

Sustainability and the Resource Management Act 1991

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I: INTRODUCTION

Sustainability is rapidly becoming the new theme for planning in the nineties. It is changing the face of planning law and methods. It is responsible for a new outlook, for long range planning, and for a new definition of development. The focus has shifted from the resources themselves to the effects of their use. Environmental effects are taken into account at all stages. This is apparent from the Resource Management Act 1991, in which sustainability is the linchpin. The Act will have a large impact on the manner in which resources are used, developed, and protected. This article considers sustainability as a general concept: what it is, why it is important, and whether it is practicable. Sustainable management under the Resource Management Act is also considered. Its utility as a definition is discussed. Possible interpretations are also examined, as well as the likelihood of its future use in New Zealand planning.

II: SUSTAINABILITY

First, it is important to define sustainability. The concept may be defined in a variety of ways. The definition adopted is that sustainability requires the management of resources in ecosystems so that they continue to provide services in the future.¹ This definition, taken from Working Paper 24 in the Resource

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1 Cronin, "Practical Implementation of the Sustainability Objective" in Resource Management Law Reform Core Group, *Sustainability, Intrinsic Values and the Needs of Future Generations*, Working Paper 24 (1989) p4.

Management Law Reform process, provides a local expression of an international concept. If an activity is sustainable it can effectively continue forever. However, because an activity can only be described as sustainable on the basis of present knowledge, there are no long-term guarantees of sustainability. Accordingly, actions potentially affecting the environment should be undertaken with caution.²

In applying the concept of sustainability, five elements are important. The first is ecological sustainability. For resources to be available at all, the whole ecosystem must function effectively. Thus, resource management must examine how a resource interacts with the ecosystem; it is insufficient to examine the resource in isolation.

The second element is the rate at which specific resources are used. Extraction of resources should occur at a rate within ecological limits. If resources are extracted more quickly than they can be renewed, depletion will occur. Consequently, it is necessary to avoid the overuse of resources in order to ensure their regenerative capacity. This will ensure that ecological systems continue to maintain human life.³

The third element is the rate of use of renewable resources. Replenishment should occur through natural processes. The Canadian Environmental Advisory Council restricts its definition of renewable resources to natural organisms, or benign products resulting from the continuing decay of these organisms.⁴ In practical terms, this does not include such resources as coal or oil because of the length of time taken for these resources to decay. Organic materials are renewable because they can increase in quantity through genetic replication. All other resources are non-renewable.

Environmental processes may also be renewable, so long as their natural resilience is not undermined by external pressure. Sustainability requires that wastes are disposed of at a rate at which they can be absorbed by receiving systems. This involves avoiding production of hazardous substances and pollution.⁵ When wastes are produced at a rate beyond the assimilative capacity of receiving systems, pollution will occur. Consequently, it is necessary to establish an optimal yield for harvesting the resource.

Fourthly, non-renewable resources cannot be sustained indefinitely. It is necessary to adopt a policy regarding the use of these resources. Such a policy must consider whether to use the resource at all, appropriate time frames, proposed rate of depletion, and transition to other materials.⁶

2 World Conservation Union, United Nations Environment Programme & World Wide Fund for Nature, *Caring for the Earth: A Strategy for Sustainable Living* (October 1991) 4.

3 Cronin, "The Conceptual Meaning of Sustainability" in Resource Management Law Reform Core Group, Working Paper 24, *supra* at note 1, at p3.

4 Canadian Environmental Advisory Council, *Canada and Sustainable Development* (1987) 5.

5 Cronin, *supra* at note 3, at p5.

6 *Ibid*, p4.

Finally, it is important to maintain the quality of life of individuals and communities. Human societies depend on environmental ecosystems for fresh air, water, food, warmth, shelter and clothing.⁷ Consequently it is necessary to sustain the quality of the environment.

