

URBAN DESIGN & REFORM OF THE RESOURCE MANAGEMENT ACT

By Barry Rae, published in *URBAN March 2009*, and *RESOURCE MANAGEMENT JOURNAL April 2009*.

Introduction

The new government's policy on phase 2 of the reform of the Resource Management Act 1991 (RMA, or the Act) includes a review of urban design issues. It acknowledges that the RMA may not be working well for our major cities and that new approaches and legislative reform may be necessary. This includes exploring new approaches to city development and the encouragement of more collaboration between planners and developers.

New Zealand is a highly urbanised country with almost 90% of the population living in urban areas. The quality of the urban environment affects the wellbeing of most people most of the time.

The urban environment has been managed under the RMA now for nearly 18 years. However, it is difficult to identify the positive effects that the Act has had on the quality of the urban environment of New Zealand despite the outrageous costs and time spent on urban resource management.

There is a serious misfit between urban design and resource management such that the effectiveness of the RMA, in respect of the urban environment, must be questioned, yet again (refer Rae B.J., "Why the RMA has failed the Built Environment", NZ Environment 25 January 2002").

Resource Management

Natural resource management deals primarily with the impact of human activities on the natural environment. Such impacts can only be adverse unless of course existing adverse effects are reversed. The natural environment must be protected from significant adverse effects of human activities. Natural resource management is primarily a conservative or protectionist process. It establishes ecological "bottom lines" in respect of effects on the natural environment.

The RMA is philosophically aligned with natural resource management, but captures all urban resources as well.

Purpose and Principles of the RMA

The singular **purpose** of the RMA (s. 5(1)) is to *promote the sustainable management of natural and physical resources*. The same purpose and principles are applied to both natural and physical resources.

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Natural resources cannot be designed, but their use is managed. Resources making up the built environment, on the other hand, may use or affect natural resources, but they primarily comprise a designed and constructed human habitat.

Physical resources, by definition (s.2), include all structures. This is the nearest the RMA gets to explaining how the built environment is part of its subject.

Of the seven matters of **national importance** in the Act (s.6), only one is directly related to the built environment: the protection of historic heritage. Given our short urban history, this doesn't include much, and ignores the rest of our built environment which will become the heritage of tomorrow. All other matters of national importance are to do with the protection and use of the natural environment.

Of the eleven **other matters** to which particular regard must be had (s.7), only three relate, indirectly, to the quality of the built environment: the maintenance and enhancement of amenity values, the maintenance and enhancement of the quality of the environment and the efficient use of resources.

The urban built environment is not referenced directly in the RMA. People and communities are included but only as parts of ecosystems (s.2 definition of Environment). The creation of the built urban environment, despite it being habitat for most people and communities, is reduced to the management of physical resources within a framework that primarily protects the natural environment.

Reference to the **environment** has been interpreted by the courts as the existing environment and the foreseeable environment determined only by permitted activities. However, an existing urban environment may change drastically in the future by resource consents consistent with district plan objectives and policies but such future likely conditions appear not to be relevant when assessing adverse effects on the environment.

By definition (s.3), the meaning of **effect** includes positive or adverse effect. The requirements of the RMA for preparing an assessment of effects on the environment (Schedule 4) do not distinguish between positive and adverse effects. Both should be assessed. When considering an application for resource consent (s.104(1)), the consent authority shall have regard to any actual and potential effects on the environment, subject to Part II of the Act. However, Part II of the Act clearly focuses on avoiding, remedying or mitigating **adverse effects** (S. 5(2)). Nowhere in Part II of the Act (Purpose and Principles) is there any inclusion of the consideration of positive effects on the environment, although the wellbeing of people and communities could imply positive effects on them.

Regardless of district plan provisions, every person has a duty *to avoid, remedy, or mitigate any adverse effect on the environment* (s.17) but no duty to enhance it.

