

Reflections of a Tagger

Introduction

A lot of my time over the last two years or so has been spent working on Nick Smith's RMA reform process. He has set up a number of Technical Advisory Groups (TAGs) of which I have chaired two and been on a third. It has been an exciting, stimulating and rewarding time – helping to influence what the law should be rather than as advocates do, manipulating its inconsistencies and massaging the facts for the benefit of the client of the moment, is far more eminently satisfying.

My experience on the three Technical Advisory Groups on which I have had the privilege of serving has led me to reflect on a number of policy fronts. Today I have been asked to briefly outline the effect of the RMA Simplifying and Streamlining Amendment Act of 2009, and then I would like to focus on a couple of other related areas, namely Auckland's growth and the not unrelated matter of its spatial plan.

Simplifying and Streamlining Act 2009

Back in 2005 when the last Government was amending the Resource Management Act, the Parliamentary Committee recorded that the Bill proposed *"radical surgery"* to address *"problems with delays, costs, inconsistencies, uncertainty and the lack of national leadership regarding the Act's processes and in decision making."* That 2005 Bill certainly did not warrant the description *"radical surgery"*; and I hasten to add that wide ranging as it is, the 2009 Act could not be so described either.

When our Committee was appointed, the Ministry provided us with some background information which I would like to refer to briefly before talking about the actual reforms which are proposed.

- After 17 years of the RMA five of our 86 Local Authorities did still not have an operative plan.
- Only a similar number of Authorities had notified their second generation plans, despite the fact that they are required to be notified every ten years. On average it took 8.2 years from the start to finish of a district plan process.

- The average cost to each Council was \$1.9m per plan, and Central Government is estimated to have spent a further \$30m on the initial plan exercises.
- The costs to the community come in many forms, and benefit few. Those costs which I have just referred to are only those incurred by the Councils in preparing the documents, and the Crown. They do not include the costs incurred by other public agencies in their involvement in the process, nor those borne by land owners and resource users affected by the document, nor those of community groups or individuals. To these direct costs must be added the dead weight losses to the economy, and the higher prices paid by consumers of goods and services.

This situation cannot be allowed to continue. When we are talking about the Resource Management Act reforms: the status quo is not an option.

So Dr Smith set out in this reform process to tackle the easy things first, those that can be quickly and easily fixed should be, and then last year and in the early part of this year he has turned his attention to the rather more complex issues.

I really couldn't begin to tell you all the changes made in the 2009 Act, there are something over 150 of them, and most are just minor technical points: but they are all cost savers.

So I thought I would give you the Minister's First XV.

The first four relate to plans, and the next to the application process.

1. New plans and plan changes:

Prior to 2009, new plans and plan changes had effect immediately the Council publicly notified them. That means that we had a problem with there being different sets of rules applicable at the same time. That's confusing, and it means that resource consents need be applied for much more often than is necessary, because it is very difficult to comply with two sets of conflicting rules and policies.

The fact that the plan change had immediate effect also meant that there was little incentive for the Council to proceed with its hearings expeditiously.

The solution is that proposed plan changes will no longer have immediate effect. They will have force only after the Council has made decisions on submissions to them.

2. Council's spend lots of money on compulsory 10 year reviews:

They are no longer required to do that. The review uses up money better employed elsewhere, and often replicates processes undertaken but a short time before during plan change hearings.

3. Individual decisions on plan submissions:

Councils were required to produce individual submissions on all plan submissions; I gather about 150,000 were required in Christchurch.

No more! The decisions can now be issued by topic, very much the same as they are under a Committee report in Parliament.

4. Trees – General Protection Rule:

A handful of local authorities in New Zealand had a rule that requires consent before any significant work is done to virtually any tree whatsoever. Indeed, 10% of all New Zealand resource consent applications were accounted for by these general tree controls in four or five Auckland Council districts.

I estimate that it cost the Auckland City Council, which supported the change, about \$2m per year to administer this control.

Under the new Act, these general controls will be illegal, and Councils will have to schedule particular trees if they want to see them protected in the future.

5. Trade Competition:

This is one of the Minister's particular bugbears. Most of you will be familiar with the circus over the Wairau Road Pak'n'Save where it took 17 years to get the store open.

I think we have the solution. Trade competitors who take a case and lose will not only be liable to pay costs; they will be liable to pay damages for loss of

profits as well. I had high hopes that it would put a stop to it – and am glad to say it seems to have worked.

6. Major Projects of National Significance:

Prior to the 2009 amendment, major projects of national significance were still generally heard by local Councils. I think there had been four applications in the last twenty years which the Minister had “called in” for decision at a national level.

