RESOURCE MANAGEMENT ACT REVIEW

My background
My name is Andrew Bydder. I am a registered architect with over 25 years’ experience. I am based in Hamilton.

I have extensive RMA experience, having made over 100 resource consent applications, and reviewing District Plan requirements for every construction project I am involved in. I am one of the few architects still personally making resource consent applications as nearly all other architects have given up that responsibility to consultant planners.

I have taught architectural students at WINTEC, I mentor young architects and other architectural businesses. I am a former chairman of the Waikato branch of the New Zealand Institute of Architects. I am a commentator for the Waikato Times on architecture, property, urban design, and council issues. I am a submitter to District Plan reviews for three councils. I established an urban development committee within the Waikato Property Council.

In 1998 I wrote to the Minister of Housing about leaky buildings, citing real examples of building failures caused by product failures, design failures, and inspection failures leading to untreated timber being exposed to water.

I was ignored.

In 2002 I wrote to the Minister of Education about the cost-cutting project management and construction management of school buildings leading to poor cladding installation of fibrecement sheets and Shadowclad, which lead to untreated timber being exposed to water.

I was ignored.

In 2004, the leaky building crisis hit headlines and official cost estimates are now in excess of $47 billion. The Building Code underwent changes to prevent the issues I had raised six years earlier.

In 2006 I wrote to the Commerce Commissioner about unlawful related party loans for property development by finance companies such as Bridgecorp at lower interest rates than was being offered to investors. This business model meant it was impossible to repay investors even if the loans were genuine, which as I pointed out, they weren’t. I noted that work on site did not match payments made, in breach of contracts.

I was ignored.

In 2007 these companies began collapsing, costing investors around $10 billion. Changes to accounting practices were made to prevent the issues I had raised.

In 2013 I wrote to the Department of Building and Housing about improper use of ‘social cohesion’ in fire designs and the failure of councils to enforce it.

I was ignored.

Less than a year later, 3 students died in a house fire on Collingwood Street, Hamilton,
within walking distance of my home, because social cohesion was presumed in the escape plan. Had the DBH acted, these people would be alive.

In 2014 I made submissions on behalf of the New Zealand Institute of Architects on the Hamilton District Plan review.

I wasn’t exactly ignored. The Deputy Mayor, Gordon Chesterman, said to me, “Andrew, don’t bother, nothing is going to change.” That is not how consultation is supposed to work.

Between 2016-2019, Hamilton City Council has spent $2 million on a plan change process to implement the exact submissions I made.

I am not always ignored.

In 2015 I wrote to Nick Smith about the housing affordability crisis being driven by council planning constraints.

This time it appears I was listened to, though never acknowledged. The changes I proposed were identical to the Special Housing Areas policy that Smith promoted in 2017.

In 2018, Labour cancelled the Special Housing Areas because it was a National Party policy. It was replaced by Kiwibuild. I wrote to Phil Twyford pointing out exactly why Kiwibuild would fail. In 2019, Kiwibuild failed.

The housing affordability crisis has got worse.

In 2018 I wrote to the Commander of FENZ about Waikato District Council’s incorrect use of fire fighting water supply standards. He agreed with me and water storage requirements were reduced by 95% on my projects. The council has not changed its use of the standards for other people.

In January 2019 I wrote to Hamilton City Council CEO pointing out that building inspectors and planners were overcharged and breached the Local Government Act. He complained to the NZRAB about me, claiming I was wrong. Yet in July 2019 he reduced inspection charges by 23% in order to comply with the Act. I was right. However, fixed fees were not reduced so the council is still in breach of the Act.

In June 2019 I wrote to the ombudsman about Waikato District Council failing to comply with the Official Information Act in questions related to resource consents. The ombudsman found in my favour and instructed the Council to comply and apologise. I received an apology, but the council has still not complied with the Act.

In November 2019 I wrote to Hamilton City Councilors about a building consent delayed by staff for 25 working days. This cost my client $50,000. Staff wrote an apology, but no compensation was offered.

Now I am writing to you because change is desperately needed. The bureaucratic processes around the RMA is having a huge and negative impact. The system needs to be fixed.

**Implementation of the RMA**

The problem with the RMA revolves around how it is being applied.
Either the Act needs legal additions to define the proper processes and cost structures, or the Act needs to establish an independent body to review the implementation of processes and cost structures with the power to make amendments.

**Bureaucracy and the gravy train**
In the last decade, the number of planners employed by Hamilton City Council has gone from 10 to 40.

The number of construction projects requiring consent has tripled. The cost of consent applications has doubled.

The paperwork required to make a consent application had quintupled.

Yet 99.7% of consents have been granted, which indicates that the vast majority of them were so minor in nature that there was no benefit to the community in going through this process.

The District Plan has doubled in size. This has not occurred as a result of public input and consultation. The additional rules have been added by council planners. The majority of the public is not aware of these new rules and the rules do not reflect the wishes of the community.