Further, there is no provision in the RMA for the balancing of positive and negative effects of an activity. The bottom line is that the RMA requires adverse effects to be avoided, remedied or mitigated irrespective of the benefits of the proposed

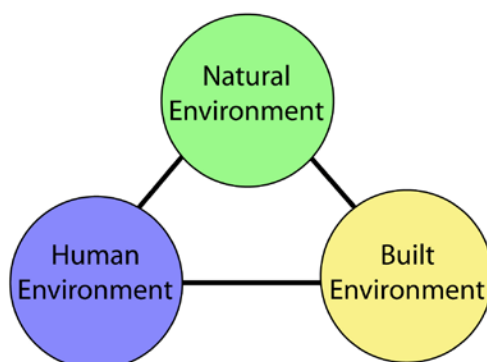
development. This is understandable in respect of the natural environment, but is totally at odds with the reality of the built environment.

Unfortunately, the RMA imposes the same assessment process to the built environment as it does to the natural environment. Unlike the natural environment (already created), the built environment is under constant change by planning, design and development processes. The built environment, because of social, economic, technological and political change, continually requires substantial restructuring and redevelopment. Given our history so far, there is not much of our urban environments that need protection, but plenty that needs to be changed and improved.

The quality of our built environment hangs on the definition of **amenity values** (s.2) which means *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*. This places strong emphasis on existing characteristics and provides a very narrow scope for determining the quality of our urban environment. Other important attributes of urban amenity should include the functional integration of urban elements, synergistic relationships amongst activities, social interaction, convenient access and movement, sense of place, and so on. Urban amenity values need to be based on how a city actually works as well as how it looks. Aesthetic coherence is the least relevant quality and it is not appropriate to emphasise recreational attributes over those of other activities.

Human Settlements

Human settlements, being an integration of the Natural, Human and Built Environments, are managed by the RMA, but nowhere in the RMA is there any direct reference to human settlements or to the purpose and principles of sustainable human settlements.



Human settlements

Human settlements are complex systems constructed to support the lives of most people most of the time. Their importance, and the process of planning and designing them, go well beyond notions of natural resource management.

Failure of the RMA

The RMA is fundamentally flawed. Human settlements require a positive and creative strategic approach to meet changing demographic, economic and social circumstances. The negative and conservative natural resource management approach of the RMA that focuses on the adverse effects on the existing environment falls far short of what is required for the built environment. While the role of urban design in the resource management process is implicit in avoiding, remedying or mitigating adverse effects, its significant role in changing and improving the built environment is ignored.

Under the RMA issues of the built environment somehow got tacked onto those of the natural environment and are subject to the same assessment process, despite the fundamental differences between the two.

The RMA is primarily an environmental protection act and is more about the sustainable management of natural resources than sustainable urban development.

The RMA did promise sustainable mixed use development by dealing with the effects of activities rather than activities per se, but in practice traditional exclusionary activity zoning remains the norm after nearly 18 years under the Act.

For human settlements, the RMA in practice is essentially a negative conservative process of avoiding, remedying or mitigating adverse effects on the existing environment.

We manage resources, not for the sake of it, but to create sustainable human settlements. The Act should be up front with its real purpose.

Urban Design

The management of current complex urban growth, intensification and re-structuring (long term issues especially for the upper north island) cannot be left simply to the avoidance, remediation and mitigation of adverse effects on the existing environment.

Urban design goes well beyond the sustainable management of resources and deals with sustainable development. Sustainable development requires both planning and design process to create quality human settlements where the quality of the built environment itself enables human well being as well as needing to be in harmony with the natural environment.

With urban design, the emphasis is on positive physical outcomes and it inevitably involves value judgement tradeoffs amongst different and competing elements and effects in achieving an optimum outcome with overall benefits and possibly with some adverse effects that cannot, or need not, be avoided, remedied or mitigated.

As well as designing adverse effects out (as required by the RMA), more emphasis should be on designing social, economic, and cultural value in, to create sustainable human settlements of complexity, diversity and vitality.

There is thus a fundamental disharmony between the sustainable management of resources and sustainable urban design. The importance of human settlements is lost to resource management.

Alternative Urban Design Initiatives

The existing chasm between resource management and urban design has recently been recognised by both central and local government.

At the national level, the Ministry for the Environment (MfE) has recognised the failure of processes under the RMA in delivering good built environment outcomes and has promoted good urban design practice by initiating a New Zealand Urban Design Protocol. This protocol now has over 100 signatories including government departments, local authorities, infrastructure agencies, health boards, private corporations and consultants who undertake to champion urban design in their day to day operations.