The theme uniting these elements is the avoidance of irreversible environmental damage. This provides a useful criterion in resource management policy and practice because it reflects an understanding of human dependency on ecological systems and the limits to human choice in a finite biosphere.⁸

Indeed, sustainability is not a political trade-off between competing values and interests. It provides the context for human activities in the physical world.⁹ The needs of the present population demand that natural systems are modified. Incorporating concepts of sustainability into policy making attempts to ensure that any such changes are within tolerable limits.¹⁰

Sustainability is an objective to ensure that it is possible for the economic and social goals of society to be met. Proper consideration of all relevant information will go some way towards achieving this objective. Factors to be taken into account include all communities of interest, the ecological, social and economic dimensions of the proposal, possible alternatives, and long and short-term effects, including cumulative effects. Any decision should be taken with the fullest possible appreciation of its impact.

1. Sustainable Development

Sustainable development is a practical derivative of the concept of sustainability.¹¹ It is concerned with sustaining the quality of the relationship between humans and the environment, and is a form of development whereby economic and social objectives are achieved within the limits of ecological systems.¹² It is usually defined in terms of maximising the welfare and meeting the needs of present generations without compromising the ability of future generations to meet their needs. Therefore, options such as enhancing the environment and the transition from non-renewable to renewable resources could be fundamental objectives of sustainable development.¹³

7 Ibid, p1.

8 Cronin, *supra* at note 1, at p3.

9 Resource Management Law Reform Core Group, *Implementing the Sustainability Objective in Resource Management Law* Working Paper 25 (1988) p19.

10 Hayward, "Some Aspects of Natural Resources Management" in Energy and Natural Resources Law Association of New Zealand *Natural Resources Management: A Series of Occasional Essays* (1989) 4.

11 See World Commission on Environment and Development, *Our Common Future: From One Earth to One World: An Overview* (1987) (Brundtland Report).

12 Cronin, *supra* at note 3, at p6.

13 Bosselmann, "Sustainability – An International Perspective" (1991) 104 PQ 6, 7.

Although there are a multitude of interpretations of sustainable development, the concept has a core meaning.¹⁴ It has three elements. The first is the entrenchment of environmental considerations in economic policy-making. The considerations are placed within a common framework in which a variety of parallel objectives can be recognised. In this sense, sustainable development goes beyond orthodox economics which ignore environmental considerations altogether.¹⁵

Secondly, sustainable development incorporates an inescapable commitment to equity. Any improvement in living standards is meaningless unless it encompasses all socio-economic groups. Sustainable development implies the creation, fair distribution and conservation of wealth and resources. The environment must be preserved for the use and enjoyment of future generations. This involves a commitment to a fair distribution of environmental costs and benefits between generations.¹⁶

Thirdly, development implies more than an increase in national income. It includes a notion of economic welfare which acknowledges non-financial components. These might include the quality of the environment itself. For example, pollution levels affect the welfare of people, but are not recorded in a country's gross national product.¹⁷

Implementation of the sustainable development concept requires the efficient use of all resources with a view to conserving non-renewable resources and maintaining an optimal yield of renewable resources. The use of clean technology and environmentally benign processes will also help to preserve the genetic diversity and natural ecological processes of the environment. Such an approach should go some way to enhancing each individual's quality of life and to achieving intra- and inter-generational equity.

2. Implementation of the Theory of Sustainability

Sustainability of renewable resources can be established as a policy objective for environmental and resource management. The general requirement would be that environmental, economic and social concerns are given weight in the decision-making process. Another method of implementation is to use a system of environmental impact assessment, in which the environmental implications of policies and projects are assessed as part of the decision-making process.¹⁸ However, these may not take us very far. It is necessary to establish concrete guidelines for decision-makers, so that development or planning schemes conform with the principle of sustainability.

14 Jacobs, *The Green Economy: Environment, Sustainable Development and the Politics of the Future* (1991) 60.

15 Ibid.

16 Ibid.

17 Ibid, 60-61.

18 Cronin, *supra* at note 1, at p1.

It may be argued that because of the uncertainty surrounding the concept of sustainability, it should not be adopted as a policy objective. For example, Gow observes that difficulties in defining and applying sustainability could mean that its adoption as a fundamental requirement will result in sub-optimal resource allocation and decisions concerning resource use.¹⁹ However, the degree of uncertainty in relation to the meaning and need for sustainability may have been overstated. It is well-known that humanity has created serious environmental problems through profligate resource use. These are real losses. It is also undeniable that there are finite limits to the carrying capacity of the Earth's ecosystems, and to the impacts that both they and the biosphere can withstand.

