The New Zealand Resource Management Act

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New Zealand's Resource Management Act, 1991, greatly altered the legal basis of planning practice in that country. In some respects its provisions represented dramatic change from what had gone before. The New Zealand Ministry for the Environment self-consciously sought through the Act to take a leading role globally in moving towards a sound basis for sustainable development. As other planning systems come under increasing scrutiny elsewhere in the world, this legislation from a small country in the southern hemisphere deserves attention.

The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. The Act draws together the management of land, air, water, and other resources. Activities, including their land use aspects, can no longer be controlled 'for the sake of it'. They must be controlled only in respect of the adverse or detrimental effects which they may cause.

When deciding how to achieve an environmental outcome in terms of the Act, all authorities are required to consider the principal alternatives available. They must be satisfied that the approach they choose is the most appropriate in the circumstances.

The Resource Management Act also requires recognition of obligations to Maori as the descendants of New Zealand's original inhabitants. They must recognise and provide for the relationship of Maori and their culture and traditions with ancestral lands, water, sacred grounds and treasures. Consultation with Maori councils is required, and planning documents recognised by Maori tribal authorities must be taken into account.

The Act repealed more than 70 statutes, and significantly amended others such as the Local Government Act. The repealed Acts included those dealing with water and soil conservation, air pollution, and noise control; and, from a planning perspective highly significant, the Town and Country Planning Act of 1977. The Ministry states that this consolidation of law was necessary since there was no standard purpose for resource management, there were too many agencies involved, procedures were complex and slow, and provisions for public involvement were unequal.

The effect, from a land use planning point of view, is that land use decisions are now made under the Resource Management Act, just as water rights and air pollution impacts are decided on under this Act. Land use (and other resource management) decisions can now be made to accomplish just three purposes:

- sustaining the potential of resources to meet reasonably foreseeable needs
- safeguarding the life-supporting capacity of air, water, soil and ecosystems
- avoiding, remedying or mitigating any adverse effects of activities on the environment.

The previous Town Planning Act had provided that the purposes of land use decisions included 'wise use and development' of resources - meaning that planning could attempt to direct development for social and economic wellbeing. That purpose is no longer supported by New Zealand planning law, since the Resource Management Act provides only for planning and decisions to control adverse effects of activities. If, for example, local authorities wish to direct where shopping centres should be built, they can now only do so through taxation or service provision, unless it can be shown that proposed developments have adverse environmental effects.

The basis of decision making under the Resource Management Act is a process of plan preparation. The Act puts in place a hierarchy of policy

statements and management plans, which can deal only with the purposes outlined above. A *National* policy statement on a matter of national significance can be prepared by the Minister, who must then publish it and appoint an Board of Inquiry, whose procedures are prescribed in the Act. The Minister must consider the report of the Board before approval of the policy statement. Changes to a policy statement require the same procedure. Local authorities are bound by these national policy statements.

Regional councils must also prepare policy statements in an open fashion. Regional *plans* are optional (except that each region must prepare a coastal plan). Such plans may include rules which allow, prohibit or regulate activities. A key focus here is water quality.

Local authorities *must* prepare plans which are consistent with national policy statements and with regional policies and plans. These local or '*district*' plans can include district rules. A section of the Act allows those whose land is rendered incapable of 'reasonable use' by such rules to challenge those provisions.

Since policies and plans restrict activities, consent may be required. The Act creates several categories:

- permitted activities where no consent is required
- controlled activities, where there is a presumption of entitlement subject only to conditions
- discretionary activities, where councils may exercise full discretion subject to criteria in relevant plans
- non-complying activities, where an activity contravenes a plan but may be permitted, and
- prohibited activities, expressly banned by the plan and for which no consent may be sought.

The Act then provides for a standardised and integrated consent process, including land use consent. The same notifications, time constraints, and requirements apply to all resource use applications. The Act allows for pre-hearing meetings and mediation. Decisions must be based on all relevant national, regional and district policies and plans, and must be made within tight time frames. The local or regional authority makes the decision, which is open to appeal and review. Submissions to hearings can be made by a much wider range of persons than previously.

Part X of the Act deals with subdivision of land. Like other aspects of land use, subdivision is subject to district plans rather than to detailed standards specified by law. Survey plan provisions for registration of title are retained, but simplified.

The Act continues the Planning Tribunal, which hears appeals and makes inquiries under the Act, and issues enforcement orders. It is made up of five planning judges and up to ten planning commissioners. Alternates, deputies and advisors can also be appointed. There is provision for pre-hearing conferences and mediation to assist in dispute resolution.

The Tribunal has the powers of a District Court, but can regulate its own procedure. Where it is fair and efficient to do so, it can conduct its proceedings informally. The Tribunal can direct a local authority to change plans and policy statements. It has the power to order change where there is inconsistency between national, regional and district plans. It can order a rehearing if new evidence comes to light.

There is a right of appeal against Tribunal decisions on points of law. Such appeals can only be made by persons who were party to the relevant hearing, and are heard in the High Court.

The Minister of the Environment also has a 'call-in' power which allows the Minister to call in applications of national significance, for decision on the basis of an inquiry board's recommendation. Criteria for the determination of 'national significance' are included in the Act.

There is a very strong obligation on local authorities to keep *records* which allow *monitoring* of resource development (including land management). For example, local authorities must record and be able to show how alternatives

have been considered when developing policy statements. The Act also provided in some detail for transition from the previous systems to the new one, dealing with transitional plans, the fate of applications submitted before coming into force of the new law, and protection of existing lawful land uses.

Although written in reasonably accessible language, the Resource Management Act is very lengthy and a challenging read. The Ministry has produced (and updated) a number of explanatory publications in various media (including video) which greatly assist understanding - not only by interested outsiders, but also by councillors and officials of the relevant authorities. The Act has been amended several times, affecting over half of its sections, most significantly by narrowing the discretionary consents which local authorities can provide.

In summary, the New Zealand Resource Management Act of 1991 substantially altered the planning system in that country. In an environment of decreasing state involvement in the economy, the emphasis of control was shifted firmly towards controlling the *effects* of development rather than attempting to accomplish other outcomes. Applications for development permission were greatly simplified by unifying a range of previously separate processes. Decision making is based on policy statements and plans prepared by all three levels of government, and a central role is performed by the quasi-judicial Planning Tribunal. Each of these features is of potential interest in other countries, including South Africa, in which planning law is under reform.¶

Acknowledgement

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Sources

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