

## **Straight Thinking – By Owen McShane**

### **What would life be like without the RMA?**

As you will know I spend much of my time trying to assist ordinary families and small business ventures deal with the complexities of their District and Regional Plans, and wonder how many decisions seem to get things so wrong.

There is hardly a major clause in the Act which does not need some rewriting to prevent ongoing abuse of power and to preserve what few rights remain to us. If one sat in New Zealand from year to year, reflecting only on our own experience, it would be easy to conclude that passing the RMA was one of the greatest mistakes we ever made.

However, every year I attend one or more overseas conferences on land use and development where people from the US, Canada, Australia, New Zealand the UK, Ireland, and occasionally from Europe, gather to compare notes.

I board the plane carrying a package of RMA horror stories and reports of the damage being done to our economy. Then I hear the stories from abroad and find myself thinking “We don’t know how lucky we are!”

The New Zealand Town and Country Planning Act, which the RMA replaced in 1991, was based on the UK Town and Country Planning Act, overlaid with some US practise.

By the eighties the Town and Country Planning Act had become bogged down with confusing case law, while major projects had to proceed through a series of Tribunals operating under different Acts before they could finally exit the process with all their consents in place.

A major project could successfully navigate, say four hurdles, only to fall over at the fifth.

At the same time the government was under pressure to bring all manner of environmental issues under some legislative umbrella, if only to reflect popular opinion, international pressures, and increasing concerns about dangerous pollution.

The New Zealand reformers faced a choice. They could let the Town and Country Planning Act remain in place and pass separate legislation to deal with water quality, endangered species, air pollution and heritage issues while taking on board the more “progressive” elements of the legislation developing in both the UK, and the interventionist States of the US, such as California, and Oregon.

The probable outcome doesn’t bear thinking about.

The Western World economies have all experienced a rise in deep environmentalism which puts the interest of the planet or nature ahead of that of human beings, and at the same time has experienced the spread of the dreadful planning fad called Smart Growth, which wherever it has been implemented leads to an explosion in property prices and compliance costs which in turn leads to huge increases in borrowing, which in New Zealand means high interest rates

and an over valued dollar. Finally, these bubble economies have burst, and brought down the sub-prime mortgage funds and caused a global economic crisis. The history of planning can be described as “one damned fool idea after another” but this latest one is surely the most costly and hurtful of all.

Thanks to *Demographia* we all know that Smart Growth, and its consequences, have now made New Zealand one of the least affordable housing markets in the Anglo-American world. It's easy to blame the RMA.

But we cannot blame the RMA for all those unaffordable markets in parts of the US, Canada, Australia and the whole UK.

In fact the RMA has actually held the extremes of Smart Growth at bay in many parts of New Zealand. The Statewide Planning laws of Oregon simply make “Growth Management” mandatory and the State Government develops a land use plan for the whole State. But when the ARC tries to implement hard line Smart Growth the effects based RMA stands in the way. So the ARC and other Smart Growth planners have had to first establish the adverse effects of people living where they want to live and then use them to justify their Metropolitan Limits, Growth Strategies and the like.

Also, in most US states there is no binding legal framework equivalent to the sections 5, 6, and 7 of the RMA. For example, the zoning board in Oakland decided that the old Kaiser shipbuilding yard should not be rezoned for residential use because there might be another war and California might need to build the Liberty Ships again. The Commissioner who swung the vote was not required to refer to any legal document to justify her opinion. It just seemed like “a good idea at the time” and took everyone by surprise.

Or we might have followed the UK example and ended up with a framework in which there are NO permitted activities at all. Every change in land use needs planning permission. The result is that the UK builds only 3 houses per thousand people a year (compared to 7 in Australia and 6 in NZ) making it the worst performer in the *Demographia* survey. And virtually square metre of the land in the UK has an overlay of some land use constraint which makes those permits very hard to get. Even the Duchess of Northumberland had a major battle to build her wonderful £15 million garden at Northumberland Hall.

(For pictures and commentary go to:

[http://www.alnwickgarden.com/about\\_the\\_garden/index.asp](http://www.alnwickgarden.com/about_the_garden/index.asp)

*English Heritage* said “You are destroying one of the most important gardens in England.” They could not conceive that she might create an even better one.

The major achievement of the RMA was the creation of a single “omnibus” act which laid down a single process for obtaining a resource consent with time lines for participation established along the way. Tragically, this “one stop shop” is now being undermined by the Local Government Amendment Act which allows Councils to write all manner of plans and

invent visionary nightmares which now lie over the RMA documents like a dark cloud. The proliferation of UK style Waitakere Ranges Protection legislation will further destroy this advantage, as will so called “affordable” housing laws.

In San Jose a developer had endured eight years of legal action to gain Planning Permission for a major residential development which San Jose seriously needs. The developer had hardly pulled the champagne corks when the Sierra Club brought a legal action under the Federal Government’s endangered species legislation. The Sierra Club generously agreed to withdraw the action if the developer agreed to set aside about a third of the land area as open space for the lizards and to donate over a million dollars or so to Sierra Club to help them monitor their habitats. They had no choice but to agree.

When David Friedman, the Californian Attorney, visited me last year he explained the classic gambit of the “Robert Redford liberals” who are determined to keep lots of open space around their own properties – all in the public interest of course. If someone wants to develop a neighbouring orchard some nature loving celebrity will bring an action before the courts. If the applicant succeeds they come back again with another action under another piece of legislation and they keep coming back again, and again, and again, until the applicant’s bank balance has run dry. Because of their celebrity status they are assumed to be benevolent.

Thomas Sowell the, African-American economist, despises them for making housing unaffordable for the poor.

Yes, the RMA needs a major re-write. The original authors could not foresee the onslaught of the new round of central planners who invent all manner of theories and fancies to force us to bend to their will.

But we should also ensure we understand the strengths of the Act, so that these are not undermined while our minds are focused elsewhere.

And believe me, the “Dedicated Central Planners” are working on it – at every level of government.

**1299 words**