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**Natural Resource Management
in New Zealand: Lessons for
New South Wales?**

by

Stewart Smith

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EXECUTIVE SUMMARY

In February 1999 the NSW Government released a discussion paper on plan making under the *Environmental Planning and Assessment Act 1979*. The discussion paper is open for public exhibition for a four month period, with submissions closing on 30 June 1999. The paper canvassed several options available to the Government and community in relation to reform of the planning system. One identified option was to adopt a system similar to that currently operating in New Zealand, known as the *Resource Management Act 1991*. This Briefing Paper explains the background and operation of that Act.

New Zealand's *Resource Management Act 1991* (RMA) covers land, air, water, coastal, geothermal and pollution management. It is the principal framework for managing natural and physical resources, including land use of the built environment. It replaced some 59 previous resource and planning statutes, and its introduction was preceded by the reform of central and local government. The framework of the RMA is based on a single purpose which is to promote sustainable management of natural and physical resources (page 2).

The RMA sets out a series of duties and restrictions. Everyone under the Act has a duty to avoid, remedy, or mitigate adverse effects on the environment, notwithstanding terms and conditions of consent permits. The duties and restrictions set up a presumption against the use of natural resources unless the use is permitted under the Act. Whereas the presumption for use of natural resources is very strict, the reverse applies to land uses such as buildings and structures. Here, activities are deemed to be permitted unless constrained by provisions in statutory plans under the Act (pages 2-4).

The RMA operates principally through statutory plans which sets out policies and rules. Rules provide for consent requirements. Regional authorities produce plans for natural resource management, such as use of river water. Territorial (city and district, ie local) authorities produce plans for land use control. Both regional and territorial planning systems have to conform with superior regional policy statements. There is also provision for overarching national level policy statements and national environmental standards (pages 4-7).

Worldwide, many commentators have stated that the Act is considered a model at least worth exploring for possible adoption in their respective countries. Several critiques of the Act are presented (pages 7-11).

However, seven years after the implementation of the RMA, the New Zealand Minister for the Environment Hon Simon Upton MP noted that the perception in the community of land use restrictions seemed to be as extensive as ever. In response to these concerns, the Minister has released discussion papers on amendments to the Act. These changes, and public submissions, are briefly summarised (pages 11-14).

The NSW Government discussion paper *Plan Making in NSW* makes reference to an option of NSW adopting a natural resource management regime similar to that in New Zealand. The key components of such a change are listed (page 14).

1.0 Introduction

The *Environmental Planning and Assessment Act 1979* (EPAA) is the main vehicle for planning in NSW. The EPAA provides a comprehensive three tier planning scheme, allowing for state, regional and local plans, as well as outlining the development assessment process. The *Local Government Act* provides for council decision making procedures and building control. Whilst the EPAA attracted considerable support upon its introduction, nearly twenty years of amendments, case law and the proliferation of other natural resource legislation has meant that the natural resource management regime in NSW is, to say the least, complex.

In recognition of this and other issues, in February 1999 the NSW Government released a discussion paper on plan making under the EPAA.¹ The discussion paper is open for public exhibition for a four month period, with submissions closing on 30 June 1999. The paper canvassed several options available to the Government and community in relation to reform of the planning system. One identified option was to adopt a system similar to that currently operating in New Zealand, known as the *Resource Management Act 1991*. This Briefing Paper explains the background and operation of that Act.

2.0 A Summary of the New Zealand Resource Management Act 1991²

New Zealand's *Resource Management Act 1991* (RMA) covers land, air, water, coastal, geothermal and pollution management. It is the principal framework for managing natural and physical resources, including land use of the built environment. It replaces some 59 previous resource and planning statutes, and its introduction was preceded by the reform of central and local government. Local authorities were rationalised from over 800 to 88. These include 16 regional authorities with resource management functions based principally on catchment boundaries.

The laws which the RMA replaced had significant gaps, inconsistencies and overlaps. Land, air, water and the marine environment were dealt with as if they were separate and disconnected, and the various statutes had varying levels of community involvement in its planning decisions. The review of New Zealand's resource laws began in 1998. It developed in the climate of major regulatory and institutional reform which was a characteristic of New Zealand's public administration since 1984. The natural resource reform program began from a zero based perspective. A three phase process was initiated, as follows:³

¹ NSW Government, Department of Urban Affairs and Planning, *Plan Making in NSW. Opportunities for the future - discussion paper*, February 1999.