Dr Smith is talking about calling in 15-20 a year and sending them off to special Boards of Inquiry, which will be required to report with their decision in nine months. In the last few months he has appointed four or five of these Boards.

This will apply to designations for new public works, as well as to applications for consent. It should certainly speed things up a lot.

7. Direct Referral to Environment Court:

Anybody who has been in this game for a little while knows that there are a considerable number of cases every year which, whilst they cannot be described as being of national significance, certainly have the imprint of “this is going to appeal” from the very day they are filed. In those cases, everybody knows that the Council hearing is very largely superfluous; and therefore represents a less than optimal commitment of time and resources.

So now, the applicant, with the consent of the Council can require that its case be heard directly by the Environment Court.

This applies for designations too.

8. Council Decision Makers:

Over the years there has been a lot of dissatisfaction at the quality of Council decision making – many people have expressed concerns about the objectivity of many councillors and the extent to which they may be influenced by political factors rather more than those to which the Act refers.

One of the reforms is that any party to the hearing, applicant or objectors, can now require the Council to appoint a panel of independent commissioners. That is to say, you can now get yourself a "councillor-free hearing"

9. Notification Presumption:

The Act used to contain a statutory presumption that all applications would be publicly notified. In fact 95% weren't. So a lot of Council time and resources went into justifying decisions not to notify.

By removing the presumption, we hope there will be considerable savings in this area. I stress that the presumption has not been reversed. There is now no presumption at all.

10. Processing Delays:

Councils are required to process applications in accordance with statutory time frames. However, each time they asked the applicant for further information, *"the clock stopped"*. That was an abuse of process; so now the clock stops only once, namely on the first request for further information.

Council can still continue asking for further information, but the clock will not stop.

11. Council's will be required to have a rebate policy:

If Councils don't meet the statutory time frame for processing applications, they are now required to rebate a proportion of the fee.

12. Third Parties:

Third parties, people who weren't involved in the process at the start, may join in appeals commenced by other people; and could even prevent those appeals being resolved on terms agreed to by the appellant and the applicant.

The 2009 Act restricted those third parties' rights and ensured that they cannot frustrate an agreement reached between the principal parties.

13. The Act reintroduced security for costs by appellants.

14. The Minister of Conservation's veto in respect of coastal activities was repealed.
15. The fee on filing of an appeal under the RMA was increased tenfold.

Phase 2 of the Reform Process

We are currently in phase 2 of the RMA reform process, and what with what else has been happening since September; I think it is fair to say things have not progressed in accord with the original timetable.

Nevertheless the Aquaculture reform legislation is in its final stages after some years of a moratorium under the last Government. This presents huge opportunities for economic growth and employment, particularly in the regions.

The Bill establishing the Environmental Protection Agency will be passed, probably next week. The review of our heritage laws is well underway and I gather a Bill will probably go to Parliament later in the year.

Fresh water management has been a big issue for the Minister and I gather is to be the subject of a National Policy Statement expected any day.

I was on the Minister's Infrastructure and Urban TAGs. The Ministry produced a discussion paper late last year and submissions on that have now closed; but I am told that policy decisions are still some way off. I am confident that if you want to be heard, it's not too late. I think it is likely that phase 2 will not produce just the one reform bill, but rather quite a few spread over a year or two.

So we don't know yet what the Minister's reform proposals will be, but if I outline some of those areas that have been looked at, and some that I have reported on, you may get a flavour of what we might expect.

Amongst the issues under discussion have been:

- (a) Metropolitan Urban Limits
- (b) housing affordability
- (c) a greater voice for central government in local plan making
- (d) Public Works Act reforms as regards rights to compensation

- (e) some additional easing of the procedural paths for major projects
- (f) a major study on fresh water allocation, which will likely lead to a National Policy Statement later in the year
- (g) the recent release of the National Policy Statement on renewable energy, with more National Policy Statements still to come
- (h) some proposals around urban design.

Auckland's Growth

We've all seen the headlines about Auckland's rapid growth – e.g. *"Population Boom to cause big headaches"* (NZ Herald September 10, 2010) – and indeed it seems generally accepted that Auckland's population is growing more rapidly than most cities in Australasia: on some measures it is indeed growing the quickest.

That growth rate is only 1.6% or 1.9% per annum (depending upon which set of statistics you accept) – and it is certainly not projected to reach the higher growth rates which cities of the Asian subcontinent and South America have been confronting for decades.

I have difficulty in understanding why such a modest growth rate is seen as presenting huge challenges, representing such big problems, or is any cause for "headaches".

