

With a nod to the RMA, a wander through the woods of time

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Abstract

This is a personal account of part of my experience of the Resource Management Act 1991 (RMA) and how it has dealt with forestry. By forestry I mean trees planted for a variety of purposes, which can include timber production, carbon sequestration, soil conservation and the like. The follow-up question is, taking my experience into account, would a forestry policy have changed RMA outcomes or would a policy change RMA regulation in the future?

Up front I have to say that I do not know the answer to the follow-up question. My experience is, however, that in comparison to other rural productive activities there has been a lop-sided and uneven approach to dealing with the effects of forestry on the environment.

I am not saying that there should not be RMA controls on forestry operations, but there should be a more even playing field. A multi-pronged approach, which could include a policy for forestry, should be part of the forest sector's tool box to promote forestry as a sustainable land use in New Zealand. In reaching the above conclusion I have concentrated on considering only a few lines of enquiry, predominantly dealing with regional council controls on the impacts on erosion by rural production activities.

Brief history of environmental regulation

I have to confess that my age is now catching up with me. When I first commenced operating in the area of environmental law, the Acts I was dealing with were the Town and Country Planning Act 1953 and the Soil Conservation and Rivers Control Act 1941 (the Soil Conservation Act). Life changed with the introduction of regulation for water quality under the Water and Soil Conservation Act 1967. The Clean Air Act of 1970 was specific to air quality. Then the 1977 Town and Country Planning Act introduced major changes to land use planning.

The proposed RMA was certainly welcomed by me as it was promoted to be a one stop shop. Numerous pieces of legislation that affected environmental controls were to be repealed and there was to be a single framework of purposes and objectives. No more having to deal with a variety of pieces of legislation, all with different purposes. I was also attracted to the concept of the idea

that the legislation would be 'effects-based' and need not be prescriptive as to the controls for an activity.

Soil Conservation and Rivers Control Act

History is important. I am of the opinion that the provisions of the Soil Conservation Act were pivotal to the development of controls on forestry that were to eventuate under the RMA. The Soil Conservation Act was born out of concerns that had been growing as to the effects of flooding and the link with land erosion. They were not concerns related to forestry, but rather as to what was happening on hill country and the effects downstream. The objects of this Act as set out in section 10 were: 'To promote soil conservation, to prevent and reduce erosion, to prevent flood damage and to use land in a way that would achieve these objects (paraphrased).'

Under the Act Catchment Boards were established. Other commissions and authorities were also established which took on the functions of the Soil Conservation Act. Two important provisions with regard to this article were the powers to make bylaws under section 150 for land utilisation and a power introduced in the 1959 amendment to place notices on land to control soil erosion and/or flooding. These were known as section 34 notices and most of these notices had controls on earthworks and the removal of trees. At the commencement of the RMA in 1991, most regions in New Zealand had some section 34 notices in place on eroding hill country areas. Waikato Regional Council had a section 150 bylaw to control earthworks and vegetation clearance.

RMA – development of regional plans

The transitional provisions of the RMA limited the effect of the section 34 notices for a two-year period. However where the consent of a council was required for an activity, such as by way of a bylaw, then this would become a discretionary consent. So while section 34 notices were to lapse within two years, there was no time limit on how long transitional provisions relating to bylaws could be in effect.

While there was no legal requirement for regional councils to introduce regional land plans, the effect of the RMA transitional provisions was a flurry of activity by regional councils to introduce these plans to replace

the section 34 notices. In those days, the provisions of a proposed plan had effect and had to be taken into account. As long as a regional land plan was introduced prior to the lapsing of the section 34 notices, controls could be applied. And so the introduction of regional land plans commenced. In my opinion, these plans were the origin of inequitable rules governing forestry.

As an aside, the Waikato Regional Council bylaw was not rescinded until the regional land plan became effective in 2007. For 16 years, to harvest a forest it was necessary to obtain a discretionary resource consent. There were no controls on the effects of grazing hill country or the disturbance of land by way of cultivation. Controls that were originally initiated for the purposes of controlling land use for soil conservation and flood protection reasons were now being used for a much wider suite of purposes, including maintenance and enhancement of the quality of the water and of ecosystems in water bodies.