Furthermore, uncertainty is endemic within environmental science. Revisions of targets will be necessary, but this is no reason for refusing to set them initially. That would be tantamount to declaring that the risk of environmental damage is not worth the cost of prevention. Surely this is not the case.²⁰

Implementation of sustainability is highly dependent upon the use of adequate information concerning the ecosystems, the state of particular resources, and measurement of indicators of environmental health. Once such information is known, allocation of resources may be made within this framework. If total resource demand is established at an optimal level for the environment, allocation of the resource surplus and trade-offs between resource claimants can be made using economic and social criteria.²¹

Such information demonstrates the regeneration rate of renewable resources. So long as the rate of harvest does not exceed the regeneration rate, the resource stock will remain constant. This is sustainability in practice. The basic rule of sustainability is that input and output must remain equal. It is noted that sustainability does not prevent growth. If the regeneration rate can be increased, a larger harvest will be permissible. This is appropriate where the regeneration rate can be increased without adverse effects.²²

Having acquired the necessary information, the degree to which resources should be used to benefit present generations must be determined. This involves considering the extent to which present decisions may pre-empt or restrict future generations in their choices of resource use.²³

As sustainable development applies to both renewable and non-renewable resources, it is necessary to establish a depletion policy in relation to the latter. Depletion of non-renewable resources is inevitable. However, it is very rare for a resource to be completely exhausted; it is more likely that its continued extraction will become uneconomic because of the increasing amounts of energy required for

19 Gow, "Emerging Trends: Legislative Reform in New Zealand" Address to Globe '92 Conference, Vancouver, Canada (17 March 1992) 2.

20 Jacobs, *supra* at note 14, at 98-99.

21 Cronin, *supra* at note 1, at p6.

22 Jacobs, *supra* at note 14, at 87.

23 Hayward, *supra* at note 10, at 3.

extraction.²⁴ The issue for sustainability is to determine the rate of depletion which best accords with the principle of fairness between generations.

A depletion policy should consider several issues. First, whether the resource should be used at all. It should be noted that increasing absolute scarcity will not necessarily be a pragmatic concern of future generations. Because many non-renewable resources are only valuable for the manufacture of products, their value depends on demand, which is not fixed. Scarcity relative to demand is more important. If the resource level can be maintained at a constant level relative to the demand, so that the depletion of the resource is equal to a decline in demand, sustainability will be achieved.

Secondly, it is necessary to consider the availability of substitutes and pollution effects of the resource use, given that non-renewable energy resources are essentially highly concentrated energy with high levels of waste. Both strategic and financial considerations related to immediate and deferred use should be examined. A rate of use and projected time frame should be determined. Finally, a strategy for managing the effects of reducing use once a resource becomes scarce should be developed.²⁵

III: RESOURCE MANAGEMENT ACT 1991

1. Sustainable Management

Sustainability lies at the heart of the Resource Management Act 1991. However, the definition adopted is more restrictive than that discussed earlier. *Our Common Future* identifies three interrelated goals of sustainable development. These are to ensure that all of society's needs are met, to ensure equity of resource use, and to ensure that all development is sustained in social, economic and environmental terms.²⁶

Sustainable management in the Act seeks to achieve only one of these goals – sustainable development in the environmental sense.²⁷ Hence, the legislation relates solely to planning law. It is concerned with resource use. The term “sustainable management” was adopted to avoid any confusion with the broader concept of sustainable development.²⁸

Sustainable management has two facets. It involves the protection of resources by recognising the environmental cost of human activities and policies. It is also relates to conserving resource potential for future generations.²⁹ The concept of

24 Boer, “Natural Resources and the National Estate” (1989) 6 EPLJ 134, 135.

25 Cronin, *supra* at note 1, at p8.

26 *Supra* at note 11, referred to in Ministry for the Environment, *Resource Management Information Sheet No 6* (1991) 1.