If a private sector enterprise had been growing at merely 1.6% or 1.9% per annum for the last several years and was not projected to grow any faster – the only headache would be that it was so slow. You wouldn't be looking to the heavens for solutions – you'd be finding a new Chief Executive Officer, one who could make the business grow faster.

I can accept that even a modest growth rate of 1.9% may have caused problems for former Council districts on the periphery of Auckland where much of the growth is occurring, e.g. (the old) Rodney District – but that's a governance/structural issue and one which the new Supercity should resolve. I can understand that the nature of local body financing, being historically so dependent on property taxes, also

introduces complexities into how some of the infrastructure growth is funded. But of itself, 1.9% per annum is not in my estimation any cause for “headaches”.

So let’s get away from this “growth is a problem” mindset. Growth represents opportunities, and in particular opportunities for the less privileged members of our society.

Stagnation – a perpetuation of the status quo, provides fewer opportunities for the less privileged to advance/improve their station in life. So if we are interested in social equity, then we should be promoting economic growth.

In addition, Auckland’s growth has been identified by central government as being crucial to the long term economic growth of New Zealand.

So we should stop thinking of it as a “problem” and get on with addressing the issues that arise.

One of those issues of course is housing. Where are the new Aucklanders to live? In what sort of dwellings? And how affordable will they be?

I guess in a free society we should aim on their living where they want to, and in dwellings of the kind that they would prefer to live in.

Now contrary to what many would appear to believe, few New Zealanders actually want to live in apartments – the overwhelming preference is for a block of land and a free standing home in the suburbs.

The housing preferences of New Zealanders were the subject of recent research undertaken for the NZ Centre for Sustainable Cities, centred at the University of Otago, Wellington. This survey was based on a sample size of 3244 respondents, with a response rate of over 30.0%.

- (a) When asked whether they would prefer to live in a stand-alone house, or an apartment; 80% of the people voted for the former, and about 4% for the latter.
- (b) When asked whether they would prefer a larger house further out, or a smaller house or apartment in the city; 53% said the former, 23% the latter, 17% didn’t mind and 6% responded “other”.

- (c) When asked whether having space is more important than a longer commuting time, or having a shorter commute to work or other activities was more important; 56% said the former, 15% said the latter, 22% didn't mind and 5% were "other".

And of course there was a wonderful news item last week. The results of a United Nations survey and what young people around the world fear most was released. As you'd expect, threats to personal security, barriers to economic and educational opportunities, natural or nuclear catastrophes' all featured highly. But the fear most commonly mentioned by young kiwis, and one not mentioned elsewhere, was the fear of having to live in an apartment. Now we might feel that there has to be something a bit awry with a survey like that, but I still accept it as a strong indicator of New Zealanders' housing preferences. Overwhelmingly we want our own house on its own plot.

So desirably, I would suggest, we should be making provision for significant growth/expansion. But "*Ohhhh*" say so many – "*Auckland will grow and spread out to Hamilton and Whangarei*" – well, not so.

The conventional thinking is also that Auckland is a very spread out/sprawled/dispersed city. Well it may be a long way between its southern and northern extremities – but that's what happens when you develop on an isthmus. But there is much data to suggest that in terms of intensification and development – the simplest measure for which is the number of people per km² – Auckland is not the sprawl we may have believed it to be.

Now I know there are different ways of measuring these things, and particularly there will always be debate around where is the edge of the urban area, and so forth; but the most complete set of data I've come across is on the www.citymayors.com website, which gives all sorts of data about the world's most populous 600 cities. In terms of density of development, Auckland ranks at 115th, with 2,000 people/km². Sydney 113th at 2,100, Vancouver 123rd at 1,650, Portland Oregon 136th at 1,300, Melbourne 127th at 1,500, Adelaide 133rd at 1,350, Perth WA 146th at 1200, Brisbane 167th at 950.

So by all means - let us have the debate about where and in what sort of dwellings the increased population will live, and let's debate whether or how we should provide for further intensification of our city:

but let us not seek to develop that policy framework on the misguided belief that most people actually aspire to apartment dwelling (when it is the preferred choice of only 4%) or that Auckland is already one big sprawling statistical outlier of a megapolis about to gobble up Dargaville and Morrinsville; when the data would seem to suggest that Auckland is already developed to an average intensity greater than that of Vancouver and Portland Oregon, two of the cities frequently cited to us as inspirational models.

Nor should we operate on the misguided belief that an expansion of our major cities will make significant inroads into our rural productive capability. If New Zealand's population were to grow at 50,000 per annum and all these people were to be accommodated in housing on the fringe of existing towns and cities (at the comparatively low population density of 1,000 people per km²), an additional 50km² of land would be required each year. Given New Zealand's total land area of 267,700km²; even 20 years of population growth would urbanise less than 0.4% of the country.

