

When is Enough, Enough?

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Questions for discussion

- Cumulative effects ... what are they?
- Cumulative effects of land use intensification
- Is there a problem?
- Barriers
- Tools in the tool box
- Conclusion

What are cumulative effects?

- *"Any cumulative effect which arises over time or in combination with other effects"*

(section 3(d) RMA)

- *"The concept of cumulative effect arising over time is one of a gradual build up of consequences."*

Dye v Auckland Regional Council [2002] 1 NZLR 337

- A continuum

Potential effects of high probability >>>>>> low probability but high potential impact

When is enough, enough?

- *"If a consent authority could never refuse consent on the basis that the current proposal is ... "the straw that will break the camel's back." Sustainable management is immediately imperilled."*

Unison Networks Ltd v Hastings District Council

- *"...any one incremental change is insignificant in itself, but at some point in time or space the accumulation of insignificant effects becomes significant."* Gargiulo v Christchurch City Council

The cumulative effects of agricultural intensification – a shared problem

- Nutrient enrichment of water bodies...
(Taupo, Rotorua Lakes, Canterbury lowland streams)
- Nitrate contamination of ground water (eg Canterbury)
- Reduced groundwater levels and resulting effects on availability to existing users and reduced flow in lowland streams (eg Canterbury red zones)
- Increased duration of low flows in surface water
- Manage the land use or the water use or both?

What are the criticisms?

- "Effects based" approach can only cope with individual consents
- Consent process can't cope..difficult to decline individual consents based on cumulative effects
- A more strategic response is required
- Perception that it is easier to get the 100th consent than the 1st

- Plan process is too slow
- Act is not sufficiently precautionary
- Over emphasis on scientific certainty and proof
- Proposed restrictions not necessarily accepted by decision makers

The task

*If one looks at the definition of effects, at s 5 and its three 'bottom lines' and at the duties and responsibilities of regional councils set out in s 30, there is clear power to deal with cumulative effects. It is a question of **identifying the resource, determining its capacity and then limiting its use** so that the s 5 objectives can be met. Cumulative effects may be difficult to identify in some instances but I cannot see how a better system for dealing with them can be provided. Whatever the system devised, the same problems of identification and control will arise.*

(Peter Salmon QC)

Prerequisites for managing cumulative effects

- Identifying the problem or potential problem
- Identify the scope of the resource
- Establish consensus as to the value based components
- Determine the actual or likely cause of effects
- Determine resource capacity
- Set sustainable limits

Common conundrums

- Death by a thousand cuts
- Planning creep - the thin end of the wedge (or the bolting horse)
- The existing environment argument ("just a wincey bit more wont hurt...")
- The precedent argument
- Too much emphasis on proof?
- Precaution or speculation
- Failure to establish limits in time

The barriers

- reluctance by some politicians to constrain resource use
(restrict dairying..... "*yeah right* ")
- Insufficient information upon which to base limits
- Uncertainty about the cause of particular effects
- Proposed limits may not be upheld in the Environment Court because of the lack of good science or other uncertainties

- The time lag between identification of the problem and setting limits
- Time lag between a council deciding to act and achieving operative limits
- Lesser weight can be given to "untested" limits in proposed plans

The toolbox

Policy statements and plans

- Strong objectives and policies to provide clear direction
(integrity of the plan)
- Enhanced precautionary approach
- Strong assessment criteria
- Standards where appropriate rather than policies and guidelines
- Non-complying activities coupled with strong objectives and policies
- Where justified, prohibited activities with appropriate exceptions
- Zones of prohibition or non-complying activity

Resource based limits

- Minimum flow, minimum levels or pressures
- Maximum rates of use
- Minimum standards of quality
- Use limits (caps)
eg Taupo Nitrates, Rakaia and Rangitata allocation caps

Other local tools

- The resource consent process
- Adaptive management
- Inventories for key resources
- Economic instruments
- Review of resource consents
- Trading schemes and quotas (eg Nitrate)

National level tools

- NPS
- NES
- Classifying catchments at risk
- Moratoriums and/or interim controls (via NES)

Is there a need for amendment?

- No deficiency in the legislation
- But the task is inherently difficult
- Ample tools in the tool box
- Problem is implementation at plan and consent level
- Largely practical, in some cases political problems...
- Some case for more central Govt intervention

- Make the Act more precautionary?
- Fast track First Schedule process?
- More use of central government tools
- Environmental Protection Authority
- Fast track plans (eg Waitaki Allocation Board)

Conclusions

- Issue largely implementation at regional and district level
- Challenge for local authorities to use the tools to fix the stable door before the horse bolts
- Development of stronger objectives, policies, assessment criteria and standards in plans required
- More guidance from central government - NPS
- Use of NES where plans cannot respond in time
- A case for requiring a more precautionary approach to potential cumulative effects?
- More central government intervention (but be careful what you wish for!)