27 *Ibid.*

28 Randerson *et al*, *Report of the Review Group on the Resource Management Bill* (1991) 6.

29 Ministry for the Environment, *supra* at note 26, at 1.

sustainable management seeks to ensure that decision-makers recognise the environmental cost and impact of resource use and development.

In legislation, policy and planning instruments are commonly related in functional terms to the goals to be achieved. In the Resource Management Act, explicit emphasis is placed upon the purpose of promoting sustainable management in every relevant context. This is evident in the references to the Act's purpose in ss 6, 7, 8, and 104, as well as the provisions relating to national policy statements, regional statements and plans.³⁰ While regional and district plans will implement sustainable management, it is unlikely that they will simply be the vehicles by which rules are promulgated. They will also have the function of interpretation and development of national and regional standards and statements.³¹

The sole purpose of the Act is to "promote sustainable management of natural and physical resources".³² This positive statement requires action to be taken. Rather than constituting a mere policy consideration, the concept of sustainable management has been placed in a position of pre-eminence. It is an end to be pursued in resource management.³³

Section 5 states:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Within the meaning of this provision, sustainable management has two stated functions. The first is the management function which involves managing the use, development and protection of natural and physical resources. The goals to be achieved through this function are social, economic and cultural well-being, and the health and safety of people and communities. The term "managing" is clearly neutral. No value or priority is prescribed. Fisher argues that it is used in a general sense to mean conduct. Its object, use, protection and development, import priorities and values.³⁴

The management function is anthropocentric in nature. The reference to "people and communities" restricts the activity of management to the achievement of human purposes, as does the reference to "social, economic, and cultural

30 Fisher, "The Resource Management Legislation of 1991: A Juridical Analysis of its Objectives" in *Brooker and Friend's Resource Management Act (1991)* Vol 1, 9.

31 Gow, "The RMB's Key Concept" (1991) 103 PQ 25, 26.

32 Section 5(1).

33 Fisher, *supra* at note 30, at 11.

34 *Ibid.*

well-being". Use of "their" in s 5(2) refers to humans, who are central to this activity. Non-human needs and perspectives are ignored. Management of the use, development and protection of resources is not motivated by environmental or ecological considerations. The net effect is that resources are not protected for their own sake, but because of their potential for use and development by people and communities.³⁵

The second function is ecological. It is outlined in s 5(2), paragraphs (a) to (c). The use of "and" between these paragraphs means that they are to occur simultaneously, without any given order of priority. Each is equally important. The ecological function displays a different perspective from the management function. Section 5(2)(a) acknowledges the reasonably foreseeable needs of future generations. The term is not defined, but presumably refers to human generations.³⁶ This reinforces the anthropocentric nature of s 5(2). Paragraph (b) refers to life-supporting capacity. The question raised in this provision is whose lives are to be supported. It could be restricted to humanity, or extended to everything in the life-sustaining environment. If the extended definition is adopted, the range of considerations for decision-makers is broadened vastly. With respect to s 5(2)(b) Randerson says:³⁷

[T]he subsection does not mean that a development would be unable to proceed in the event that there was some reduction of the life supporting capacity of air or water in the immediate vicinity, or even that some flora or fauna were destroyed as a result of a development. It is likely to be interpreted as requiring a broad assessment of life-supporting capacity generally.

This derogates markedly from an ecocentric perspective, and even from sustainability. According to this interpretation the life-supporting capacity for humans may be reduced. This does not account for the capacity to support ecosystems, which may not even be considered.

Section 5(2)(c) deals with adverse effects of activities on the environment. Section 3 gives "effect" a wide, inclusive definition. "Environment" is also defined widely and inclusively. Thus, ecological values may be encompassed. The main question concerning paragraph (c) is, if mitigation is considered sufficient, will adverse effects on the environment ever be avoided? There is no express priority or preference given to the avoidance of adverse effects.

