

AN INTRODUCTION TO THE NEW ZEALAND REFORM OF THE LAW IN RELATION TO LAND, AIR AND WATER THE RESOURCE MANAGEMENT ACT 1991

Derek Mason

The significance of the Act in New Zealand is that it falls within the jurisdiction of the Ministry for the Environment. The last court of appealed decisions is the Environmental Court. The law has implications throughout the whole regulatory process affecting every aspect of resource use. The legislation draws together issues dealing with town and country planning, water and soil conservation, pollution, minerals, geothermal energy and New Zealand's coast line. The Act replaces more than twenty existing laws and requires responses from all regulatory processes affecting everyone; Court agencies, local authorities and most private business. There are some exceptions and some of those place a lot of power and authority directly on the Minister for the Environment. The holistic approach of the Act is such that anyone that has a responsibility related to resource use is in a steep learning curve in making decisions. New Zealand's natural and physical resources have in the past been subject to fifty different laws developed on an ad hoc basis. They have often been conflicting, overlapping and inconsistent in their purpose. The new legislation aimed to put New Zealand's decision-making on a sound footing, building a system where the environment is considered as an interactive whole. Maori holistic values are acknowledged, sections specifically provide recognition of the Treaty of Waitangi.

I personally had at an early stage an opportunity to look at policy that affected the rural community and at rural issues on private land. The vision for the future, as an original concept, was that it would be launched with sufficient funding from Central Government to meet the public interest, the social and admin cost in partnership with agencies and private interests for developing educational attitudes, rather than bureaucratic function in the application of the Act (naive perhaps). There was certainly a need for new law to cover pollution, contamination of fishing grounds, flooding problems, soil erosion, loss of native forest cover and plant and bird species. (Andy's speleothems were definitely at risk.)

The Act's purpose was to safeguard the life supporting capacity of air, water, soil and ecosystems, to avoid remedy or mitigate any adverse effects of activities on the environment.

Persons and authorities exercising powers under the Act are required to recognise Matters of National Importance.

1. The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and margins. They are to be protected from inappropriate subdivision use and development.

2. The protection of outstanding natural features and landscapes from inappropriate subdivision use and development.
3. The protection of significant indigenous vegetation and significant habitats of indigenous fauna.
4. The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.
5. The relationship of Maori and their culture and tradition with their ancestral lands, water, sites, waahi tapu and other taonga.

There are other matters that decision-makers are to give consideration to, for example, the efficient use and development of natural and physical resources, the protection of heritage values of sites, buildings, places or areas and other things such as the intrinsic values of ecosystems. The words used in the Act state, "shall have particular regard to". Andy's speleothems and cave biota are not quite yet covered by the law.

With reference to "the efficient use and development of natural and physical resources", it has often been linked with a commonly used term internationally, sustainable development. It is not the term sustainable management embodied in the RMA? The Act focuses on the sustainability of the natural and physical environment (air, water and land, the built environment and ecosystem). It does not attempt to cover the wider concerns of sustainable development.

I make the comment here that cause and effect, action and reaction are inevitable natural laws of mans impact on the environment When no man set a foot in New Zealand's natural landscape, fire destroyed bush and tussock, and mountains moved to the sea. In that time I believe there was a constant balance in the rate (speed) that this occurred. In a flight of fancy I would like to call it Beetham's constant raft, like a datum peg against which natures change or biodegradability can be measured. A little difficult to create the formula when Andy was not there to do the measurements. For Andy's speleothem the problem is the time scale to heal change and with mankind's help will never to be healed. The economic pressure of today's world pushing that change are overwhelming, particularly in the case of cave biota, with environmental pressure coming from the financial sector.

The regulatory process is based on Resource Consents, with five types:

- (1) Land use consents
- (2) Subdivisional consents
- (3) Water permits
- (4) Discharge permits
- (5) Coastal permits

Regional Councils are responsible for mandatory regional policy statements. Territorial authorities are responsible for land use planning along the lines of

existing district schemes, although their focus is now required to be on the effects of activities not just on the activities themselves.

The strategy in the Waitomo District Plan (as an example) have used zoning as a planning tool for controlling environmental effect. They consider (the consultants) that zoning offers a degree of certainty and familiarity (alternative offered in Appendix A). The Waitomo District Council gives two types of consent; (a) land use consent and (b) subdivisional consent. Activities are classified for administration purposes in five decrees:

- (1) Permitted activity
- (2) Controlled activity
- (3) Discretionary activity
- (4) Non-complying activity
- (5) Prohibited activity

Each has different consent requirements under the law. The introduction of Karst Zones as an overlay on private land zoned rural, and not subject to resource consent for standard farming practise, is a major step for the Waitomo District Council. Most submissions to Council's District Plan revolve around the classification of the resource use in the District. More than eight hundred and fifty submissions were listed in response to the Draft District Plan, much of which would be motivated by the costs associated with compliance the resource user would have to meet, out of income, which has been difficult in a predominantly sheep and beef producing locality. A response of that size for a small territorial authority means that those that do things with air, soil and water are responding to and trying to get to grips with the Act as stated. It would require a further address to deal adequately with the requirements of compliance. In terms of the law it is complicated, is costly in time and administration, and after ten years and four amendments to the RMA only now has case law given some guidelines to aspects of the RMA.

