

ECO Conference 2012

Session 5 – Responsible and Inclusive Resource Management

RMA REFORMS - WILL THEY IMPROVE ENVIRONMENTAL OUTCOMES?



The signalled “reforms”

Part 2 and planning process

- The “Principles” TAG
- The LAWF report

Outcomes – principles and process

“Our Common Future”

- Brüntland Our Common Future (1987)
 - Originated RMA sustainable management purpose
 - Informed RMA public participation model
 - Recognised that principles & processes drive outcomes

The “signalled” reforms

Neither yet Government policy

THE 2ND LAWF REPORT

- Ministers Carter and Adams:
“... plenty to consider... within the wider work the Government is doing to reform the resource management system.”

The “signalled” reforms

Neither yet Government policy

THE PRINCIPLES TAG REPORT

“... the independent views of ... the advisory group, and the Government will consider the recommendations as part of our wider reforms of the resource management system”.

“A key consideration ... is to achieve enduring outcomes while reducing the time, costs and uncertainties involved in the process.”

Reform to ss. 6 and 7?

The “problem” defined

THE PRINCIPLES TAG:

- Mismatch between:
 - “Overall broad judgement” approach and the s.6 list and ss.6/7 hierarchy
- Inconsistency in interpretation:
 - Part 2 as a whole
 - National v local interest
 - Particular subsections and words

Reform to ss. 6 and 7?

The “problem” defined (cont)

- Policy-making accountability confusion:
Executive, councils or Courts?
- Lack of flexibility in the ss.6/7 lists:
No longer reflect contemporary values/priorities
Do not sufficiently reflect all matters that encompass the principle of sustainable management

Reforms to planning processes?

The “problem” defined

THE LAWF

- Planning and consenting procedures marked by:
 - Litigation
 - Cost
 - Lengthy timeframes
- Some perceptions of Council intransigence:
 - “decide-announce-defend”

Reforms to planning processes?

The “problem” defined

PRINCIPLES TAG

- Multiplicity, complexity, fragmentation of planning instruments
 - Lack of RMA-LGA-LTMA planning integration
- Plan agility – time and cost through planning lag
- Performance management
- Lack of clarity as to roles

Will proposals improve outcomes?

What is proposed for ss.6/7?

PRINCIPLES TAG

- The alternatives come back to a primary question:

Does the Government want to revert to its original aspiration of the “biophysical bottom line”?

- If so, radical RMA reform, including to sections 5

Does the Government instead prefer the Court’s “overall balance” interpretation?

Will proposals improve outcomes?

What's proposed for ss.6/7?

- Assuming the “overall balance” approach:
 - Section 6: “sustainable management principles”
 - Section 7: “sustainable management methods”

Sustainable management principles”

PRINCIPLES BASED LAW

- Some precedent in related environmental and local government legislation
- High level, not prescriptive
- To aid interpretation of section 5, not compete

Section 6

Subservience to section 5

- Replaces both section 6 and 7
- “Overall broad judgement” explicit
- Explicit reflection of “use, development” as well as “protection” dimensions
- Explicit direction of lack of “internal hierarchy”

Section 6

Principles as to protection

- Natural character, features, landscapes:
 - Retain focus on “outstanding”
 - Add “values” to “natural character
 - Drop” preservation”, “protection”,
inappropriate use etc
- Public access:
 - Add reference to “value”
 - Drop “maintenance and enhancement”

Section 6 (cont)

Principles as to protection (cont)

- Add “physical qualities” of biodiversity
- Indigenous fauna, flora:
 - Retain “significant”
 - Add “physical qualities”
 - Drop “protection”
- Add areas of significant aquatic habitats
- Climate change:
 - Significant risks, and renewable energy

Section 6 (cont)

- M ori:
 - Converging :
 - Relationship/culture/traditions
 - Kaitiakitanga
 - Protected customary rights
- Archaeological sites, historic places, areas:
 - “Significant values”
 - Drop protection, inappropriate use etc

Section 6

Principles as to use and development

- “Efficient use” of resources (previously s.7)
- Addition of significant benefits from use and development of resources
- Addition of management of significant natural hazard risks
- Addition of “planning, design and functioning” of the “built environment”
“significant infrastructure”

New section 7

“Sustainable management methods”

“MUST DOS” FOR FUNCTIONARIES

- Timely, efficient, cost-effective resource management
- Policy statements and plans – scope, clarity, avoid repetition
- Recognise voluntary environmental compensation, offsetting (“not” encompassed by section 5(2)(c))
- Promote local authority collaboration
- “Appropriate” balance public/private re land

Will the proposals improve outcomes?