MfE is currently proposing a National Policy Statement on Urban Design which all processes under the RMA will have to have regard to. It remains to be seen how urban design policies will be reconciled with the deficiencies of the Act.

Perhaps more important, the Department of Internal Affairs has set up an inter-agency Sustainable Urban Development Unit to promote place-based approaches to sustainable urban development in New Zealand.

At the local level, public outcry over the poor quality of urban development occurring through intensification, and the apparent failure of resource management processes to address these concerns, has led City Councils to initiate non-statutory urban design review panels, urban design strategies, urban design assessments, urban design guides, and so on.

These initiatives mark the beginning of a new collaboration between planners and developers, mediated by urban design, despite the RMA.

However, at the end of the day, all of this has to function within a statutory process under the RMA which is narrowly focused on the avoidance, remediation and mitigation of adverse effects on the existing environment.

Because of the complexity of some urban development, there is an argument for specific legislative provision for preliminary “outline” consents for major projects. Such outline consents could define broad activity “envelopes” and set out, as conditions of preliminary consent, precise site-specific urban design objectives which, when combined with project objectives, will form a comprehensive design brief for subsequent design and full consent. The advantage of this approach is that site-specific public design issues can be established before project design is

developed in detail, environmental trade-offs can be negotiated and consent can be obtained in principle before developers are committed to the costs of detailed design and full documentation.

Most strategic planning, growth strategies, structure plans and other more positive and design-led approaches to human settlements are being carried out under the Local Government Act (2002). Plans under the RMA need to be integrated with these planning initiatives, as evidenced with the Local Government (Auckland) Amendment Act (2004).

Recommended Changes to the RMA

The RMA has failed the urban built environment. The benefits have not been worth the costs.

Not only does the cumbersome time-consuming and costly process of the RMA need to be streamlined, but also its fundamental purpose and principles need to be expanded to deal explicitly with the sustainable development of human settlements in a positive way. The disharmony between urban design and resource management needs to be addressed in the current reform of the RMA.

The following **10 changes** to the RMA would begin to redress some of the above identified shortcomings of the Act:

1. Extend the **Purpose** of the Act to explicitly include the positive promotion of the sustainable development of human settlements, being an integrated approach to the natural, human and built environments. This means optimising opportunities for human contact and exchange for economic, social, and cultural purposes, minimising the use of energy, optimising the quality of the environment and balancing all principles.
2. Amend the **Purpose** of the Act to make it clear that it includes the consideration and balancing of both beneficial and adverse effects on the environment and that net effects on the built environment must be positive.
3. Add to the matters of **National Importance** the urban design quality of human settlements.
4. To the definition of **Environment**, include the built environment as well as the human and natural environments and encompass the subject of human settlements as the integration of all three environments.
5. To the definition of **Environment**, include the likely future built environment as defined by district plan objectives and policies and by other statutory documents.
6. Link the definition of **Amenity Values** directly to human settlements and include attributes of functional integration. Also include reference to sense of

place, identity, economic vitality and social interaction. Delete the words *recreational attributes*.

7. Amend the **powers** of territorial authorities such that where district plan rules are spatially defined by zones, such rules must relate to effects that are defined by district plan standards, not activities.
8. Provide for **Preliminary Outline Development** consents where site-specific urban design principles and development “envelopes” have been established by collaboration between Council and the applicant, to be followed by more detailed design for full resource consent.
9. Recognise Urban Design Panel recommendations as **Other Matters** to be considered when assessing resource consent applications.
10. Provide for **integration with the LGA** by recognising other relevant statutory planning documents.

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This article is an expanded version of a paper “Disharmony of Urban Design and Resource Management in New Zealand” presented to the World Society of Ekistics NGO meeting at the UN World Urban Forum, Nanjing, China, November 2008.

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Barry Rae was an urban designer/planner/architect and founder of Transurban Limited, consultants on urban development. Sadly he passed away in 2009. The company is now run by his son, Nick Rae, Urban Designer and Landscape Architect.

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