoring of resource consents is a complex exercise under an effects-based regime. Recent PCE investigations indicate a lack of action on these requirements<sup>10</sup>.

There has been very little training in RMA matters for decision makers (ie elected councillors). This is reflected in some plans and resource consent decisions that do not advance sustainable management of the environment.

### *Undue focus on process*

**The extensive criticism of the RMA is largely about process. The merits of advancing sustainable development and improving environmental management appear to be largely forgotten.**

The prime focus for criticism of the RMA is the time taken to process resource consents and the costs of so doing<sup>11</sup>. The major goal of any changes to the Act appears to be to speed up processing, improve council accountabilities and reduce compliance costs.

However, there is little information on the environmental results being achieved through the administration of RMA provisions.

Therefore, given that national environmental indicators are just being developed, the costs to the environment, and to future generations, of any changes cannot yet be evaluated.

**The consequences of any changes to the Act on the quality of environmental outcomes do not appear to be part of the current debate.**

### *The RMA is still in transition*

The RMA is seven years old and has been amended a number of times<sup>12</sup> to tidy up uncertainties in implementation.

Only a small number of the plans required to be produced under the Act have been completed and are operational. **It will take a minimum of three more years before the new planning regime is fully in place**, as some sizeable communities have not developed a draft plan. Working with transitional plans is a frustration for councils as well as communities but this frustration should not distract New Zealand from its long-term commitment to sustainable management.

Further, any fundamental changes to the RMA eg changing the definition of ‘environment’ could mean that plans would need to be revised and therefore the transition period extended. The costs of re-writing and re-hearing plans would be significant.

Past experience indicates that substantive resource management legislation can take at least ten years to become ‘seasoned’. Time is needed to gain experience using new legislation to develop case law to give guidance to practitioners, and for people and communities to become familiar with the legislative objectives and hence requirements. This can happen most efficiently in a stable climate where there are no major changes to the Act.

**New Zealand risks extending the RMA transition stage and thus increasing implementation costs if further amendments to the Act necessitate redrafting and rehearing of plans. This will be a cost on all participants: businesses, communities and councils.**

### *Land use is always an issue*

In terms of impacts, the four most distinctive land uses are urban, peri-urban, rural (all forms of farming and forestry), and conservation (including recreation). These land uses are different in terms of:

- the intensities of each land use;
- infrastructure requirements; and
- population densities they generate.

The RMA's major focus is an effects-based approach to environmental management. An effects-based regime in general works well for large 'greenfields' industrial developments<sup>13</sup>, but not so well for peri-urban and urban land where the intensity of use, the mix of land uses and the density of people provide a rich substrate for conflict, particularly given the strong focus on property rights in New Zealand.

One limitation of an effects-based approach is that it does not allow neighbours to know with any certainty what land uses can or cannot be conducted on an adjacent property. This is just as important in residential as it is in business areas. It explains, in part, the intense concern about intensification of residential living through infilling and redevelopment of lots in some cities. The relationship between people and the environment in urban areas always requires dialogue as to what results the community wants and how that is reflected in the planning framework<sup>14</sup>.

**As our urban areas evolve and as people live closer to their neighbours, the greater is the probability that land use and related conflict may occur. Therefore the strategic management of urban living must encompass the management of amenity values, heritage and urban design.**

### *Moving forward*

The current, dominant governance paradigm revolves around 'least cost' (in fiscal terms) in the approaches to most facets of the supply of public and private 'goods'.

A consequence of this paradigm is that the efficiency of resource use is barely on the agenda. Between 1980 and 1996, our population rose 15.5 percent. In the same period, increases in the use of resources rose substantially eg consumer energy 44 percent and solid waste in the Auckland region by 95 percent. Such information indicates that we are using more resources per capita to deliver

New Zealand's lifestyle and that such increases are ultimately not sustainable.

The present focus on RMA implementation costs shows no sign of diminishing. There appears to be limited realisation by many resource consent applicants that an effects-based legislative regime necessitates more information if good environmental outcomes are to prevail<sup>15</sup>.

Resource consent applicants are now contributing directly towards the costs of their activities whereas, in previous times, costs were met from general rates. Local government has been progressively implementing a 'user pays' approach, as required by legislation, in parallel with the RMA requirements for resource consent applicants to supply information on the effects of activities.

The need is for more robust analysis than the Minister's *Thinkpiece* to clearly define what parts of the Act, or types of implementation, are causing most difficulty in order to:

- improve the rationality of debate about the RMA;
- minimise any reduction in the effectiveness of the Act, ie ensure that the goal of sustainable management is not jeopardised by changes; and
- any necessary changes to the Act deliver desired outcomes with no unintended environmental consequences.

Problems with the RMA that need to be resolved include:

- the lack of integration by regional and territorial authorities in implementing the RMA (eg little use of combined plans);
- difficulties with transferring powers under s 33 because of the requirement to retain responsibility;
- businesses continuing to intervene in RMA resource consent processes through trade competition;
- the 'purchase' of the approval of affected persons for resource consents; and
- the lack of support for the involvement of community groups in RMA processes.