The ecological function is consequently a mixture of ecocentric and anthropocentric considerations. It is largely concerned with long range planning, for decision-makers are required to consider future generations and the repercussions of their decisions. They could potentially look two or more generations ahead. The management function is more likely to be concerned with matters of immediate or short-term interest.³⁸

³⁵ Ibid, 12.

³⁶ Ibid.

³⁷ Randerson *et al*, *Resource Management Act 1991* (New Zealand Law Society Seminar, September 1991) 8.

³⁸ Fisher, *supra* at note 30, at 12.

The two functions are connected by the word “while”. The meaning of this word is critical to the meaning and application of sustainable management. The weight assigned to each function and the balance between them is fundamental to the meaning and effect of the Act.

Fisher provides two possible interpretations of this balance.³⁹ If “while” is a strong or subordinating conjunction, the management function will be weaker than the ecological function. This would mean “while” has a similar meaning to “if”. The effect is that management in accordance with short-term human values cannot take place unless ecological values are sustained. Human values are conditional on ecological values. Alternatively, “while” may be treated as a weak or co-ordinating conjunction. It would then have a similar meaning to “and”, thus giving human values and ecological values equal weight in the decision-making process.

It seems that the final version of s 5(2) was intended to achieve something in the nature of a balance between use, development and protection of resources, and ecological and environmental sustainability. This will only be achieved if “while” is interpreted as a co-ordinating conjunction. It implies that sustainable management in the Act has a single integrated purpose.⁴⁰

Stating that “while” means “if” or “and” appears to be somewhat artificial. However, there is another possibility. It may mean “during the time that; for so long as”. In this context, managing while sustaining, supporting and avoiding means managing only for so long as paragraphs (a), (b) and (c) are adhered to.⁴¹ This interpretation gives long-term environmental considerations some influence over short-term management ends. The management function is not to be carried out at the expense of the objectives specified in s 5(2), paragraphs (a) to (c). This interpretation requires a balancing of the different values, but acknowledges that human values can only be effectively implemented if ecological values are sustained. It is a compromise between the two interpretations provided by Fisher; it is less strict than “if” but more demanding than “and”. It is ironic that the fundamental direction of the Resource Management Act is largely dependent on the meaning of one small word which does not deal with the actual substance of natural and physical resources.⁴²

It is submitted that this final definition should be adopted. Otherwise sustainability may never be fully implemented. Unless the ecological function prevails over the management function, sustainable use of resources is not required. In the first part of s 5(2) there is no mention of sustainable use or development. Furthermore, the ecological factors in paragraphs (b) and (c) should also influence decision-makers. These factors should not be treated as mere considerations; they should be an integral part of the decision-making process.

39 *Ibid*, 12-13.

40 *Ibid*, 17.

41 Milligan, “Pondering the ‘while’” (May 1992) *Terra Nova* 50.

42 Fisher, *supra* at note 30, at 13.

This interpretation appears to have some support. Gow observes that the Act accepts that social and economic objectives should not be achieved at the expense of the three ecological elements.⁴³ The attainment of social and economic objectives, or health, safety and cultural objectives that do not achieve ecologically satisfactory results, should not undermine the sustainable management of natural and physical resources.

However, s 5 may not always be given the primacy it deserves. Randerson provides an example of a development in a coastal marine area. If the development provides for the social and economic welfare of a community and otherwise meets the constraints of s 5(2), paragraphs (a) to (c), it will not be precluded simply because it is in a coastal marine area. Under s 6(a), preservation of the natural character of the coastal environment and its protection from inappropriate development is a matter of national importance. Despite this very strong statutory statement, Randerson believes that special weight is all that is necessary. That would require a balancing between the statutory purpose in s 5 and matters of national importance which must be recognised under s 6.⁴⁴ However, given the phrase “shall recognise and provide for” in s 6, surely more than special weight is required. This interpretation gives the management function more weight than the ecological function, even when it is supported by ss 6 and 7. As a result, it is submitted that this interpretation is open to question.

