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Fixing the RMA: Short and Long-term Solutions

Once again the vexed issue of the Resource Management Act is under review by the government. A technical advisory group has been convened to recommend short-term amendments to the Act to simplify and speed its processes.

This is indeed urgently required. Getting developments through the RMA is often a Sisyphean task for private land owners, businesses and the government itself. Their projects – like the houses, farms, factories, shops and infrastructure that the RMA stymies and delays – are the assets upon which our first-world standard of living depends.

The previous government seemed blind to the public's frustrations with the RMA. That was until Project Aqua, a major state-owned enterprise project dear to its heart, ran up against it. The solution? The cabinet resolved to bypass the RMA process, citing the need to reduce time delays and provide an orderly process for handling the applications. But isn't that what everyone trying to get a development through would want?

Amending legislation to address some of the RMA's flaws then followed, but was generally seen as too little, too late. It did not remedy the 'anti-commons' effect of the RMA, the situation where so many parties have prerogatives over a resource that its effective use is blocked, and it did nothing to address the costs, uncertainties and delays which have continued unabated.

It is not just the big-ticket projects like power stations that have to navigate the vagaries of open-ended public consultation, vexatious objections, and the mushy language of the RMA; even the most modest plans of homeowners, small businesses, farmers and the like are subjected to the same crippling and costly processes.

The new government is right to view fixing the RMA as a high priority, and inclusion of productivity and economic growth in the advisory group's terms of reference shows it appreciates the immediate problems,

Useful changes could be made that would mean an immediate reduction in costs and delays: like the reintroduction of standing – to prevent anyone, anywhere from opposing a project; security of costs – so the frivolous will bear the price of their actions; and more rights to compensation for victims of the Act.

Realistically, though, tinkering with the RMA will not fix its fundamental problems. One of them is the plethora of fuzzy terms, like the all-encompassing definition of the environment, sustainable management, Treaty principles, kaitiakitanga, and intrinsic values.

No court has defined what these vague and unquantifiable terms mean. Decisions based on them are arbitrary. This is bad for both the environment and the economy. In a study for the Business Roundtable, *Environmentalism versus Constitutionalism: A contest without winners* (www.nzbr.org.nz) Australian academic Suri Ratnapala declared the RMA to be essentially unconstitutional.

Long term, we should start afresh. If the RMA were repealed we would be left with what regulated much of our development prior to the Town and Country Planning Act 1953, the common law. A good starting point is to ask: what's wrong with leaving regulation to this regime of property, contract and tort, with its focus on quantifiable harms to third parties?

This was exactly how our towns and great cities around the world used to grow, subject only to appropriate government concern with public health and safety. How impoverished would we be now had our forebears adopted something like the RMA?

The city of Houston is a modern example of such an approach. It looks much like other major American cities. Heavy industry tends to congregate near the port; stores and apartments near transport links; artists in the Museum District, near the jazz bars, ethnic restaurants and studios, and so on.

Without heavy planning regulation, land use has evolved largely through the market and with the use of voluntary covenants. The major benefit is the inexpensiveness of land and housing, making Houston the consistent US leader in housing affordability.

Two problems come to mind that would be beyond the scope of the common law: non point-source pollution, such as smog, where there is no identifiable party to take action against; and the need to aggregate land that is essential for public use, such as for building flood protection.

These are likely to require a general restriction and special government powers respectively. Other problems may well arise, but these would almost certainly be identifiable in terms of quantifiable third party effects, not in the terms of the RMA.

The government is planning more thorough work on RMA issues after the present review. Ideally, it should go back to the drawing board.

The Labour government's reviewer of the proposed RMA said it would be worse than the Town and Country Planning Act that it replaced. Undeterred, Sir Geoffrey Palmer and then Simon Upton ploughed on.

The basic problems with the Act are not the fault of incompetent council officials or applicants. The RMA is fundamentally flawed.

Roger Kerr (rkerr@nzbr.org.nz) is the executive director of the New Zealand Business Roundtable.