² Gow, L. "New Zealand's Resource Management Act. Implementing a major planning law reform." in *Australian Planner*, Vol 34 No 3 1997. (Mr Gow was Deputy Secretary for the Environment, Ministry for the Environment).

³ Gow, L. *Implementing Sustainability: New Zealand's Experience with its Resource Management Act*. A speech delivered at the New Zealand Embassy, Washington 6 June 1995.

- Phase One - to ask the question, why have laws for the management or control of natural and physical, including built, resources;
- Phase Two - in the light of the answer to the first question, to look at the options for achieving the objectives determined by the first phase; and
- Phase Three - having selected an appropriate means for achieving resource management objectives, to develop specific policy and draft appropriate laws.

Three main themes emerged from the reform program. The first related to sustainability, and in particular the integration of laws relating the management of water and soil resources. The second was the need to overhaul pollution control laws that were inadequate, whilst the third related to public involvement in the use and development of natural resources.

The framework of the RMA is based on a single purpose which is to promote sustainable management of natural and physical resources. The central idea is: to develop and protect resources which enable social and economic well-being while sustaining resources to meet the reasonable foreseeable needs of future generations; safeguard the life supporting capacity of air, water, soil and ecosystems; avoiding, remedying or mitigating any adverse effects of activities on the environment. A new approach with the RMA is the requirement to focus on the effects of activities on the environment. The environment is currently defined to include people and communities. This approach was designed to ensure that regulations deal in a targeted way with the problems they were designed to alleviate. It also requires a new way of approaching environmental controls. Information on environmental outcomes is required, and ideally, rules should be outcome focused and performance based.

The functions and structure of the RMA

The RMA embodies three conceptually separate but related functions:

- it allocates access to community resources;
- it controls the discharge of pollutants to air, land and all water;
- it manages the adverse affects of all activities using land, air or water.

The RMA sets out a series of duties and restrictions. Everyone under the Act has a duty to avoid, remedy, or mitigate adverse effects on the environment, notwithstanding terms and conditions of consent permits. The duties and restrictions set up a presumption against the use of natural resources unless the use is permitted under the Act.

Whereas the presumption for use of natural resources is very strict, the reverse applies to land uses such as buildings and structures. Here, activities are deemed to be permitted unless constrained by provisions in statutory plans under the Act.

Part II of the Act contains the purposes and principles of the Act. As these underpin the rationale and basis of the rest of the Act, elements of this Part are reproduced below.

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.

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 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 of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

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;
- (a)(a) The ethic of stewardship;
- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;

- (d) Intrinsic values of ecosystems;
- (e) Recognition and protection of the heritage values of sites, buildings, places, or areas;
- (f) Maintenance and enhancement of the quality of the environment;
- (g) Any finite characteristics of natural and physical resources;
- (h) The protection of the habitat of trout and salmon.

There is currently considerable debate in New Zealand on the appropriateness of some of the sections in the Principles and Purposes Part of the Act. Section 3.1 of this Paper outlines this debate in more detail.

Statutory Plans

Each regional authority is required to prepare a regional policy statement. This document is the key to integrated, sustainable management for each of the 16 regions in New Zealand. Each policy statement is required to state the significant resource management issues of the region and the policies by which these can be addressed. Through the policy statements, the key sustainable management issues and priorities should be addressed. The policy statements in themselves do not include powers to implement their policies, this is done through a system of regional and district plans.

The RMA operates principally through statutory plans which set out policies and rules. Rules provide for consent requirements. There are two types of authorities which produce two types of plans. Regional authorities produce plans for natural resource management, such as use of river water. Territorial (city and district, ie local) authorities produce plans for land use control. Both regional and territorial planning systems have to conform with superior regional policy statements. There is also provision for overarching national level policy statements and national environmental standards. As a guide to the type of matters that a local plan may contain, Appendix I of this Paper contains matters that may be provided for in relation to district plans.