There is another more serious flaw in the Act. Prior to the 1993 Amendment, under s 104(4) a consent authority had to have regard to Part II of the Act. In *Kennett v Dunedin City Council*,⁴⁵ Judge Skelton relied on the wording “shall have regard to” to support a finding that Part II does not have the primacy it appears to claim. The wording in s 104(4) is not as strong as “shall recognise and provide for” (s 6), or “shall have particular regard to” (s 7), or “shall take into account” (s 8). Section 104(4) was also considered by the High Court in *Batchelor v Tauranga District Court (No 2)*.⁴⁶ In a full Court judgment, Barker, Henry, and Blanchard JJ held that:⁴⁷

Although s 104(4) directs the consent authority to have regard to Part II, which includes s 5, it is but one in a list of such matters and is given no special prominence.

Indeed, Part II of the Act is only one of a list of considerations, but it does have a special place in the Act. It contains the purpose and principles of the Act, and states how resources are to be managed. As a consideration for an authority granting resource consents, it is submitted that such a consideration has a great deal of importance. The approach of the Court in *Batchelor* may not have lasting significance because the Resource Management Amendment Act 1993⁴⁸ amends s 104, making it subject to Part II of the principal Act.

43 Supra at note 19, at 6.

44 Supra at note 37, at 4.

45 (1992) 2 NZRMA 22, 31.

46 [1993] 2 NZLR 84.

47 Ibid, 89.

48 Section 54.

2. Future Generations

Providing for future generations is problematic in resource management. As present generations, we are responsible for determining where the environmental costs and benefits will lie, what future generations are likely to require, and how present generations will address these requirements. By adopting the concept of reasonable foreseeability, the Act places some limitations on the extent to which consideration of the needs of future generations is necessary. Section 5(2)(a) requires a reasonable assessment of the anticipated needs of future generations for resources, having regard to the current state of knowledge and projected requirements. There should be provision for mechanisms to deal with unseen factors as they arise.⁴⁹

The main difficulty posed by future generations is in defining whose interests should be taken into account, and what account is to be taken of them. The first step is to define “future”. We can expect to share a common life with people in the next one or two generations. These obligations are strong, but our responsibilities to more distant generations provide difficulty.⁵⁰ One viable option is presented by Jacobs,⁵¹ whereby each generation provides for the next. Any relevant factors that become apparent should be taken into account. That is, no generation can be expected to guarantee results it cannot foresee, but none should be allowed to ignore those which it can.

Another issue which must be addressed is where future generations rank in the hierarchy of responsibilities and objectives. It is often difficult to reconcile the conflict between the welfare of current and future generations. There is a legitimate concern that inter-generational equity may be achieved at the expense of intra-generational equity. Rising resource costs which slow depletion may disproportionately disadvantage lower socio-economic groups. Conflict may arise when considering the long-term effects of actions. Should the current generation pay actual costs now for potential benefits in the future? Should future generations pay environmental costs for benefits known only to current generations?

Under the Resource Management Act, the potential of resources to meet the reasonably foreseeable needs of future generations must be sustained. However, the Act provides very little guidance as to the policy which decision-makers should adopt. It is necessary to develop a hierarchy of concerns outlining hazards that will not be left to descendants, and conversely the essential goods which should be inherited. Present generations have a fundamental responsibility not to prejudice the well-being of future generations. A second duty owed by current generations is to preserve the renewable nature of renewable resources. The third responsibility is

49 Randerson, *supra* at note 37, at 7.

50 Wright, “‘Future Generations’ as an Objective in Resource Management Law” in Resource Management Law Reform Core Group, Working Paper 24, *supra* at note 1, at p3.

51 *Supra* at note 14, at 71-72.

to slow depletion of non-renewable resources in order to preserve them for the use of other generations. In practical terms this involves the transition to substitutes.⁵²

Consequently, there are two possible interpretations of the concept of sustainability in relation to future generations. The minimal version requires preservation of the environment so that environmental catastrophe is avoided. The maximal version demands that future generations inherit the opportunity to experience a level of environmental consumption at least equal to that of the present generation.⁵³ Over the last fifty years the gap between interpretations has decreased, as the requirement of avoiding environmental catastrophe has become more difficult to meet.⁵⁴ Irrespective of this, it seems only fair to demand an equal enjoyment of the environment.