As we accommodate all these extra people, it is also important that we try to do so affordably. A high cost housing regime has a number of unfortunate social consequences, in which various commentators have included:

- (a) increased overcrowding and reduced educational achievement;
- (b) reduced disposable income, living standards and spending power;
- (c) reduced ability to maintain the housing stock, thus contributing to a deterioration in that stock;
- (d) high housing costs relative to incomes may provide an incentive for New Zealanders to emigrate, and a disincentive for ex patriots to return home;
- (e) increasing house prices increase wealth inequalities;
- (f) high house prices make it more difficult for non-home owners to enter into home ownership; a particular concern in the case of Maori and Pacific Island ethnic groups.

Another of the issues arising from Auckland's growth is that of infrastructure: and I don't just mean roads. The Auckland Regional Council did some very good work on growth scenarios, and one of their works published shortly before they went out of existence projected Auckland's population growth through to 2050. On a medium scenario, they expected Auckland's population to grow by the equivalent of two present-day Wellingtons.

Wellington region currently has:

- 450,000 people
- 183,000 dwellings
- 234,000 jobs
- 15 hospitals
- 3 Universities
- 23,000 students
- 200 primary schools
- 35 secondary schools
- 1 international airport

Thus the growth Auckland will have to accommodate will include not only 900,000 extra people, but also the equivalent of 30 hospitals, 6 universities and 70 secondary schools and 2 new airports.

One would have thought that planning for this represented quite a big task, and that the new city's much vaunted spatial plan might begin to give something of a steer as to where and how, and in what sequence, these facilities are envisaged to be provided.

At present the Council is still in the consultation phase of preparing a spatial plan, but present indications don't fill me with enthusiasm. The expressed targets in the discussion document include:

- minimum 80% participation in early childhood education Auckland-wide within 3 years;
- 100% of young people leaving school are 'work ready' with a clear plan for further education, training or a job;
- 80% of school leavers have Level 1 NCEA within 10 years;
- all those entering under the skilled migrant category are fully employed within 6 months of arrival;
- cutting greenhouse gas emissions by 40% below 1990 levels by 2030.

What do these have to do with local government?

The more resources they devote to such concerns, the less they devote to things they should be doing.

The more they focus on tasks irrelevant to their core function, the less the Council will focus on things it does have responsibility for.

I think that we run the risk of the spatial plan running seriously amok, and very expensively amok too.

Elsewhere round the world, spatial plans are not prepared by the unit of government they cover – they are prepared by the next level up; thus Melbourne's plan is prepared by the Victorian State Government and can only be altered by an Act of the State Parliament; South-east Queensland's is prepared by the State Government; the same in Canada and the with the possible exception of London, the same in the UK.

Central government in New Zealand has for 20 years now been reluctant to involve itself in matters it considers local, reluctant even to the extent of not giving much guidance in the way of national policy statements under the RMA; although Dr Smith is moving in the right direction there.

The point is that 70% of the infrastructure spend in Auckland comes from central government. Auckland can invent its wish list of pet projects all it likes, but unless Auckland is going to fund them, forget it. A spatial plan prepared by people who lack the power and responsibility to carry it through, and which lacks commitment from those who do have the power and responsibility, is likely to be worth little more than hot air.

To my mind it is vitally important that central government play a bigger role. It will be making the bulk of the investment, and it is therefore central government that should call the tune. Any lyric, to continue the musical metaphor, that local government comes up with, invents for itself, is unlikely to be in sync with the reality as seen from Wellington; and that is all the more likely if it's Wellington that is doing the paying and Auckland politicians who are doing the promising.

The present governance arrangements represent much of the worst of all worlds and little of the best of any. They encourage politicians to campaign on platforms that they are not responsible for delivering on; and that's a certain incentive to over-promising. Anyone can promise anything – how about a four track underground railway for Auckland? – knowing that they can't be responsible for its non-delivery. Politicians should be able to be held accountable – there can be little accountability in the arrangements we have in place at the moment.

That in turn reduces the quality of political debate, and distracts attention and removes resources and focus from what local politicians can achieve or influence.

Let's stop talking about childcare participation rates, whether skilled migrants are fully employed and how many school leavers have Level 1 NCEA – the local council can do nothing in those areas – and let's start thinking about where the new schools, sewerage treatment plants, parks, airports and landfills should be going.

In a press release last November, Dr Smith said:

"The Spatial Plan will illustrate how Auckland will develop in the future. It will show where and when growth will occur in transport, housing, energy, water, recreation, education and health infrastructure and services."

Judging by what we've seen to date that doesn't seem very likely.