Before the adoption of any policy or rule, the appropriate authority must consider any alternatives to the policy instrument in terms of assessing benefits and costs. For instance, section 32 of the Act requires an authority to have regard to:

- (a)
 - (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and
 - (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
 - (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available,

or of taking no action where this Act does not require otherwise; and

- (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and
- (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)---
 - (i) Is necessary in achieving the purpose of this Act; and
 - (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

This purpose of section 32 is to ensure that regulators are clear as to what outcome is intended, for whom and why. As well, it is designed to check any assumptions that regulatory intervention is the only or best way to achieve the desired outcomes, and to check the costs of intervention before a particular means or combination of means is chosen.⁴

The Act allows for five different types of resource consents. These are:

- land use consent;
- sub-division consent;
- water permits (for taking, using, damming or diverting water, except in the coastal marine area);
- discharge permits (for the discharge of any pollutant to air, land or water, except in the coastal marine area);
- coastal permits (for an activity including a pollutant discharge in the coastal marine area).

Local authorities issue the first two types of consent, and regional councils the others. The same application procedure applies to each. In each case the applicant must:

- check Part III of the Act (Duties and Restrictions Under this Act) to ascertain any relevant regional plan, policy statement or district plan to determine what category of consent is required;
- establish what impacts the proposal is likely to have on the environment and submit an assessment of environmental effects;
- submit an application; and
- explain what consultation has taken place with persons affected.

⁴ Gow, L. *Implementing Sustainability: New Zealand's Experience with its Resource Management Act*. A speech delivered at the New Zealand Embassy, Washington 6 June 1995.

For every application for a consent for works, an environmental effects statement must be tendered. Criteria for assessment are set out in statutory plans, and an example of what these may contain is reproduced in Appendix II of this Paper.

There are five categories of activities for which consent from the appropriate authority may or may not be required:

- permitted activities - no resource consent is required;
- controlled activities - consent will be granted, but may include conditions specified in plans;
- discretionary activities - the plan specifies that consent is at the discretion of the council in accordance with criteria in the plan;
- non-complying activities - contravening a plan, but not prohibited by it; and
- prohibited activities - expressly prohibited by the plan, no consent may be sought.

Controlled activities do not require any public notification if the consent of the affected parties has been obtained by the applicant. For discretionary and non-complying activities public notification is not required if the consent authority is satisfied that the effects are minor and that all persons who may be adversely affected have given their written approval to the applicant. Approximately 80% of consent permits are dealt with through this process.

An applicant and anybody who made a submission can appeal a decision of a consent authority to the Environment Court. In most cases, the Environment Court rehears all the evidence and makes a decision as if it were the consent authority. The Court comprises a Judge assisted by two planning commissioners, who are non-judicial appointees. Decisions of the Environment Court can be appealed on points of law to New Zealand's High Court and then to its Court of Appeal. In addition, anyone can apply to the Environment Court for declarations on the meaning of the law and related compliance issues, and for enforcement orders which are designed to require compliance with the law, a plan or consent condition. The RMA also emphasises alternative dispute resolution provisions, and extensive use has been made of pre-hearing meetings for arbitration and negotiation.

Section 339 of the Act provides for a range of penalties, the most severe of which is imprisonment for up to two years, or a fine up to \$200,000.

The Minister for the Environment also has the power to 'call-in' a resource consent application where the Minister considers the proposal is of national significance. The Act defines what is meant by 'national significance'. Once 'called-in', the Minister becomes the consent authority. The Minister then appoints between three and five people to a board of inquiry, which will report and make recommendations to the Minister. The Minister then makes a decision, which is appealable to the Environment Court as described above.

As the emphasis of the RMA is on environmental outcomes, performance based environmental standards have been developed. The authorities acknowledge that this has

required a new approach to environmental management, and that New Zealand has found itself on the cutting edge and at times found it a challenge.

3.0 Critiques of the Current Act

As the *Resource Management Act* is at the so-called 'cutting edge' of environmental management, it has been studied by various interests in both New Zealand and around the world.⁵ Below are some of the more pertinent comments from various interest groups. Current proposals to amend the Act, and the reasons behind these proposed changes and stakeholder view points are explored further in section 4.0 of this Paper.

