Valuing Our Environment

The costs of the RMA

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It is not uncommon to hear claims that the Resource Management Act (RMA) creates 'unnecessary costs, delays, and uncertainties', but how much is sustainability really costing us?

A recent OECD Report[1] shows that New Zealand businesses require fewer resource consents under the RMA, than the number of permits required under environmental legislation in most of the ten other countries surveyed. The Report shows that it costs New Zealand businesses significantly less to comply with the RMA, than the cost to comply with our tax and employment legislation. It estimates that 42% of our businesses' compliance costs come from meeting the requirements of tax legislation, 32% from employment legislation and only 25% from meeting environmental standards. Further, the overall compliance costs for New Zealand businesses are substantially below the average compliance costs for the OECD countries surveyed in the Report.

The RMA replaced over 50 statutes that dealt with different aspects of environmental management so all the effects of a proposed activity are considered together. The RMA is world-leading in this respect and is frequently used as a guide for other countries considering environmental law reform.

Under the RMA, district and regional councils are responsible for making most environmental decisions. Unfortunately, the absence of national environmental standards and national policy statements has led to a lack of consistency between councils.

The purpose of the RMA is to promote sustainable management by "avoiding, remedying or mitigating" the adverse effects of proposed activities on the environment. This does not mean that there should be no development or that all natural areas should be protected. To the contrary, this generally means there should be a process, the resource consent process, to consider the effects of proposed developments on our environment and our community. Currently, less than 1% of resource consent applications are declined.[2]

The public has an important role in the resource consent process, providing alternative information to that provided by the applicant. The public can provide expertise or information about which the applicant and council are unaware. The RMA relies on public participation to inform the decision making process, however, public participation is often blamed for creating "costs, delays and uncertainties" – public participation is consistent with democratic principles and if the public is excluded from this process, who will represent the environment?

The vast majority of resource consent applications are processed on a non-notified basis. On average, a staggering 95% of resource consent applications are processed without any opportunity for public input.[3] The level of notification under the RMA is less than half that which occurred under the Town and Country Planning Act 1977, the planning legislation that preceded it.[4]

The failure of councils to notify resource consent applications has resulted in the destruction of important natural areas being approved without any public input. Examples include a coalmine under the Paparoa National Park, creating a significant risk of subsidence; the farming of the alien invasive seaweed *Undaria pinnatifida* in Wellington Harbour; and the clearfelling 100ha of pristine native forest in the Catlins.

The courts have endorsed public participation in environmental decision-making. The Environment Court in *Minister of Conservation v Southland District Council*[5] held that "the process of deciding whether resource consents should be granted or refused is more complete, and leads to better decisions, when others have the opportunity to make submissions." The High Court in *Murray v Whakatane District Council*[6] held that the broad right of public participation in environmental decision-making is "based upon a statutory judgment that decisions about resource management are best made if informed by a participative process in which matters of legitimate concern under the Act can be ventilated."

Already, the RMA process, by its very nature, is weighted in favour of developers and against community groups. Developers have better access to information, funding, scientific expertise, and legal representation, while community groups are usually under-resourced and unable to participate in the RMA process to the extent required. Participating at the Environment Court level also exposes community groups to the risk of having costs awarded against them. After losing their case, legal costs of nearly $27,000 were awarded against the Save the Sounds - Stop the Wash group, which had sought to reduce the speed of the fast ferries to address environmental and safety issues.[7] The Marlborough District Council has since passed bylaws to reduce ferry speed.

Claims that "vexatious" submitters hold up development are used as an argument to reduce public participation. However, few members of the community have the time or energy to participate in the RMA planning process - if they manage to hear about and understand a proposal, writing a submission can still be a daunting prospect (let alone appearing before a council hearing committee). The RMA devolves responsibility for the environmental public interest to communities but there is little support for those that participate to ensure that councils properly consider the environment.

The RMA relies on public participation to ensure that relevant information is made available and decisions are fair and sustainable. It is essential that the interests of the community and the environment be considered alongside those of the developer. In some circumstances, public participation enables a compromise to be reached that achieves sustainable management and satisfies the interests of all those involved. For example, a recent subdivision proposal in the Kaiwharawhara bird corridor near Wellington was agreed to by submitters on the basis that domestic predators would be excluded from the area.

Despite the numerous barriers to public participation that already exist, the Resource Management Amendment Bill, currently before Parliament, proposes to reduce public participation even further under the semblance of reducing costs. "Limited notification", as proposed by the Resource Management Amendment Bill, would mean that members of the community that are not "directly affected" are excluded from environmental decision making processes.

A recent case in point is the application to dump the 117m *Frigate Wellington* in the proposed marine reserve area off Wellington's South Coast. In spite of the area's scientific values (recognised by the Department of Conservation and Victoria University marine scientists), Wellington Regional Council granted the resource consent. Two members of the public appealed this decision to the Environment Court – a scientist and a planner. Neither were "directly affected" by the proposal but both were extremely concerned about its effects. Limited notification could see people like this blocked from participating in RMA processes.

Rather than an overhaul of the RMA, we need to improve its implementation by providing councils with greater resources and guidance. Complaints about the costs associated with the RMA are usually uninformed and without foundation. The RMA provides an opportunity to safeguard our environment for future generations – reducing public participation may reduce costs to the developer, but at what cost to the community and the environment?

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[1] *Businesses' Views on Red Tape: Administrative and Regulatory Burdens on Small and Medium-Sized Enterprises* (2001) OECD (see the OECD website at: www.oecd.org)
[2] *Resource Management Act: Annual Survey of Local Authorities* (1999/2000) Ministry for the Environment
[3] *Resource Management Act: Annual Survey of Local Authorities* (1999/2000) Ministry for the Environment
[4] 15-17% of applications were notified under the Town and Country Planning Act 1977
[5] A039/01.
[6] 2 NZED 557.
[7] *Marlborough District Council v New Zealand Rail Limited* 1 NZED 60.