

RMA – FIT FOR PURPOSE?

FIRST QUESTION: WHAT IS THE PURPOSE?

- Protection of indigenous flora and fauna (conservation?)
- Protection and allocation of water resources?
- Climate change resilience?
- Consenting roads of national significance?
- Giving effect to Treaty of Waitangi (integration of Mātauranga Māori)
- Landscape protection?
- Safeguarding coastal and marine resources?
- Provision for housing?

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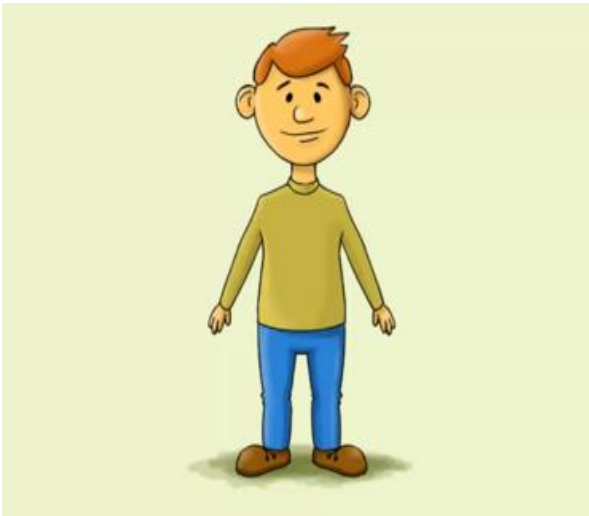
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Aka:

- “Sustainable management of natural and physical resources?”
ie “all of the above”
- Clarity of purpose required.
 - a) Sustaining potential of resources to meet reasonably foreseeable needs. ✓
 - b) Safeguarding life-supporting capacity of air, water, soil, and ecosystems. ✓
 - c) **Avoiding, remedying or mitigating adverse effects on the environment.** ?

- Simon Upton – Third reading
 - “The Bill provides us with a framework to establish objectives by a *biophysical bottom line that must not be compromised*. Provided that those objectives are met, what people get up to is their affair. As such, the Bill provides a more liberal regime for developers. On the other hand, activities will have to be compatible with hard environmental standards, and society will set those standards.”
- Definition of environment nebulous – “avoid, remedy mitigate effects on”:
 - Ecosystems including people and communities
 - Natural and physical resources
 - Amenity values
 - Social, economic, aesthetic and cultural conditions affecting (or affected by) the above
- How can that establish a bottom line?
- Compare with EEZ definition.

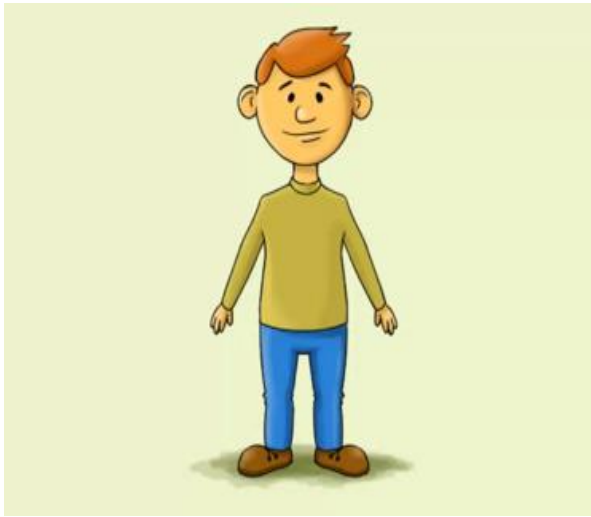
- Cannot be “fit for purpose” until have “clarity of purpose”.
 - Biophysical realm – natural and physical resources.
 - Human realm – social wellbeing.
- *King Salmon* ‘bottom line’ does not work for both.
- Yet both realms inextricably linked!
- Concept of ‘domains’.



Natural domain – intrinsic value

- Social wellbeing domain – “built environment”.

‘Relational effect’



- How do you set a bottom line on this type of effect?

