

## **The economic costs of excessive environmental legislation**

By Dr Muriel Newman, NC Centre for Political Research, 18 February 2016

A report on the burden to economies of environmental policies, prepared by the OECD in 2014, ranked New Zealand 28<sup>th</sup> out of 34 member countries. It highlighted that real problems exist with our system of environmental regulation.

While many countries had more stringent environmental controls than New Zealand, the associated costs to their economies were found to be relatively minor.

### **NZ had the worst administrative burden**

In comparison, New Zealand had the worst administrative burden, alongside Israel, Canada and Iceland. This was due to the high levels of bureaucratic compliance necessary to fulfil the requirements of New Zealand's pre-eminent environmental legislation, the Resource Management Act. With 164 regional and district plans requiring different rules for thousands of different types of activities, the government estimates that in excess of 50,000 resource consents are required around the country each year. This not only delays development proposals by months or even years, but it creates a huge economic burden on the country.

In fact, the RMA has become so problematic, that when faced with the need to respond quickly to major development proposals, the Government has chosen to legislate to bypass it.

The Environmental Protection Authority is now used to process large infrastructure and public works projects of national significance, efficiently assessing the proposals and recommending to the Minister whether they should be referred to a board of inquiry, to the Environment Court, or back to the local authority.

After the Christchurch earthquakes, new emergency legislation was introduced by the government to bypass the RMA, to enable the rebuild to occur in a more-timely fashion.

More recently, in response to Auckland's housing crisis, legislation has been passed to create Special Housing Areas where the consenting and approval processes are fast-tracked, to speed up development.

### **The RMA has become a huge barrier**

In reality, if the RMA has become such a huge barrier to progress that the government needs to remove its own projects from its purview, then the Act is clearly in need of radical reform.

In response to the report produced by the OECD's Working Party on Integrating Environmental and Economic Policies, Minister Nick Smith explained, "*This report highlights that high environmental standards do not have to mean high administrative costs. Many countries had more stringent environmental policies than New Zealand, but had far less costly administrative systems. We need to heed the advice from the OECD to find ways to reduce our environmental policy red tape and improve the business friendliness of our bureaucratic procedures.*"

*“Fixing the Resource Management Act so as to address these very real administrative problems while maintaining high environmental standards is a huge challenge. This second phase of reform will involve the most significant changes to the Resource Management Act since its inception 25 years ago. We need to take the time to get it right.”*

The RMA has long been regarded as the ideal mechanism by which environmentalists, iwi, councils, competitors, neighbours and busy bodies in general can delay or destroy development proposals.

While it was heralded as a landmark piece of legislation back in 1991 when it was first introduced – for being ‘enabling’ rather than ‘prescriptive’ – in reality it gave environmental considerations pre-eminence over the economic benefits of any development proposal.

In other words, instead of enabling the economic benefits of a project to be weighed up against the environmental impact, the Act was designed to ensure the environment trumped all other considerations.

### **“Smart growth” restrictions**

This is the reason that environmentalist planners in councils all over the country have been so successful in imposing “smart growth” restrictions on housing development. Ostensibly introduced to prevent so-called ‘urban sprawl’, these restrictions ignore the fact that the total area of land in New Zealand that makes up the ‘built environment’ of housing, roads, and other forms of community and industrial development, is less than one percent.

In many parts of the country, councils choked off the availability of green-fields land for new housing, as they tried instead to impose higher density living. The problem is that most Kiwis don’t want to be crowded in on each other, preferring instead a home with a backyard for a garden, an orchard, and space for the kids to play.

While initially such planning constraints had little impact on communities with low population growth and spare capacity for housing, this was certainly not the case in high growth areas like Auckland. In fact it is ludicrous that the RMA has enabled the country’s major city to be held hostage by green ideology – or indeed that land owners anywhere can be held hostage by any ideology, be it green or brown.

Essentially, Auckland’s housing crisis has become a siren call for RMA reform. The challenges faced by the government as they have tried to counter the idealism of environmentalist planners in local government, have been plain for all to see. That’s not to say that environmental considerations aren’t important when development is being considered – of course they are. But experience shows a better balance in the law is now needed.

At the last election, the National Party campaigned on comprehensive RMA reform. In particular, they wanted to *rebalance* the Act to give economic considerations the same weight as environmental concerns. This meant changes to the “Purpose and Principles” of the legislation through sections 6 and 7 of the Act. While a raft of other amendments was also proposed, rebalancing the Act was understood to be National’s priority.

That's why the *Resource Legislation Amendment Bill* that is now in front of Parliament's Local Government and Environment Select Committee is so disappointing. While there are a number of important changes – namely introducing national planning templates for councils, speeding up planning processes, allowing consents for minor matters to be waived, and providing stronger national direction on consent requirements – the politics of the situation has meant that National has had to abandon the amendments to sections 6 and 7, which were the central component of their reform programme, in order to gain the support of the Maori Party to send the Bill to a select committee.