Southgate has identified the following problems that have been raised with the RMA:⁶

- the massive changes have required considerable adaptation, resulted in some confusion and imposed a heavy burden on local authorities;
- the RMA does not clearly define the roles and responsibilities of regional councils and territorial authorities;
- many of the integrating mechanisms are over-bureaucratic;
- public participation is illusory as time, representation costs, possible Environment Court costs etc act as barriers. It is still a legally combative process which favours those with the ability to pay;
- there is inadequate attention given to, and monitoring of, the environmental outcomes of the Act;
- the Act needs a major education and training initiative on the principles and practice of sustainable management;
- there is a lack of national leadership in the form of policy statements and standards; and
- notification levels are too low under the discretion provided by the Act, resulting in some potential participants not getting to hear about consent applications.

The Royal Forest and Bird Protection Society of New Zealand Inc has the following view of the RMA:

Because of our extensive experience of the Act in practice, we can say with some certainty, that the Act, in its present form, has contributed to changes in resource management which have benefited the environment and in

⁵ For example, see:

Alexandra, J *New Zealand Legislates for Sustainable Development. Lesson for Australia. A brief review of New Zealand's Resource Management Act.* Australian Conservation Foundation, April 1994.

NSW Department of Land and Water Conservation, *Natural Resource Management under the NZ Resource Management Act: Implications for NSW*, April 1998.

⁶ Southgate, M. "Sustainable Planning in Practice?" in *Town and Country Planning*, Vol 67, No 11, December 1998. Southgate is from the Royal Society for the Protection of Birds.

particular the protection of natural habitats and flora.⁷

The Society also acknowledges that the implementation of the Act has been uneven and that there is room for improvement. In particular, the Society is critical of the lack of development of national policy statements and standards, and the failure of many local councils to adequately resource their administrative functions.

Views of the New Zealand Parliamentary Commissioner for the Environment

New Zealand has a Parliamentary Commissioner for the Environment (PCE), who is appointed by the Governor-General on the recommendation of the House of Representatives and holds office for five years. The Commissioner is an Officer of the Parliament, independent of the executive arm of government and may only be removed or suspended from office by the Governor-General. The current Commissioner Dr J Morgan Williams has tenure from 1997-2002.⁸ The previous Commissioner, Mrs Helen Hughes, finished her term at the end of 1996 and had these views on sections of the RMA:

While the Resource Management Act ushered in a new era in which it was expected that the public would have a greater say in decisions affecting the environment, the reality has been somewhat different...I have been increasingly concerned to be told by members of the public of the barriers they encounter and the disincentives they face in participating in the planning process...Many members of the public believe that they have inadequate information and inadequate time to evaluate information when proposals which may affect the environment are put before councils. They are also concerned about the unbalanced way that information can be presented at council hearings, and about the use by councils of adversarial approaches and unfriendly attitudes and venues.⁹

In another publication by Mrs Hughes as Parliamentary Commissioner, the following barriers to public participation in decision making were identified:¹⁰

- the public's lack of awareness of RMA procedures and failure to recognise the

⁷ Chapple, K et al. *Forest and Bird Environmental Report. Central Office submission on Land Use Control under the Resource Management Act - A "think piece" to the Ministry for the Environment.* Royal Forest and Bird Protection Society of New Zealand Inc, July 1998.

⁸ See Internet site: <http://www.pce.govt.nz/>

⁹ Office of the Parliamentary Commissioner for the Environment, Press Release: *Public Participation in Environmental Decision Making - the Management of Conflict*, 17 December 1996.

¹⁰ Office of the Parliamentary Commissioner for the Environment, *Public Participation Under the Resource Management Act 1991. The Management of Conflict.* December 1996. The barriers identified were from a study titled: *Public Participation in Environmental Decision Making*, which was released in February 1996.

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- importance of becoming involved as early as possible in the planning process;
 - inappropriate council management of decision making processes (including pre-hearing meetings and hearings which are not user-friendly);
 - lack of resources (people, skills, funding) for the public to participate;
 - the nature of statutory procedures (including time available and the adversarial nature of hearings).