SOLUTION – (Outline)

- Stable frame, but greater resilience
- Focus on what matters
- Separate domains
 - natural and social/built (urban and rural)
 - clarity of purpose for each
 - ‘structural’ by design, not default (*King Salmon/ Davidson Trust*)
- Less clutter
- Integration
- Participation and role of Environment Court
- Enforcement

STABLE FRAME

- We have been here before!
- Elizabeth Fisher
- Parts 2 and 3 ‘meta law’
- Hot law – serial reform and “quick fixes”
- Environmental law as constitution
- “Scaffold for resilience” - paradox
- Adaptive governance

FOCUS ON WHAT MATTERS

- Section 6: Natural domain

- Climate change – effects and mitigation (including natural hazard resilience)
- Biodiversity
- Water quality / quantity – aquatic habitats
- Soils?
- Marine?
- Intrinsic values / finite characteristics

[Landscape / Natural character?]

- Section 7: Social wellbeing / Built domain

- Amenity values / 'quality of environment'
- Stewardship
- Efficiency – resources and energy
- Urban development and urban design
- Infrastructure
- Historic heritage

- Section 8 – Current s6(e), 7(a) and 8
 - “Matauranga Maori”
 - Structural approach
- Relative priority – hierarchy – ss6 and 7
- Adaptive governance – s18A
 - Resilience to withstand shocks
(natural hazards)
 - ‘Agility’ – *responsiveness to change*

SEPARATE DOMAINS

- Productivity Commission Report
- Parts 3 to 5
- Regional Councils – natural domain – section 6 focus (s30)
- Territorial – social/built domain – section 7 focus (s31)
- Infrastructure – regional spatial strategies
- Clarity of purpose:
 - Bottom line – *King Salmon* – natural domain
 - Broad judgment – social/built domain
- Less overlap / duplication of function

Productivity Commission (Better Urban Planning, Page 426)

“The natural and built environments require different and distinctive regulatory approaches. The natural environment needs a clear focus on setting standards that must be met, while the built environment requires assessments that recognise the benefits of urban development and allow change. **Current statutes and practice blur the two environments, and provide inadequate security about environmental protection and insufficient certainty about the ability to develop within urban areas.** Rather than attempting to regulate these different issues through a single set of objectives and principles, a future planning system should clearly distinguish between the natural and built environments, and clearly outline how to manage the interrelationship between the two. **To support an integrated approach, these sets of principles should sit within a single planning and resource-management Act.”**

LESS CLUTTER

- Planning Inertia
- Lack of:
 - Clarity of purpose
 - National direction x broad discretion + “Effects based” = ...
- “Good, bad and the ugly”
- Less duplication
- 2 tier maximum
- “Fewer, simpler, clearer”
- Greater ‘agility’



***For Three Men
The Civil War
Wasn't Hell.
It Was
Practice!***



CLINT EASTWOOD in

**"THE GOOD,
THE BAD ^{AS}
THE UGLY"**

co-starring

LEE VAN CLEEF ALDO GIUFFRÈ | and with MARIO BREGA

also starring

ELI WALLACH

in the role of Tuco

SERGIO LEONE

Music by ENNIO MORRICONE

Screenplay by AGE-SCARPELLI, LUCIANO VINCENZONI and SERGIO LEONE Directed by
Produced by ALBERTO GRIMALDI for P. E. A.—Produzioni Europee Associate, Rome

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INTEGRATION

- RMA Part 2 as constitution?
- RM System or 'Galaxy'?
- Section 6 Bill of Rights Act:
“Wherever an enactment can be given a meaning that is consistent with the ~~rights and freedoms contained in this Bill of Rights~~, purpose and principles of the RMA, that meaning shall be preferred to any other meaning.”
- Subordinate legislation.



[Source, Environmental Defence Society, Working Paper 2, Figure 14]

PARTICIPATION AND ROLE OF ENVIRONMENT COURT

- Principle 10 – Rio declaration.
- Back to basics.
- No better way?
- Good fortune or by design?
- Constitutional function – separation of powers/security of tenure.
- Environment Court Annual Review:
 - Biosecurity Act
 - Crown Minerals Act
 - Electricity Act
 - Forests Act
 - Heritage New Zealand Pouhere Taonga
 - Local Government Act
 - Public Works Act
 - EEZ Act
 - Affordable Housing ...

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, **and the opportunity to participate in decision-making processes.** States shall facilitate and encourage public awareness and participation by making information widely available. **Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.**

ENFORCEMENT

- Resourcing?
- Agency Capture?
- A real EPA?

CONCLUSION

- To be fit for purpose, need clarity of purpose.
- Mission Impossible (Fit for purpose)
 - No 'right' answer – best reasonably available.
 - Over analysis.
- Reform not Transform.

“To get distracted by questions of regulatory cost, and public participation rights over provision for housing, is to entirely miss the point”.