The resulting Bill has not only been watered down to the point where it is largely cosmetic, but the cost of dealing with the Maori Party, has been the inclusion of race-based provisions of such magnitude that no rational New Zealand government should ever consider putting them in place.

This week's NZCPR Guest Commentator Judge Anthony Willy, a retired Environment Court Judge and former Canterbury University Law Lecturer, explains what these new provisions entail – in particular, the introduction of clauses 58K to 58P dealing with participation of persons of Maori descent in the planning process:

“Put simply the Government is contemplating a revised process for introducing and amending District and Regional planning documents requiring that in all such cases the Territorial Local Authority must first consult with ‘Iwi groups’ having ‘authority’ in their area before making any changes to a plan or introducing a new plan.

### **Take into account the views of an ethnically selected group**

“Thus the democratically elected representatives of the locality covered by the plan are required to take into account the views of an ethnically selected group who are of necessity citizens of the district and who had the same rights as any other citizen to submit on the contents of a plan.

“In this way the ethnic group has two opportunities to influence the contents of the plan whereas the rest of the voters have only one.

“A clearer breach of the Rule of Law, which mandates equality before the law is hard to imagine, but some government Ministers appear to be oblivious to such constraints.”

Judge Willy concludes that, “In their present form these provisions are unworkable, expensive and time consuming. They stand exposed for what they are; a political sop to the votes of the Maori Party needed to pass this legislation. And for this the Government further erodes the Rule of Law.”

It is now clear that the ‘Iwi Participation Agreements’ in National's new RMA reform bill will strengthen the power that tribal groups have over local government and the country's natural resources – including fresh water.

They will set the scene for the tribal *co-governance* of local authorities, since once bedded in they will require democratically elected councils to seek the approval of unelected tribal representatives in all major decision-making.

### **The tribal elite's plan to control New Zealand's fresh water supplies**

The Agreements are also instrumental in the tribal elite's plan to control New Zealand's fresh water supplies by providing an accelerated pathway for tribal groups to gain resource consenting powers under section 33 and 36B of the RMA. Until now, there has been no formal mechanism to progress any such ambitions, but once enacted, these Agreements will enable tribes to fast-track their plans to become resource consenting authorities for their whole region for fresh water and other natural resources.

It is clear that what National is attempting to do in this Bill – in particular, enabling race-based vested interests to take over resource consenting from democratically elected councillors – is simply untenable.

As a result, since the much-needed changes to rebalance the RMA have been excluded from the Bill, while the pandering to Maori self-interest has been included, many people who would normally support RMA reform are likely to oppose the Bill on the basis that it will not only significantly deepen the country's racial divide, but it will also fail to address the RMA's regulatory roadblocks to growth.

In his State of the Nation address last month, Winston Peters indicated that there may be a way forward. Mr Peters expressed serious concern about National's RMA reform Bill and offered New Zealand First's support for substantial amendments – presumably to sections 6 and 7 of the Act – on the condition that all race-based proposals are removed from the Bill: “we announce here tonight, that New Zealand First will, in the committee stage of the RMA Bill, move amendments to cut red tape and bring common sense to the RMA. We will do so on one condition, that National will drop ALL provisions in the bill that provide separate rights based on race.”

In response, the Prime Minister indicated that he is very serious about wanting *real* reform of the RMA, and explained, “what we need is 61-plus votes to get [the bill] out of select committee. We are happy to work with any political party to make that happen”.

When asked if he would be prepared to deal with Winston Peters, John Key said, “If he wants to support the National Government, come with his own set of proposals for the RMA and vote for it we're more than happy to sit down with him and do that”.

Whether Mr Peters comes up with some decent reform proposals, and whether National will remove all race-based provisions, remains to be seen. But right now, with the Bill in front of a Select Committee, the public have an opportunity to express their views.

The Parliamentary submission process is a *numbers* game. If few people bother to send in submissions to convey their concerns about a bill, the government assumes everyone is happy with it. But if thousands of people send in submissions indicating strong opposition, then the

government realises that the bill may need amending to avoid alienating a large proportion of the electorate.

So, if you are concerned about the government's proposed RMA reforms, then we urge you to send in a submission, stating whether you support or oppose the bill and whether you want to be heard by the Select Committee. We suggest that you don't rely on industry group submissions nor on form submissions, as they are often counted as 'one' submission, even though they may represent large numbers of people. With electronic submissions now accepted by Parliament, the submission process is no longer time-consuming, nor onerous.

Submissions on the *Resource Legislation Amendment Bill* close on March 14. Full [details](#) on the Bill, including the links for electronic submissions can be found on Parliament's website.