Commissioner Morgan Williams released a paper on the role of the RMA and sustainable development in August 1998.¹¹ The Commissioner stated that the concept of sustainable development does not appear to be well understood in New Zealand. A consequence of this is an inability to clearly define desirable environmental outcomes. The consultation provisions of the Act are identified as one of the strengths of the Act, yet they are sometimes seen as simply increasing the cost of the resource consent process. The issue of who is an affected person in terms of a consent application (and hence who is notified by the Council) is an area of significant tension. The Commissioner suggests the following strengths of the Act, in terms of advancing sustainable management:

- recognition of the importance of the goal of sustainability in the purpose of the Act;
- opportunities to achieve desired environmental outcomes through a variety of approaches;
- opportunities to integrate various forms of knowledge, ie technical, indigenous and community;
- the potential for integrated management of the environment to occur;
- the participation of people and communities in the environmental management of their area;
- recognition of intrinsic values;
- inclusion of people and communities as part of the environment;
- publication of the desired environmental outcomes of communities.

However, the Commissioner also identified some restrictive aspects of the Act in terms of achieving sustainable management. These included:

- the effects based approach in regional and district plans. As a new approach it is difficult to comprehend and to use as a basis of decision making;
- the lack of accountability of some councils in fulfilling their responsibilities under the RMA. The intent of the RMA can be thwarted by councillors and staff who ignore community preferences for resource management;
- the difficulties in managing cumulative effects;
- the lack of environment performance targets and the difficulty of linking visions in strategic plans to the RMA planning regime.

¹¹ Office of the Parliamentary Commissioner for the Environment, *Towards Sustainable Development. The Role of the Resource Management Act 1991*. PCE Environment Management Review No 1, August 1998.

In terms of achieving sustainable management, the Commissioner concluded:

the approach to sustainable management that has been developed in New Zealand is reactive, based mostly on the management of environmental effects rather than on setting environmental performance targets and articulating visions to improve the nature and efficiency of resource use in line with sustainable development.¹²

The Commissioner was critical of the limited resources and effort committed to ensure the successful introduction and management of the big changes that the RMA introduced. The Commissioner concluded that this lack of investment by the Government had probably cost local authorities, businesses and communities millions of dollars. There has been very little training in RMA matters for local councillors, which is reflected in some plans and resource consent decisions that do not advance sustainable management of the environment.

The Commissioner also noted that under an effects based regime, compliance with, enforcement of, and monitoring of resource consents is a complex exercise, and that some Councils have not committed sufficient resources to implement the RMA properly.

Significantly, the Commissioner also noted that an effects based approach to environmental management in general works well for large 'greenfields' industrial developments. However, it does not work so well for peri-urban and urban land where the intensity of land use, the mix of land uses and the density of people provide a rich substrate for conflict, particularly given the strong focus on property rights in New Zealand. One limitation of the effects based approach is that it does not allow neighbours to know with any certainty what land uses can or cannot be conducted on an adjacent property.

The Commissioner also noted that the RMA is still in transition, and that past experience indicates that substantive resource management legislation can take at least ten years for it to become 'seasoned'. The Commissioner concluded that critics of the current regime appear to focus on process, whilst the merits of advancing sustainable development and improving environmental management appear to be largely forgotten.

It is pertinent to note that two successive Parliamentary Commissioners for the Environment have been critical of either the basis and/or the implementation of the Act.

¹² Office of the Parliamentary Commissioner for the Environment, *Towards Sustainable Development. The Role of the Resource Management Act 1991*. PCE Environment Management Review No 1, August 1998, at 3.

4.0 Legislative Review of the Resource Management Act

The idea of the RMA was to turn town planning on its head. The presumption of the old *Town and Country Planning Act* that landowners could do nothing with their land which was not expressly authorised by a planning document was reversed. Land use was assumed to be legitimate unless constrained by a rule. Seven years after the implementation of the RMA, the New Zealand Minister for the Environment Hon Simon Upton MP noted that the perception in the community of land use restrictions seemed to be as extensive as ever.¹³ Whilst some argued that the Act itself was not at fault, just the implementation of it, others noted that the Act as drafted authorises such extensive restrictions on land use that the intended change in the presumption of land use was defeated. In response to these concerns, the Minister for the Environment commissioned a report by one of the Act's critics, Mr Owen McShane. This report, titled *A 'Think Piece' on Land Use Control under the RMA* was published with a critique by three people. This report was then released for public comment. Signifying the high level of interest in the issue, the Ministry for the Environment received over 750 submissions on the report, which were subsequently analysed by the Ministry.¹⁴ As the analysis of submissions crystallises many of the issues and makes reference to wide community inputs, the following discussion is taken from that document. The Minister for the Environment has announced that legislation amending the Act will be introduced into the House in June 1999.