3. Policy Instruments: Standards, Statements and Plans

The Resource Management Act is structured so that sustainable management is refined and given practical effect through three instruments: regional policy statements, regional plans and district plans. These instruments will incorporate and implement policies and standards developed by the government of the day.⁵⁵ A crucial element of the concept of sustainable management is the interrelationship of resource use and the environment. Policy-making is not a question of simply identifying issues in isolation. It is an extremely complex task of identifying the connections between resource issues and deciding how to deal with them. These can be identified at several stages in policy processes under the Act.

National environmental standards are intended to prescribe fundamental sustainable management criteria for maintaining environmental quality throughout New Zealand. The Ministry for the Environment expects that they will be technical in nature, specifying minimum standards for matters such as noise, contaminants, water quality, levels or flow, air quality and soil quality in relation to the discharge of contaminants. Methods for implementation of these standards may also be prescribed.⁵⁶

National policy statements are intended to constitute formal expressions of government policy on certain areas of sustainable management. They should establish goals, policies, criteria and priorities to provide guidance and direction at regional and district planning levels. National policy statements could outline national criteria by which sustainable management can be defined and applied at a regional and district level. These could also link directly with the formulation of national environmental standards.

⁵² Wright, *supra* at note 50, at 6.

⁵³ Jacobs, *supra* at note 14, at 72-73.

⁵⁴ *Ibid*, 73.

⁵⁵ Gow, *supra* at note 19, at 7.

⁵⁶ Ministry for the Environment, *Sustainable Management of Resources Information Sheet No 3* (1992) 1.

Regional policy statements are central to implementation of sustainable management under the Act. They are the primary means of translating the broader objectives of sustainable management into more specific objectives for implementation at regional and district levels. Regional policy statements have to provide broad and integrated guidance on the wider range of sustainable management issues throughout the regions.⁵⁷ These are the documents which will interpret and apply Part II of the Act to the biophysical and socio-economic situation of a particular region. Through regional policy statements, the key sustainable management issues and priorities should be revealed in reasonably practical terms.⁵⁸

4. Future directions

The RM Act clearly places the environment in a pre-eminent position, along with the principle of sustainability.⁵⁹

This is certainly the principle that the Resource Management Law Reform Group intended the Act to implement. However, the success of the Act is somewhat less certain than this optimistic statement. Many are unhappy at the mixture of anthropocentric and ecocentric objectives with the lack of any clear priority or balance. For example, Bosselmann views the “muddled” definition as providing an opportunity for continuing unsustainable development. Essentially, according to this interpretation, there has been no change; the business as usual approach is to continue “sweetened by the trendy notion of sustainable management”.⁶⁰

This concern stems from the prevalence of anthropocentric values in the definition. Ecosystems and resources are available to be used in order to maximise human welfare. Rights, values and obligations do not exist independently; they are created by humans. According to this view, sustainability is only one of many values to be considered in resource use decisions. The goal is resource use which achieves the highest possible expected present value.⁶¹ This undoubtedly continues the business as usual approach. Highest value use is most likely to be effective when resource rights are exclusive, freely transferable and enforceable, which does not bode well for conservation. If society wishes to hold resources for its own benefit, it must ensure the benefits of doing so are greater than the benefits of other uses.⁶² However, this is an anthropocentric view which ignores environmental costs altogether. It appears that Part II of the Act will not permit this interpretation.

Another interpretation adopts the definition of sustainability which emerged

57 Ibid, 2.

58 Gow, *supra* at note 19, at 8.

59 *Marlborough Hockey Association Inc v Marlborough District Council* (1992) 1 NZRMA 274, 279 per Judge Treadwell.

60 *Supra* at note 13, at 7.

61 Wilson, “Treasury Paper on Sustainability” in Resource Management Law Reform Core Group, Working Paper 24, *supra* at note 1, at p4.

