

October 31, 2007



omcshane@wk.planet.gen.nz  
www.RMAStudies.org.nz

**Centre for Resource Management Studies**

1104 Oneriri Road, Kaiwaka  
Northland 0573, New Zealand  
T 64 9 + 431 2775 F 64 9 + 431 2772

## **Reforming the RMA**

The following is a list of proposed reforms to the RMA that have recently been proposed, collected, and assembled by the Centre for Resource Management Studies.

The CRMS has been collecting such proposals for some time and so many have come from diverse sources. They are intended to be agenda items for discussion and the Centre does not necessarily endorse them in total or as presented. (For example we believe Housing Affordability goals are best dealt with through reforms to the LGA so as to maintain the biophysical focus of the RMA.)

Some of the major issues are difficult to encapsulate in a proposed reform because their scope is so wide. For example, traditionally Councils have a fiduciary duty to their citizens but environmental law now puts the wellbeing of the environment ahead of the citizen. A snail has more rights than a child. Only future generations seem to have rights – once they are born they lose them.

While the reforms proposed below may not address these issues head on, the Centre hopes they may go some way towards restoring our normal constitutional checks and balances.

We also hope this is a useful starting point for a programme of reform.

### **GROUP A – CONSTITUTIONAL ISSUES, PROPERTY RIGHTS, COMPENSATION**

#### **1. Guarantee and Protect Property Rights.**

- 1.1. Rewrite sections 5, 32 and 85 and Part VIII of the Act.
- 1.2. Strengthen restraints on trespass and other unlawful entries and actions.

#### **2. Place RMA in a Constitutional Context.**

- 2.1. Require all RMA documents to include an outline of their Constitutional Context.

**3. Re-Introduce Elements of Common Law and Encourage Private Covenants.**

3.1 Legislate to include certain elements of the “move to the nuisance” provision of the common law, so as to protect landowners’ existing use rights from new arrivals, and require those who move to a nuisance to live with it. (This will actually get support from those trying to encourage inner city mixed use.)

3.2. Simultaneously, enable and encourage landowners to protect their ongoing use rights by purchasing development rights of adjoining properties by mutual agreement and contract rather than depend on “zoning”.

3.3. Restore the common law principle that there is no “right to a view” at the expense of neighbours’ development rights. (Again this will find favour with those promoting inner city development.) At the same time enable and encourage such “protection of view” by private covenants between the parties.

**4. One Law for All.**

4.1 Repeal Section 8 (Treaty of Waitangi) and the 33 other provisions that make exclusive reference to Maori Culture and spiritual values.

4.2 Prohibit Treaty Settlements, or other treaties, contracts and memoranda, from overriding processes and procedures of the RMA without specific Legislation by Parliament.

**5. Freedom from, and of, Belief.**

5.1 Expressly guarantee freedom from the imposition of other peoples’ religious beliefs.

5.2 Remove, or clarify the meaning of, the “danger words” such as *culture*, *ecosystems*, *intrinsic values*, *ancestral*, *ancestral lands*, and *spiritual*.

**6. Compensation. (See also Rural Issues below.)**

6.1. Introduce a new compensation mechanism for landowners significantly affected by plan change or significant resource consents.

6.2. Discipline Heritage designations and require and provide for compensation.

3.3. Strengthen Compensation Provisions by rewriting section 85 and parts of Part VIII.

6.3. Require compensation for takings in the public interest.

## **GROUP B – PURPOSE SECTION 5 ETC.**

### **1. Generally Make Intentions of Parts I and II More Clear, More Specific, and More Bullet Proof.**

- 1.1. Redefine *environment* by removing clause (d) of definition.
- 1.2. Replace “future generations” with “current generations”. (100 years is enough.)
- 1.3. Strengthen enabling provision of s5. (See draft proposed changes to Parts 1 and 2.)
- 1.4. Require that decision makers recognize that the Act “trumps” plans, and that science and knowledge can trump obsolescence in planning documents. Technology can move dramatically in ten years.
- 1.5. Integrate Archeological consents into the Act.

## **GROUP C – PROMOTE ECONOMIC EFFICIENCY AND INNOVATION.**

### **1. Define Sustainable and use sparingly.**

- 1.1 Remove all undefined references to “sustainable” from the Act and Schedules.

### **2. Promote Economic Efficiency**

- 2.1 Raise the efficient use of natural and physical resources to a “matter of national importance” and include sub-clauses relating to “access to energy” and mobility.
- 2.2. Strengthen Trade Competition clauses and apply to plan preparation, notification decisions and consent processing.
- 2.3. Make it clear that councils and decision makers are not in the business of allocating, or rationing activities and requiring calculations of supply and demand.
- 2.4. Prohibit the imposition of Metropolitan Urban Limits and other restraints on supply of land.
- 2.5. Make affordability of land in title a matter of National Importance (s6).
- 2.6. Include the time value of money in Section 32 analysis, and reinstate requirement to cover costs of compliance.

### **3. Remove inhibitions to Innovation and Change.**

- 3.1 Remove references to “character”.
- 3.2 See Trade Competition Rules above.

3.3. Clarify the meaning of “cumulative effects” to restrain hand-waving about the future.

#### **4. Infrastructure and Designation**

4.1 Define “infrastructure projects” and collapse the designation and consent process into one process within a single timeframe.

4.2 Allow proponents of Infrastructure Projects to introduce Cost and Benefit analysis in support of national interest.

#### **GROUP D – PLAN PREPARATION AND CONTENTS.**

##### **1. Regulatory Review.**

1.1 Require all proposed plans to be subject to a Central Government Regulatory Review, prior to publication. (See CRMS submissions to Select Committee.)