4.1 Land Use Control under the Resource Management Act: Analysis of Submissions

Over-arching themes

The submissions gave a clear message of support for the Act. Most believed that the principles are sound and no radical surgery is necessary. Many submissions from non-government organisations (NGOs) sought to strengthen provisions relating to protecting the natural environment and the public participation process.

Many submissions considered that there has been a serious lack of national guidelines in implementing the Act. The Act sets up a hierarchy of instruments including: national policy statements; national standards; policy statements; and plans. All of these can be used to promote sustainable development. Other than the New Zealand Coastal Policy Statement, no other national 'guidelines' have been prepared. In addition, it is argued that little assistance has been provided in understanding the Act or developing a consistent approach to its administration. The submissions argue that the lack of national guidance has led to considerable variation and inconsistency in councils formulating plans and processing resource consent applications.

¹³ McShane, O. *A 'Think Piece' on Land Use Control under the RMA, A Report Commissioned by the Minister for the Environment with Critiques by: Ken Tremaine, Bob Nixon, Guy Salmon*. April 1998.

¹⁴ Ministry for the Environment, *Land Use Control under the Resource Management Act. Analysis of Submissions*. September 1998.

Many submissions from the business/industry and farming sectors considered that local authorities do not interpret the Act correctly. This has led to plans that are too regulation focused, with no apparent significant environmental benefit. Plans are not ‘effects’ based and difficult to interpret. Those arguing this line note that the Act itself doesn’t need to be changed, implementation by local authorities needs to be ‘improved’.

Definition of Environment

One issue that arose in the McShane report was the definition of environment. Presently, the Act defines environment as:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

McShane considers that the scope of ‘environment’ should be limited to ‘natural and physical’ resources, and that the Fourth Schedule of the Act, which relates to the assessment of effects on the environment, should have issues relating to socio-economic matters removed.¹⁵

One consequence of replacing ‘social and economic’ references with say ‘natural resources’ would be to focus the Act on bio-physical matters. Many submissions noted that it is not possible to separate people (and hence social and economic) from the bio-physical environment, and that bio-physical effects have no meaning unless placed in a social and economic context.

Purpose and Principles of the Act

The purpose and principles of the Act were noted in section 1.0 of this Paper. McShane seeks to narrow the focus of the Act, as found in the purpose and principles section, to natural and physical resources, and questions the fairness of including inter-generational equity in section 5(2) and most of the matters in section 7 (see page 3). However, the Ministry analysis noted that there was very little support for amending the purpose section, and that NGOs in particular were very clear that ‘future generations’ should not be amended. Most submissions from NGOs did not consider that section 7 needed amending at all, as it provides a sharper focus to section 5.

Whilst there were few submissions supporting changes to the purpose and principles section, there were many requests for greater government guidance in the form of national

¹⁵ Currently Schedule 4 reads as follows: Matters that should be considered when preparing an assessment of effects on the environment: (a) Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects.

policy statements and or guidelines on sections (b) and (c). The issues of concern concentrated around the words ‘outstanding’ and ‘significant’. Those seeking changes were principally from the farming/rural sector, who were particularly critical of (b), relating to subdivision. NGOs considered that heritage provisions in section 7 (Other Matters) should be elevated in importance by being included in section 6 (Matters of National Importance).

The Question of ‘Amenity Values’

Section 7 states that in exercising functions of the Act, consideration must be made of the maintenance and enhancement of amenity values. ‘Amenity values’ is defined in the Act to mean those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. McShane considers that reference to amenity values in section 7 and the definition should be removed. He advocates separate legislation to address environmental effects on people and communities, limited to ‘traditional nuisance’ of light, shading and noise. These thoughts were strongly negated by NGOs and resident groups, who consider that ‘amenity values’ are important, both in a rural and urban context. For instance, the Royal Forest and Bird Protection Society stated that “the current wide definition of amenity values has been important in protecting many habitats and the recreational value of waterbodies.” It was noted that in an urban context maintaining and enhancing amenity value is critical to appropriate environmental outcomes. Urban environments generally have fewer bio-physical ‘bottom lines’ to protect, and it is through amenity provisions that much of the environmental quality and the quality of life in urban areas are derived. Several submissions noted that amenity provisions such as tree protection and design and appearance considerations were relevant to enable communities to provide for their social, economic and cultural wellbeing.