Unfortunately the haste to introduce these regional land plans did not embrace the new RMA concept of being effects-based. In my naive optimism I thought that controls for erosion arising from use of land for grazing or cultivation would be considered along with the impacts on erosion arising from the use of land for forestry. But no, this was not to happen. Although the regional plans could now have provisions/rules to deal with land use activities that affect water quality, the regional land plans concentrated on the activities that were covered by the previous section 34 notices, i.e. earthworks and vegetation clearance. Here is the nub of the problem: 'vegetation clearance' was the activity to be covered in the regional land plans but, and time and time again, the activity was defined to exclude 'harvesting of crops, other than forestry, cultivation and/or grazing'.

These first regional land plans saw the introduction of set-backs from water bodies for forestry, but because



Erosion near Gisborne

pasture and cultivation did not fall within the scope of vegetation clearance similar set-backs for other rural productive activities were not imposed. This is not to say that the provisions for forestry are not relevant or required. Forestry has supported many provisions, but the lop-sided approach to dealing with the erosion impacts of all rural production activities has led to a non-effects-based approach under the RMA.

Some may argue why be concerned if there is no level playing field? A more regulatory level playing field would be reflected in the costs of internalising effects and a flow-on effect on land values.

A quick digression to district plans

A classic example of the lop-sided approach at district council level is how district plans deal with the tree set-back from boundaries. It has been usual for district plans to control the set-backs for forestry at limits that are different from any other trees. That is, it is usual to find that shelter belt trees or amenity trees may be located at a much closer limit to a road and to another property than a tree that falls within the definition of a forest. It was refreshing to see the first Otorohonga District Plan treat all trees the same.

The new district plans were, and still are, prescriptive about where forests may be planted. On the flat plains of the grape growing areas of Marlborough, while you cannot plant a pine tree for timber production you can plant one for pine nuts, even though such trees may grow to 20 m.

Conclusions

New Zealand's young geology has not changed. Erosion from pasture lands has not changed. Under the Soil Conservation Act subsidies were put in place to assist farmers with retirement fencing, pole planting and so on. Catchment plans were developed, the Forest Service planted forestry on 'failed farms' to assist with soil conservation, and mile upon mile of stop banks were established to protect farms/towns from floods. It is interesting to note that most subsidies for agriculture production finished in the late 1980s, but some councils still provide subsidies for farmers to fence stock out of waterways and undertake riparian plantings.

Concern over water quality is leading to a new interest in soil conservation, i.e. how to keep soil on the hillsides and not fill up the waterways. In the

Manawatu region an overall catchment plan has been developed to encourage hill country farmers to plan some 70,000 ha in trees. A similar area for tree cover has been identified in the recent Waipa Catchment Plan. Some six million dollars is available for Waipa landowners to subsidise catchment planning works. On the East Coast the subsidised tree planting scheme continues. Sound familiar? Yes it does, so nothing appears to have changed since the introduction of the Soil Conservation Act in 1941. Hill country erosion from pasture land use is still occurring and public money is still being used to encourage farmers to undertake soil conservation works. This is all occurring while the research shows that pasture slopes generate two to five times more sediment than comparable forestry slopes, except during forestry harvest periods (Ritchie, 2012).

Has there been a change to regional land plans? The new generation plans are patchy in their approach to dealing with the impacts of rural productive land uses on erosion and the generation of sediment. There is a move to recognising sector codes of practices, best practice, and the requirement for all to have farm/forest plans to consider the effects of operations and provide sector appropriate mitigations. This approach has been advocated by and supported by the forest sector. There is, however, some way to go in the development of region-wide rules that equitably deal with sediment generation from the different sectors.

Would a Forestry Policy assist in providing a more level playing field? As stated earlier, I do not know. But such a policy would be part of that tool box that, along with research, means the proposed National Environmental Standard for Plantation Forestry could be used to provide the public and councils with the information that forms the story of forestry in New Zealand.

Reference

Ritchie, H. 2012 *Diffuse Sediment in Waikato Waterways- Sources, Practices for Reduction, and Policy Options TR 2012/2 Waikato Regional Council*, 3. Hamilton, NZ: Waikato Regional Council.

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