##### **2. Limit Number of Proposed Plans.**

2.1 Require Councils to have no more than two plans in place at one time: An Operative Plan and a single proposed plan – except for Private Plan Changes.

2.2 Change the Local Government Act so that Councils cannot prepare Land Use plans (disguised as Community Plans and the like) that over-ride the RMA, and which eliminate the right of appeal to the Environment Court – as is happening now.

2.3. Restrain front end fees and levies on new lots and consents.

2.4 Require planning documents to prioritise Issues.

2.5 Enable and Provide for “Consolidated Planning Frameworks” within a Region.

2.6. Reduce the number of categories of consent. (e.g. Remove Prohibited Activities.)

2.7. Simplify Plan Preparation process and require all councils to have operative plans within 12 months of reform Bill being passed.

2.8. Repeal requirement for Councils “to give effect to” regional policies and plans.

2.9. Restrict Regional Councils to regulating matters relating to soil water and air and to prohibit their involvement in land use and subdivision applications except insofar as they impact on the soil water and air.

## **GROUP E – CONSENT PROCESSING.**

### **1. Reduce Delays – Environment Court.**

- 1.1. Repeal 2005 amendment enabling council notification decisions to be appealed to the Environment Court.
- 1.2. Replace with RMA Ombudsman or Special Department of Audit Office to deal with “small claims” and complaints.
- 1.3. Require Decisions of Environment Court to be delivered within 20 days of conclusion of hearing.
- 1.4. Strengthen powers of Environment Court to award costs.
- 1.5. Expand Powers of Court to reject vexatious objections and objectors.
- 1.6. Reintroduce “Standing” to ensure interests are genuine and affects are real.
- 1.7. Allow Environment Court to require Security for costs from applicant or objector.
- 1.8. Enable an applicant to seek direct reference to Environment Court for major consents that are certain to be appealed regardless of the outcome.

### **2. Council Decision Making.**

- 2.1. Legislate for a “late consent being a free consent” whereby if the council fails to process the consent within the 20 working days required by the Act it loses its right to charge processing fees.
- 2.2. Make the 10 day period for the notification decision mandatory unless there are exceptional circumstances (identified).
- 2.3. Reduce need for notification by reducing “*de minimus*” implication and requiring adverse effects beyond the immediate neighbourhood to be significant.
- 2.4. Scrap the RMA Legal Aid Objection Fund. (see Paper by CRMS.)
- 2.5. Widen application of limited notification process.
- 2.6. Emphasise that consultation is at the heart of the plan preparation process but once a plan is operative consultation normally not be required.

### **3. Participation and Pricing.**

- 3.1 Get the pricing right – e.g. objectors should have to pay to object. At present the applicant pays for the costs imposed by objectors.

- 3.2 Require councils to meet at least half the costs of processing applications and generally enforce restraints on charging private applicants for costs relating to public benefits.
- 3.3 Require Councils using Consultants to Contract with at least Two Consulting firms and allow Applicants to choose.
- 3.4 Do not allow the same consultants to make the Notification decision as make the Consent decision. The conflict of interest is too great. (See KDC.)

## **GROUP F – RURAL ISSUES.**

### **1. Enable Succession.**

1.1 Encourage and enable economically sustainable farming into the future with flexible subdivision policies and innovative use of covenants and transferable development rights that provide a form of compensation for farmers who have restricted land use or are required to manage amenity values in areas determined to be of high landscape value.

### **2. Reward good stewardship with flexibility and freedom to farm.**

2.1 Encourage responsible farming by minimising those activities that require consent – manage effects not the farm.

2.2. Streamline process by introducing a one stop on farm visit for issuing individual resource consents.

2.3. Enable Councils to train and license contractors (just as we license electricians and plumbers) who can do earthworks and build dams etc without resource consents.

2.4. Introduce concept of net conservation benefit to enable a more holistic approach to on-farm conservation management.

### **3. Mandate Consultation**

3.1. Councils must understand what motivates on farm decision making before writing policies and rules into plans – Memorandum of Understanding with councils or legislate meaningful consultation with landowners.

### **4. Recognise Farms as Working Landscapes in a Rural Industry Zone.**

4.1. Farmers who provide public with the use of their land or in areas that are highly visible should not be required to preserve a state purely for public amenity - tone down or remove requirement to protect amenity values in section 7 of the Act. Label Rural Zones as Rural Industry Zones.

- 4.2. Prevent plans attempting to “Save” productive land from their highest and best use. The Act does not mention “productive land”, probably because there is no such thing. Landowners know best how to match activities and crops to soil types.

## **GROUP G – DEPT OF CONSERVATION AND OTHER GOVERNMENT ISSUES.**

### **1. Remove DoC’s Special Powers.**

- 1.1. Remove DoC’s special rights in relation to Coastal Areas, etc.
- 1.2. Removing the Minister of Conservation’s powers of veto over coastal area projects.
- 1.3. Remove DoC’s advocacy role except in relation to its own land.
- 1.4. Limit the role of DoC to advising councils on Biodiversity and Natural Heritage Issues.

### **2. Establish an Environmental Protection Authority.**

- 2.1. This EPA would develop national environmental standards and policy statements. NP.
- 2.2. These standards would be subject to open debate and scrutiny through a Parliamentary Expert Committee to ensure that the science was well founded. (c.f. air standards which are nonsense).
- 2.3. Remove ability of councils to set different standards and require approval of applications that meet national standards. (These need not be uniform through the country. (c.f. earthquake zones etc).

Owen McShane  
Director  
Centre for Resource Management Studies.