Categories of Consent

Currently the RMA has five different resource consent categories. These are: permitted activities; controlled activities; discretionary activities; non-complying activities; and prohibited activities. McShane recommended that non-complying and prohibited categories be removed from the Act, as these re-inforce the practice of the old zoning regime rather than focusing on effects and enabling land uses unless their effects cannot be managed. Prohibited land uses therefore seem to be in conflict with the Act’s permissive presumption.

It was noted that most NGOs and individuals did not support removing prohibited activities from the list. However, Councils were evenly split on the issue, with some identifying benefits with the current regime and others supporting prohibited activities to be limited to issues such as natural hazards, hazardous substances, and health and safety. In contrast, most business/industry submissions supported deleting prohibited activities because it is not in accordance with the Act’s philosophy, and all activities should be able to be considered on their merits.

Contestable Consenting

The Minister for the Environment also had concerns about the high costs and time delays in processing consent applications. The Minister introduced the idea of contestable consenting, so that Councils do not have monopoly control over consent administration, to try and reduce these problems. It was noted that a large number of submissions opposed this, especially community groups and a few from the business sector. However, the majority of business submissions supported the proposals.

Action for Community and the Environment

A coalition of environment, community, heritage and recreation groups has been formed to campaign against changes to the Act. The coalition, ACE - Action for Community and the Environment, has identified that two key problems with the RMA are: barriers to community participation and the lack of central government investment in resource management. ACE notes that the amendments foreshadowed by the Government do not address either of these two issues.¹⁶

5.0 Application of the Resource Management Act to NSW

Obviously New Zealand and Australia have different government structures, so a straight importation of the New Zealand model into NSW is not possible. For example, an important difference in New Zealand is regionalisation of natural resource management functions, based on Regional Councils defined by catchment boundary. However, even with many institutional differences between the two countries, if desirable, elements of the *Resource Management Act* may be able to be successfully implemented.

It is also pertinent to note that NSW is facing many of the problems that New Zealand faced before reform of their planning system. Examples include the complexity of policies, plans and decision making processes, all of which have contributed to marginalising many people and communities from the planning system.

Officers from the NSW Department of Land and Water Conservation visited New Zealand to study the implementation of the RMA. They noted the benefits of having a hierarchy of plans and a legislative requirement that lower level plans must not be inconsistent with higher level plans. This facilitates coordination and discourages inconsistency between plans.¹⁷ The Officers concluded that NSW needs to consider what mechanisms could be used to ensure consistency between plans. It was also noted that a major advantage of the RMA is that all plans are made with a single purpose: 'to promote the sustainable management of natural and physical resources', and that the multitude of plans produced in NSW could benefit from such an approach.

¹⁶ Jessica Wilson, Campaign Coordinator, Action for Community and Environment, Personal Communication 25 May 1999.

¹⁷ NSW Department of Land and Water Conservation, *Natural Resource Management Under the NZ Resource Management Act: Implications for NSW*, April 1998.

The Officers noted that some of the regional councils in New Zealand experienced problems in formulating their regional plans, principally because of inadequate information about the resource conditions in their area. In addition, the formulation of new plans has taken three to five years and has been resource intensive.

It was also observed that while the focus of the Act is on managing the effects of activities, there is a general feeling that it is still primarily activities that are being regulated. Regional plans that have been produced tend to be fairly generic, with no specific focus on effects of activities. This is largely as a result of the lack of data concerning effects, especially on ecosystems. However, notwithstanding this, plans are tending to move towards managing the effects of an activity, but still primarily include some statements that focus on regulation of the activity itself. The Officers offered the following example: 'do not remove vegetation within 20 metres of a particular watercourse', rather than 'do not reduce the quality of water in a particular water course'.

