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▶ 2 Attachments, 414 KB

One Activity in this Special Digest.

Activity One: Centre Makes Supplementary Submission to Legislative Committee, Local Government (Auckland Council) Bill.

The Submission follows:

Supplementary Submission to the Auckland Governance Legislation Committee.

1. Can the Mayor of a Greater Auckland Council Actually Get Anything Done?

1.1 The expectations vs the Reality.

We now have two candidates who have thrown their hat in the ring – John Banks and Len Brown.

Both are presumably excited by the prospect of being the Mayor of a Greater Auckland Council, with a strong mandate for action, and with some additional executive powers to achieve their visions.

They are likely to be disappointed. Bold visions are not enough when the odds of actually doing anything are so heavily stacked against you.

For, example, last week the Rodney District Council declined an application by a Maori-based joint venture to develop a luxury resort on Te Arai Beach, near Mangawhai.

This was celebrated by many as a ‘victory for the community,’ although we can presume that this ‘community’ does not include many of the unemployed tradesmen in the area, or the young people who might have found employment in the 180 chalet complex.

Some months ago another proposal for a luxury resort on the Te Arai point was ended when the ARC bought the property, for a Regional Park, from the project financier – leaving the developer, and the resort operator I was negotiating with, high and dry.

A third resort project, also in Mangawhai, is teetering on a knife-edge, dependent on whether the Kaipara District Council will process the application to expand the facilities to meet the needs of the US operator as a non-notified application. It has taken two years to get the present proposal through the system. If the additions are notified the investors may have to wait a further two years – and they simply will not do so.

So one small town on the East Coast of Northland faces the prospect of three resorts being abandoned because of the RMA process – even though all these resorts were intended to be ready in time for the Rugby World Cup.

This pattern is being repeated all around the country.

1.2. The Need for Reform of Part 2 of the RMA.

This will continue to be the case within the territory of the Greater Auckland Council unless we make some changes to Part 2 of the RMA.

Part 2 states the *Purpose and Principles* of the Act and most importantly establishes the 'matters of national importance' to be considered by decision makers. At present all the matters of national importance relate to the protection of the environment. Part 2 makes no mention of infrastructure, access to energy, mobility, economic growth and development, or employment.

Any RMA decision-maker is required to finally assess any application against Part 2 of the Act, and, given the present wording of the Act, the ecosystems or natural character, will almost always trump economic development and job creation.

Luxury resorts are naturally built in locations of great beauty and natural character. That means they cannot get built in New Zealand because the protection of that natural beauty and character almost always trumps economic development and employment. The current wording of the Act says economic growth and development are not matters of national importance, or indeed of any importance at all. The developer cannot compete with the national importance accorded to the natural and physical resources of the environment.

1.3 Reforming Process is not Enough.

The proposed reforms to the RMA will not affect this situation because they are all about process and there are no changes to Part 2 proposed in either Stage One or Stage Two of the reform programme.

There is no point in speeding up the process for dealing with nationally important infrastructure, for example, if the decision will still be determined by the present criteria, which do not include infrastructure.

The present reforms simply mean that any Mayors of the Greater Auckland Council will simply get the bad news earlier. No matter how charismatic they may be, and no matter how grand their visions, they will be toothless tigers.

1.4. Times of Crisis Demand Substantive Reforms.

Our overall productivity is being dragged down by our rapidly declining productivity of capital. Three developers have been frustrated in their attempts to invest their capital in resorts in my neighbourhood. They are unlikely to try again. It is also virtually impossible to get consent for a major timber processing plant in New Zealand, so we end up exporting raw logs overseas.

We are in a time of crisis and the ordinary people are expecting Government to provide a stimulus to economic development, productivity and employment. But Government cannot fund this activity – it does not have the cash and cannot borrow more. Our credit rating is vulnerable.

The key is to remove these obstacles and mop up the unemployed in privately funded

construction projects and the downstream activities they generate.

The Centre believes these extraordinary times legitimise a major re-write of Part 2 of the Act, and our proposals [are on our web site here](#).

Those who regard economic growth and development as an assault on the Earth Mother will be furious but Government could surely say that these are temporary measures, which will be reviewed once the country is officially out the recession.

2. The Proposed Reforms to Part 2 of the RMA.

The current wording of Part 2, with our proposed amendments, follows:

2.1 Amendment to Section 5.

Present wording:

5. Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, 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 wellbeing and for their health and safety while –

(a) sustaining 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.