Policy and planning processes

LAWF

- Alternative “collaboration” track for “freshwater-related” elements of RPS and plans, and national instruments:

Council-led “public process” to instigate Collaborative Stakeholder Group (CSG)

Collaborative development of policy

Translated by Council experts into provisions

Policy and planning processes

“Environment Court equivalent”
independent submission/hearing process

Draft decision

Final decision by regional council (“with
involvement of iwi”)

Appeals usually confined to High Court on
law:

- Some potential capacity for “leave” to go to
Environment Court

Policy and planning processes

PRINCIPLES TAG

- A single hearing with appeals on points of law?
- Chaired by independent commissioner from national pool
- Panel composition related to issues
 - Appropriate iwi membership
- Rights of cross examination

Will proposals improve outcomes?

What defines “improved”?

- NZs environmental priorities:
Now different or substantially unchanged?
Requiring recalibration of:
 - Part 2?
 - RMA participation processes?

What defines “improved”?

Brüntland Our Common Future (1987)

- “Strategy for sustainable development”
 - In a context of global economic, social and environmental crises
- Call for integrated decision-making:
 - to recognise economic and ecological interdependence
 - to promote “harmony among human beings and between humanity and nature”

What defines “improved”?

Brüntland Our Common Future (1987)

- Some curious similarities:
 - The relationship of land and water degradation and management to agricultural productivity (page 137)
 - The importance of fisheries and aquaculture and irrigation to development (page 140)

What defines “improved”?

Brüntland Our Common Future (1987)

The importance of conservation of living natural resources – plants, animals, and micro-organisms, and the non-living elements of the environment on which they depend – to development (page 149)

The emerging risks of climate change and loss of biodiversity (pages 153 -154)

The significance of renewable energy development and the conflicts in relation to these issues (page 192)

What defines “improved”?

Brüntland Our Common Future (1987)

The importance of encouraging energy efficiency (page 219)

The importance of sustainable cities (at least in developing countries) and of infrastructure to resilience (page 243)

What defines “improved”?

Brüntland Our Common Future (1987)

- Sustainable developments limits (pages 24-25)

Not absolute

Depend on:

- technology
- social organisation, and
- biophysical limits

Rest ultimately on political will

What defines “improved”?

Brüntland Our Common Future (1987)

- “Sustainable development” also about process
Enforcing the “common interest”
 - Depends on community knowledge and support
 - Entails a need for effective citizen participation in decision making

Will proposals improve outcomes?

Reforms to sections 6/7

- Our current list of matters:
 - A significance source of conflict and process drag
 - Has this been worthwhile?
 - Have debates advanced true sustainability outcome priorities?
 - Has ss.6/7 seen the Executive duck leadership?
 - In taking timely policy and regulatory intervention

Will proposals improve outcomes?

Reforms to sections 6/7

Has ss.6/7 always reflected NZ's "common interest"?

Has ss.6/7 confused accountabilities between Council and Courts?

- Is the answer to add to/subtract from the section 6/7 list?

Will proposals improve outcomes:

Reforms to policy/planning processes

- “Collaboration”:
 - Why should this be an alternative to Schedule 1?
 - Shouldn't it be part of all initial planning processes?
- Who is “in” or “outside” the CSG:
 - Are some more worthy than others to participate in the RMA?

Will proposals improve outcomes:

Reforms to policy/planning processes

How well does this address the purposes of participation in decision-making?

Will it alleviate or worsen resource conflict?

- Does the EPA Board of Inquiry model offer opportunity for wider use?

A single “quality assured” hearing model option for:

- RPS?
- Plans?