62 Ibid, p5.

from the international debate.⁶³ It must be remembered that this definition is prescriptive, so the ordinary meaning is precluded.⁶⁴ The argument is wholly ecocentric. A sustainable society is founded on the basic value principles which are derived from the industrial society. It recognises intrinsic values so that use of resources must be justified by the right of the natural world to live on its own terms.⁶⁵ Thus, sustainability is an objective in resource management law, rather than an outcome. This means it must be considered before any changes are made in the way a resource is used.⁶⁶

However, this debate is of limited importance. In practice, sustainability can perform most, if not all, of the tasks desired by the majority of ecocentrists. Sustainability in its maximal form offers at least as much environmental protection as a coherent ecocentric position would be likely to. In declaring that future generations should be left the opportunity to experience a level of environmental consumption equal to that of the present generation, sustainability imposes a substantial constraint on economic activity. Although protective policies would be formulated using an essentially anthropocentric concept of environmental consumption, this is simply a means of overcoming the problems of definition of the ecocentric ethic. In practice, sustainability will prove a sufficient moral basis for an environmental policy of conservation, even if its philosophical foundation is not ecocentric.⁶⁷

It is preferable to have a combined concept of sustainability, or even a wholly anthropocentric concept, enshrined in legislation. At present, sustainable management is an action-oriented concept. It is based on the need to identify goals, find the right means to achieve those goals, implement them, and evaluate success. It depends on strategic planning. Now it is necessary to identify the significant sustainable management issues within a region or district, based on the need to recognise and provide for the elements outlined in s 5(2), paragraphs (a) to (c). The main difficulties to be addressed will be in identifying the interrelationships between resource use and environmental systems, and appropriate levels and time scales of resource use. There are no magic formulae for solving these problems: concepts of priority and the ability to achieve realistic goals will govern the process.⁶⁸

The Resource Management Act alone will not achieve sustainability. It requires the active and constructive co-operation of all sectors of the community. Its premise of minimum regulation for maximum effect presumes there are complementary means of ensuring sustainable management.⁶⁹ However, an omnibus

⁶³ Bosselmann, *supra* at note 13, at 7.

⁶⁴ Fisher, *supra* at note 30, at 11.

⁶⁵ Bosselmann, *supra* at note 13, at 8.

⁶⁶ Wilson, *supra* at note 61, at 4.

⁶⁷ Jacobs, *supra* at note 14, at 76.

⁶⁸ Ministry of the Environment, *supra* at note 56, at 2.

⁶⁹ Gow, *supra* at note 19, at 12.

piece of legislation is, by itself, inappropriate for implementing a sustainable resource management policy. The various natural resource systems have such significant differences that the legislation becomes either cumbersome or too general. It is not possible to deal with the necessary aspects of institutional design for all resource systems within a single piece of legislation. Forests and fisheries are both renewable resource systems capable of supporting sustained commercial development, but the state of understanding, the level of uncertainty, the character of harvesting difficulties, and environmental impacts all reinforce the need for resource specific legislation.⁷⁰

IV: CONCLUSION

This article has traversed various interpretations of sustainability. In an article of this length it is not possible to discuss all of its aspects. Sustainability will have an important impact on New Zealand in the years to come, as it is now the focus of resource management and planning legislation.

The essence of the concept is to ensure that the effects of humanity on the environment are controlled, and remain within the capacity of the environment to absorb them. This is practicable, given the ability to measure components of environmental capacity. However, the costs of implementing sustainability in the next few years are likely to be very high because of the necessity for maintaining a comprehensive information system.

The Resource Management Act is clearly aimed at implementing sustainability, but the definition provided is not particularly clear. It is possible to have an ecological emphasis in the current wording of s 5. It is not necessary for an ecological emphasis to have an ecocentric philosophy. There are problems of balance between the management and ecological functions which should be addressed by legislation. If they are not, planning decisions are likely to be inconsistent and subject to frequent litigation. This would waste valuable time and money.

⁷⁰ Melhuish & Baines, "Incorporating 'Sustainability' into Natural Resource Law" in Resource Management Law Reform Core Group, Working Paper 24, *supra* at note 1, at p7.