Proposed re-wording: (changes and additions underlined):

5. Purpose.

(1) The purpose of this Act is to promote economic growth and development by enabling people, families and groups with shared or common interests to manage the use, development and protection of natural and physical resources in a way, or at a rate, so as:

(a) To provide for their own social, economic and cultural wellbeing, and

(b) To provide for their retirement. and

(c) To provide for their own health and safety, and

(d) To initiate, respond to, and adapt to change, and

(e) To promote personal mobility, and

(f) To promote their access to energy.

while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals and petroleum) to meet the reasonably foreseeable needs of current and future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, and soil and habitats; and
- (c) Avoiding, remedying or mitigating any adverse effects on the environment which might arise as a result of any proposed use or development of natural and physical resources.

2.2 Section 6, Matters of National Importance.

The Centre proposes section 6 be amended as follows:

6 *Matters of national importance.*

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the effects of the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the ~~natural character~~ amenities of the coastal marine area ~~coastal environment (including the coastal marine area)~~, wetlands, and lakes and rivers, and their margins, and their protection from inappropriate use, and development, while enabling appropriate use and development; and*
- (b) *The protection of outstanding natural features ~~and landscapes~~ from inappropriate subdivision, use, and development.*
- (c) *The protection of significant areas of indigenous vegetation and significant or scarce habitats of indigenous fauna, and the reforestation of land where appropriate:*

[Expl. Note: Many developers volunteer to reforest (with heritage forests etc) eroding land in return for rural residential development but the courts consistently decide that “rural character” trumps reforestation. There is currently no reference to reforestation as a matter of national importance.]

- (d) *The maintenance and enhancement of access to and along the coastal marine area, lakes and rivers from both public and private lands.*
- (e) *~~The~~ Any special relationship of ~~Maori~~ the peoples of New Zealand and their culture and traditions with their ancestral and family lands, water, sites, burial grounds, sacred places and other significant places.*
- (f) *The protection of historic heritage from inappropriate ~~subdivision~~ use and development.*
- ~~(g) The protection of recognized customary activities. [Recent amendment]~~
- (g) *The efficient use and development of natural and physical resources, and in particular –*
 - (i) *the use of market mechanisms to promote their efficient allocation.*
 - (ii) *the need to promote this efficient use by reducing transaction costs to a reasonable minimum.*

(iii) by councils collecting data bases relating to previous applications so that applicants do not have to provide information already provided by previous applicants.

(iv) The need for communities to have access to locally sourced mineral aggregates for construction purposes.

(h) The payment of compensation to those whose lands are affected by development controls imposed to protect environmental qualities of national and regional importance.

[Exp. Note: These are self-explanatory. The reference to reducing transaction costs was a recommendation of Judge Jackson in one of his papers on economic efficiency.]

2.3 Section 7 – Other Matters.

7. Other matters.

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

[Exp Note: (aa) as in recent amendment to balance (a)]

~~*(b) The efficient use and development of natural and physical resources:*~~

[Exp. Note: Moved to s6.]

~~*(ba) The efficiency of the end use of energy:*~~

[Exp Note: Undefinable.]

~~*(b) The maintenance and enhancement of amenities. values:*~~

[Exp Note: This had led to anthropomorphic “Values” being pepper-potted everywhere.]

~~*(c) Intrinsic values of ecosystems: The maintenance and enhancement of habitats of significant flora and fauna.*~~

~~*(d) Any finite characteristics of natural and physical resources:*~~

[Exp Note: All ‘natural resources’ are infinite. Read Julian Simon.]

(e) Ongoing access to mineral resources, including aggregates. (This is better)

~~*(e) The protection of fish and game habitats. The protection of the habitat of trout and salmon.*~~

~~*(g) the effects of climate change.*~~

~~*(h) the benefits to be derived from the use and development of renewable energy.*~~

[Exp Note: There are not necessarily any, and if they are they should be spelled out.]

2.4 Section 8 – Treaty of Waitangi.

8. Treaty of Waitangi.

(1) In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the ~~articles principles~~ of the Treaty of Waitangi, including the fiduciary duty. (Te Tiriti o Waitangi).

(2) Treaty settlements or memoranda of understanding between Councils and Maori interests may not over-ride or conflict with the processes and procedures laid down by this Act unless specifically sanctioned by an Act of Parliament.

3. Summary.

The Centre is not saying that all these reforms are necessary.^[1] But the changes proposed in Sections 5 and 6 certainly are necessary if the Mayors of the Greater Auckland Council are to meet the expectations of action which this proposed reform of Auckland Governance will inevitably generate.

Owen McShane

Director

Centre for Resource Management Studies.

^[1] The total package of our proposed reforms is at: <http://www.rmastudies.org.nz/documents/RMAAmendments.pdf>

Funding

The Centre has many more issues to address over the next several weeks. In particular we are seeking support for major ongoing investigation into the causes of New Zealand's low rate of productivity and a better way to finance our local government infrastructure.



[DONATION08R.doc \(233 KB\)](#)

PDF Version of this Digest.



[CRMS Friday ...pdf \(181 KB\)](#)

NOTE: The attachments cannot be opened in the PDF document.

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