The introduction of the RMA was done at a time in New Zealand when major changes were taking place politically. The development of Governance away from governing to a market force driven economy paid for by user pays, meant that funding the regulatory process became nonexistent. The envisaged partnership for the elements of social and administration costs shared between central government, local authority and resource user was lost. GST tax was used to service debt, expand government employment and incomes and pay consultants for restructuring. The costs are being met at the local level, the loading of further debt onto the land or property base by way of rates should no longer be an option. Reference has already been made to economic pressure on the environment, just another trend in the wrong direction (self defeating). Where are we now with the RMA? The Waitomo District Council is currently taking action in planning to record the district's heritage of Karst, note our caves of significance and protect them from soil run off.

Hopefully Andy's speleothems and the cave biota will benefit, but we are not there yet though. My references have only been to the Draft Plan of the Waitomo District Council.

I offer this critique of difficulties ahead for our Waitomo District Council's response to the RMA as embodied in the Draft District Plan.

Draft proposals for complying with the Resource Management Act are far from user friendly for the following reasons:

1. Identified funding had not been specifically allocated for additional costs to Council, from Central Government, for administration and legal costs as required by the Act at District Council level. Note: *There is a sustainable resource fund available within the structure of Environment Waikato.*
2. Funding to deal with legal issues affecting major international companies or other large organisations is beyond the resources of the District Council.
3. No provision is made for compensation to private commercial interests or the farming community where property rights impact on commercial returns and where these rights have been transgressed.
4. Karst areas are not legally specifically defined; who pays surveying or possible fencing? Note: *Not suggesting they should be. See Appendix A - Change system or return to amenity areas with a specific requirement to notify activity.* Divorce it from zoning. Notification only required subject to Council response.
5. Planning costs for the start of small business can be a disincentive to all new business enterprises much needed in the Waitomo District. Zoning as such may not be the best option for the environment where dispersal and the establishment of suitable businesses in rural areas, may be a good option in the future.
6. The grafting of environmental issues into a zoning system loses intent, becomes a licensing scheme and lacks flexibility to future change. (See Appendix A)

The above critique offered was part of a submission to the Waitomo District Council, that I hoped that when taken in conjunction with the structures offered in Appendix A, would be seen as a positive alternative. The concepts of the Resource Management Act was great in its holistic and integrated view of the environment. It is a difficult exercise to find common and acceptable direction when dealing with the human element in the world as it is. In conclusion for me there is the hope that the RMA has elements of a good structure, that in future most legislation can relate to and protect us from our own self destruction. Long live Andy's speleothems, the cave biota too. I believe it will be protected when the Waitomo District Council adopts its District Plan.

APPENDIX A

SUBMISSION ON DRAFT WAITOMO DISTRICT COUNCIL DISTRICT PLAN

- Eliminate zoning as such.
- Replace with Defined Recommended Usage Areas.
- *(Downgrade in regard to legally defined areas but covered by conditions attached to a Certificate of Notification.)*
- Re-introduce Amenity Areas as it relates to cave and karst and/or some reserves. (Not legally defined areas but generally identified and also covered by conditions attached in a Certificate of Notification.)
- Recommended Protection Areas, for bush, swamp, river banks, coastal areas (fragile) etc, all requiring Certificate of Notification.
- Mandatory provision for any development affecting surface areas, protection areas, to apply to Council for affects grading (Certificate of Notification, response time ten days).
- One-stop-shop from Environment Waikato Resource Management Approval, response time twenty-one days for affects gradient response (level six to level ten a Regional responsibility).
- Use the same policy, effects gradient for signage with qualifications (safety, quality, effectiveness, and size as the only criteria).

GENERAL PRINCIPLES

- Grade five at Council level the only non-compliant and not permitted level of activity.
- Subject to review appeal or referral to region (Environment Waikato).
- Council rights within ordinances to upgrade Certificate of Notification to a higher level of Certification if conditions are not met under the original Certificate.
- Certificate of Notification with the exception of level V classification is an approval for the requirements under the legislation for the Resource Management Act locally.
- Same structure for Environment Waikato to level ten being the only non-compliant not permitted level of activity.
- Suggest the structure so that only one authority need to be approached for Resource Management consent.

CERTIFICATE OF NOTIFICATION (BASED ON EFFECTS, GRADED SYSTEM)

Grade 1 to 5 requires Certificate of Notification at District Council level for all activity (subject to conditions). Grade V at Council level is the only non-compliant, not permitted level of activity.

The proposed need for a Certificate of Notification would apply to any activity that has affects on the environment, all business activities, local or international, all service based utilities, power companies, telephone services, gas and all contracted Council services.

For the future it is important to separate environmental issues in the regulatory process from matters concerning Maori customs or rights. The destruction of remaining forests, bird life or over-fishing a species has the same result regardless of what custom or culture is applied.