Some changes to the Act are undoubtedly needed but they should be developed through a much more open, consultative (with users, local government and communities) process that focuses both on how to maintain the integrity of the purpose of the Act and also improve its processes.

It appears (from the Minister's *Thinkpiece* and its critiques<sup>16</sup>) that only a few councils are having difficulties in undertaking their RMA statutory functions. If this is the case, these councils could be assisted by central government to improve their performance.

Much of the need for legislative change may then be reduced and performance needs could be addressed in a more cost-effective fashion.

### ***Towards sustainable development***

**There is little demonstration of Government commitment to enhancing environmental management and the overall sustainability of resource use.** Government's environmental focus appears to be dominated by conservation of indigenous flora and fauna. While this is an essential thrust for New Zealand, it constitutes only one part of the environmental agenda.

**The unstated tenor of much of the current RMA debate is as much about reducing the core thrust of the Act (sustainable management) as it is about reducing compliance cost.** Reducing the core thrust of the RMA is potentially a very risky pathway for New Zealand - a small trading nation in a highly competitive world in which environmental qualities will increasingly be a core component of competitive advantage.<sup>17</sup>

**The following action is needed to ensure that change to the RMA will enhance environmental management:**

1. A real commitment and investment by the Government to make the RMA a key component of contributing to sustainable development in measurable ways.
2. If the Act is to deliver on sustainable management, it will require:
  - minor process changes where there is a consensus among local government, communities and other stakeholders;
  - no changes to Part II that would reduce the Act's core requirements to contribute to sustainable management;
  - increased capacity-building at institutional, professional and community levels;
  - more constructive working relationships between territorial authorities and regional government, as demonstrated for example by the Auckland Regional Growth Forum;
  - clear guidance from central government as to what is needed in an RMA plan; and
  - clear guidance from all councils as to what information is needed for resource consent applications.
3. The retention of core aspects of the RMA including:
  - recognition of intrinsic values;
  - potential for the establishment of environmental 'bottom lines';
  - inclusion of people and communities in the definition of environment; and
  - retention of amenity values as currently defined in the Act.
4. The New Zealand Government, communities and businesses must return their focus to the environmental outcomes that are being sought through the RMA rather than simply the processes associated with the Act.

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## Endnotes

- <sup>1</sup> The first review was PCE 1995 *Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities*. Aug 1995.
- <sup>2</sup> (a) World Commission on Environment and Development (1987) definition: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”  
(b) United Nations Habitat Agenda Principles, 1996: “Sustainable development - a process of change which improves people’s quality of life while protecting the natural and human resources on which future generations will also rely.”
- <sup>3</sup> ‘Sustainable management’ means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while (a) safeguarding the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.  
In a publication (RMA Info Sheet No. 6, Dec 1991) MfE stated that: “In essence, sustainable management comprises two things. Firstly, it is about recognising more fully the environmental costs of activities and policies in order to protect our natural and physical resources (better environmental valuation). Secondly, it is about better consideration of the earth’s resources for future generations (better environmental stocktaking).”
- <sup>4</sup> Frieder J 1997. *Approaching Sustainability: Integrated Environmental Management and New Zealand’s Resource Management Act*. Ian Axford New Zealand Fellowship in Public Policy.
- <sup>5</sup> PCE 1998. *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management*, June 1998.
- <sup>6</sup> For example, see PCE 1998. *The Management of Urban Vegetation in North Shore City*, February 1998.
- <sup>7</sup> *St Columba’s Environmental House Group v Hawke’s Bay Regional Council*. [1994] NZRMA 560.
- <sup>8</sup> Ministry for the Environment 1995. *Environment 2010 Strategy*. Sept 1995.
- <sup>9</sup> PCE 1998 *The Cities and their People: New Zealand’s urban environment*, June 1998
- <sup>10</sup> PCE 1996 *Administration of Compliance with Resource Consents - Report of an Investigation of Three Councils*. Oct. 1996
- <sup>11</sup> MFE 1998 *Annual Survey of Local Authorities* (for the 1996/97 year).
- <sup>12</sup> In 1993, twice in 1994, and once in 1996 and 1997. There are still the residual parts of a Bill currently before the House.
- <sup>13</sup> PCE 1998. *Information Needs of the RMA. A Review of Information used for Discharge Permit Applications*. June 1998.
- <sup>14</sup> PCE 1997. *The Management of Suburban Amenity Values. Administration by Auckland, Christchurch and Waitakere City Councils*, March 1997
- <sup>15</sup> see 13
- <sup>16</sup> Reviewer’s critiques attached to *Land Use Control under the Resource Management Act*, April 98, MfE.
- <sup>17</sup> Elgin D & LeDrew C 1997. *Global Consciousness Change: Indicators of an Emerging Paradigm*.