The NSW Government discussion paper *Plan Making in NSW* makes reference to an option of NSW adopting a natural resource management regime similar to that in New Zealand. Institutional structures in NSW would be changed so that portfolios are based on a regional structure rather than a sectoral one. The paper identifies the following key components to such a solution:¹⁸

What Stays the same

- regional and local levels of plans are retained;
- local government structure is retained in its current form;
- state government involvement is retained but responsibilities are administered under a modified structure.

What Changes

Improved coordination and integration

- new planning and resource management legislation with plan making, licensing and other resource consents issued under one piece of legislation.

Reduced Complexity

- two levels of plans - regional and local;
- plans currently prepared outside the EPAA are incorporated into these two levels, reducing both the type and number of plans operating in the State.

Better Communication and Participation

- the local plan is prepared through a 'bottom up' approach with the local community actively involved in its preparation by defining outcomes and assisting in preparing local area plans for council to use in drawing together a composite plan;
- the draft local plan is subject to a compulsory public hearing.

¹⁸ NSW Government, Department of Urban Affairs and Planning, *Plan Making in NSW. Opportunities for the future - discussion paper*, February 1999, at 57.

Effective Land Use Controls

- locality character statements define desired planning outcomes for an area and replaces traditional zoning;
- all developments considered on merits and subject to development application appeal process.

Efficient process for plan making and review

- plans are made a requirement under the legislation;
- plans lapse after five years;
- Councils make all local plans subject to plan being consistent with regional plan. Consistency is checked by accredited planning professional.

Legislative Framework

- EPAA is integrated with other legislation into comprehensive planning and resource management legislation.

Institutional Structure

- regional place management is achieved through the introduction of regional ministers for planning and resource management and regional units assume some of the powers and responsibilities of State agencies.

6.0 Conclusion

The ramifications for NSW from the above observations are considerable. It is clearly not easy to move to an effects based approach to environmental management, and it is apparent that any change will probably take at least ten years to filter through the system. Such an approach needs a much greater information base than a purely regulatory approach, and needs to be supported by an effective monitoring and compliance regime.

Appendix One

Second Schedule of the New Zealand Resource Management Act 1991

Matters that may be provided for in Policy Statements and Plans (in relation to District Plans)

1. Any matter relating to the management of the use, development, or protection of land and any associated natural and physical resources for which the territorial authority has responsibility under this Act, including the control of---
 - (a) Any actual or potential effects of any use of land described in section 9 (4) (a) to (e), including---
 - (i) The implementation of rules for the avoidance or mitigation of natural hazards; and
 - (ii) The implementation of rules for the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (b) Any subdivision of land described in section 11 and Part X of this Act:
 - (c) Any emission of noise from land and structures in the district, and the mitigation of the effects of noise:
 - (d) Any actual or potential effects of activities in relation to the surface of water in rivers and lakes.
-
2. Any matter relating to the management of any actual or potential effects of any use, development, or protection described in clause 1 of this Part, including on---
 - (a) The community or any group within the community (including minorities, children, and disabled people):
 - (b) Other natural and physical resources:
 - (c) Natural, physical, or cultural heritage sites and values, including landscape, land forms, historic places, and waahi tapu.

Appendix Two

Fourth Schedule of the New Zealand Resource Management Act: Assessment of Effects on the Environment

Matters that should be included in an assessment of effects on the environment.

1. Matters that should be included in an assessment of effects on the environment---Subject to the provisions of any policy statement or plan, an assessment of effects on the environment for the purposes of section 88 (6) (b) should include---
 - (a) A description of the proposal:
 - (b) Where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:
 - (c) Where an application is made for a discharge permit, a demonstration of how the proposed option is the best practicable option:
 - (d) An assessment of the actual or potential effect on the environment of the proposed activity:
 - (e) Where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use:
 - (f) Where the activity includes the discharge of any contaminant, a description of---
 - (i) The nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and
 - (ii) Any possible alternative methods of discharge, including discharge into any other receiving environment:
 - (g) A description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:
 - (h) An identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted:
 - (i) Where the scale or significance of the activity's effect are such that monitoring is required, a description of how, once the proposal is approved, effects will be monitored and by whom.