The encouragement of an educated awareness on the effects on the environment can be a worthwhile cultural exercise, but one legal requirement should apply to all, in the exercise of the Resource Management Act.

At the time the Resource Management Act was introduced the costs of applying the Act were seen to be in the national interest, and funded from Central Government. This does not now appear specific for costs at District Council level.

Meet the legislative requirements for the Draft District Plan subject to Central Government funding in defined areas of costs.

In the interests of Waitomo District Council ratepayers and public relations generally, identify costs and negotiate funding from Central Government.

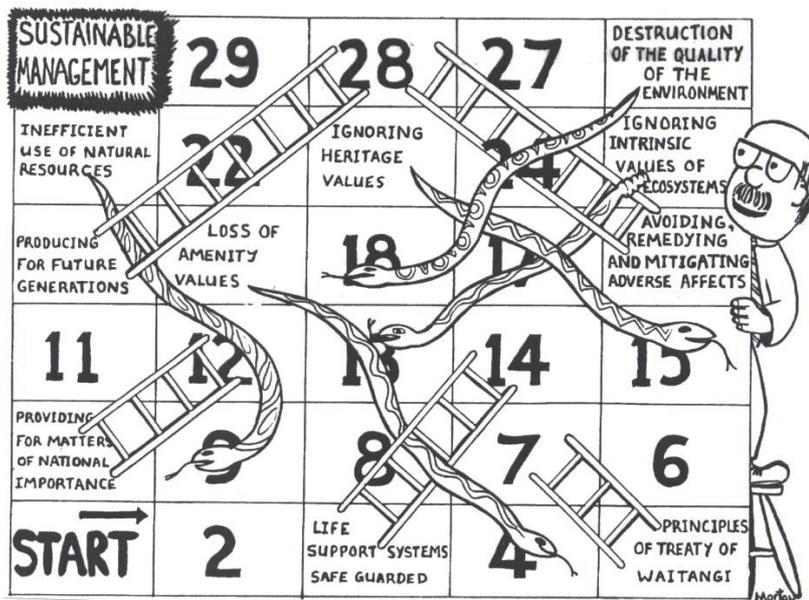


Figure 1. Designed around Part II of the Act – Purposes and Principles.

TRANSITIONAL PROVISIONS

The regulatory process – Land use an exception unless it contravenes a rule in a District Plan – not there yet for the protection of Andy’s speleothems.

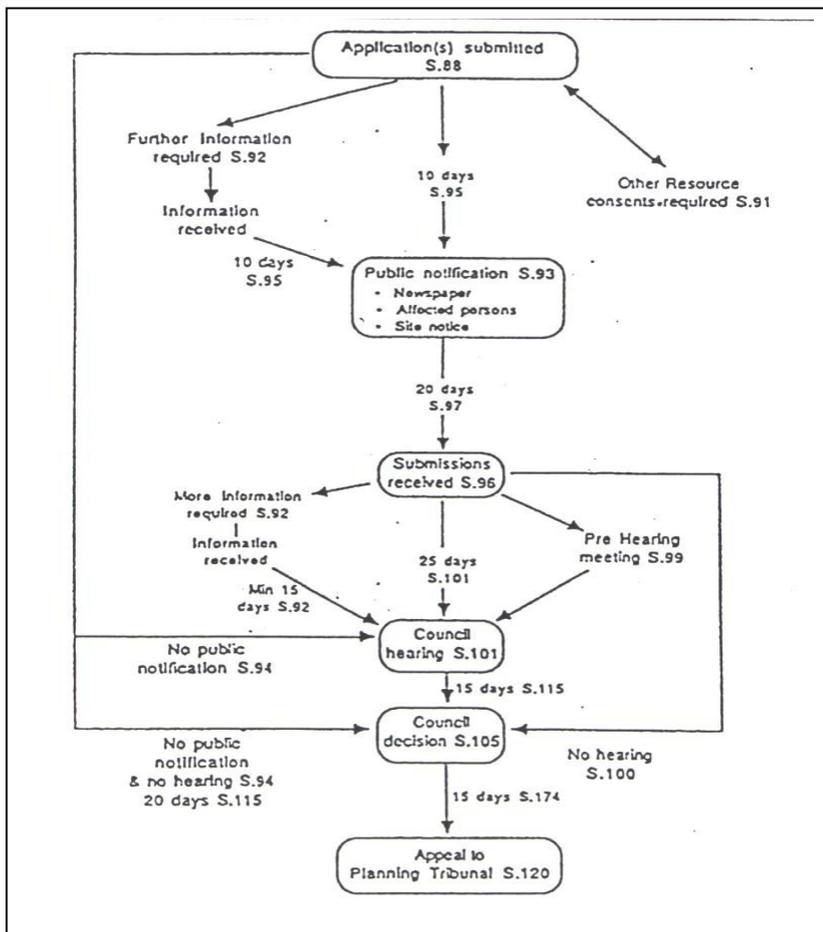


Figure Two. The procedure involved in processing resource consent applications can vary significantly.