The council staff made the decision to change many permitted activities to controlled or discretionary activities that suddenly required consents.

Elected councillors do not get to represent the people because this part of this process is controlled by external commissioners.

The District Plan is now a different document to what was intended by the RMA in 1991 when town plans were simple documents. The consent application and process is no longer possible for lay people to navigate.

An industry of consultants has emerged. These new planning consultants are ex-council planners. To be blunt, they were incentivised while in council to make the process more difficult so there would be need for consultants when they left the council. They actively created a gravy train for themselves.

Council planning managers have employed more staff, and therefore claim to be more important within council, so are paid higher wages. They are incentivised to create bureaucracy. More rules mean more staff to process consents.

Councils now use Planning Units as profit centres. They are incentivised by more consents, meaning more fees and more money into council coffers. This is illegal. The Local Government Act requires charges to be fair and actual. There should be no profit margin. Councils are profiteering from a regulatory monopoly.

Planning staff are encouraged by council managers (who do not understand the legality of the RMA) to argue with, and obstruct, applicants who challenge unnecessary demands that generate additional council revenue.

**Negative effect**
The intention of the RMA was to use consent conditions to create solutions to mitigate
Developers now shy away from consents because they have become too long, expensive, and uncertain. Instead of opportunities to create better outcomes and work with council planners on mitigation, developers work down to the minimum standards set by rules. Better outcomes are avoided.

**Rule failures**
Each new iteration of the District Plan brings new rules without a review of existing rules. The history and understanding of the development of planning has been forgotten.

The list of examples is too long so I will use a single series to demonstrate:

Maximum site coverage rules came from the old Town Plans predating the RMA. The purpose of the rule is to ensure sufficient area on site for ground soakage of stormwater. This is a blunt instrument as it did not explicitly define the purpose, so site area was often hard sealed for other uses such as parking. The rule was a failure, yet it was simply copied into the first District Plans.

In the 2000’s, a permeability rule was introduced, setting minimum areas specifically for the purpose of soakage. Yet the site coverage rule was retained.

In the 2010’s, stormwater management plans were required, with engineer-designed soakage calculations. This supersedes the need for a minimum permeable area with precise project-specific mitigation based on actual percolation tests. Yet the permeability rule was retained.

We now have three rules for the same purpose, two of which are inaccurate. If sufficient soakage has been calculated, then there should be no requirement for minimum permeability and maximum coverage. Efficient land use is being denied.

**Rule creep**
The RMA was specifically intended to manage natural resources such as land, air, and water.

Planners have introduced rules into District Plans covering aesthetics (such as colour schemes), which are not resources, and the RMA does not legally cover. Planners are not trained in aesthetics and have no expertise to consider this in consent applications.

Planners have introduced rules regarding energy efficiency and natural light in buildings that contradict the Building Code. The planners have no expertise in these areas, while the Building Code is the result of scientific analysis and industry-wide solutions.

**Common sense**
The RMA was specifically intended to allow rationalisation of effects and their mitigation outside of the rule structure. Planners were supposed to think and use their discretion.

Council management has increasingly restricted discretion. Staff simply stick to rules that they regard as limits that must not be exceeded, when the rules actually established user rights.

The function and practical application of rules is ignored.
I was recently told by a council planner to add more windows for passive observation of the neighbouring park, and in the next sentence, add a 1.8m high screen between the building and the park. This complies with the rules, yet utterly defeats the purpose of the extra windows.

**Arrogance**
Along with the lack of common sense and the management drive for more fees, planners are becoming more confrontational and arrogant. Mistakes or misunderstandings are not admitted, and there is a refusal to take other interests into consideration.

When I raise concerns, rather than discussing it, I get told to “take the council to court”. While the Environment Court exists for RMA disputes, the majority of consent applicants simply have no access to the justice system because the cost and time delay cannot be contemplated. As a result, poor decisions and processes by council are going unchallenged.

**Conclusion**
The problem has less to do with how the Act is written and more to do with how it is applied.

Unless the RMA review deals with how councils are applying the law in their systems, no real change will occur.

There needs to be more control of council processes and rules, as the councils have demonstrated they cannot be trusted to act as the RMA intended or to charge in accordance with the LGA.

There needs to be some sort of affordable and quick appeal or adjudication process for minor disputes to create some accountability for council planners.

There needs to be a fundamental consideration of the cost and efficiency of rules for the benefit of the community.

There needs to be more national standardisation of District Plans. The size of these documents is related to the number of planners employed by councils, not the complexity of issues covered by the document. Small councils such as South Waikato have a range of activities from rural, mining, forestry, coastal, and river environments as well as the usual residential and commercial centres. Yet their District Plans are small, easy to understand, and easy to manage, with fewer consents required and lower fees compared to the narrow and simple range of environments in Hamilton with many more consents and much higher fees.

Andrew Bydder