

Institutional Issues for Sustainability: Entering the New Millennium

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The scope of this Forum is wide ranging: to examine the major issues and challenges facing environmental law and policy in New Zealand and the wider Asia Pacific region at the cusp of the new millennium. It is an ambitious agenda. The organisers' challenge to me, namely, to give a presentation that is "pithy, conceptual, and visionary" seemed equally daunting. I should say at the outset that my own background is in economics, zoology, and resource management. I can claim only to be a "bush lawyer".

In this paper I will touch on two broad topics:

- *The current and emerging issues that we, the environmental policy community, should be recognising and the role of legislation in addressing these issues — what should our expectations of legislation be?; and*
- *The role of legislation in addressing those issues — how does legislation fit alongside the other avenues through which communities can pursue sustainability?*

Introduction

The Ministry for the Environment ("the Ministry") has a central interest in legislation, as the government's key adviser on the Resource Management Act 1991 (the "RMA") and other environmental legislation, including the Hazardous Substances and New Organisms Act 1996. However, let me put that legislative interest in context. The mission of the Ministry is to "[make] a difference through environmental leadership". Our interpretation of that mission involves

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identification of priorities, a willingness to tackle the hard issues, and the ability to point the way forward. We see leadership as working with and through others, and in particular to identify national environmental priorities, and to bring together those who can supply the research, creative ideas, and practical solutions to solve the problems. We recognise that many other individuals and organisations can also be leaders in pursuing sustainability.

From that description, it is probably self-evident that our interest goes well beyond legislation and the RMA. We see our priorities in four main areas:

- (a) Good environmental information: leading the development “signposts” for sustainability — a system for reporting on the state of the environment, so that we and others can answer the key questions about what is happening to our environment, and whether our policies are working;
- (b) Creating and maintaining effective policy frameworks for environmental management: the RMA is a key element as a foundation, but our work goes beyond this to the development of national environmental standards;
- (c) Developing practical tools for environmental management by working with others in areas as wide-ranging as sustainable land management and cleaner production; and
- (d) Influencing the ever-expanding international policy agenda.

Issues into the Millennium

Eighteen months ago, the Ministry published New Zealand’s first *State of the Environment Report*.¹ That milestone report, all 650 pages of it, identified that we have enough information to be clear about the general nature of our environmental problems. It showed that we have no reason to be complacent, and every reason to be a little nervous about the substance of the claims behind our clean green image. It is my proposition that the key environmental issues we face in the new millennium will be characterised by the following features:

- (a) Complexity — no simple causes or answers;
- (b) Interconnectedness — the issues involve connections between economic, social, and environmental systems, and issues cross international boundaries even if the physical resources do not; and
- (c) Uncertainties — about the problem and possible solutions.

I will illustrate these with reference to water resources, sustainable land management, climate change, and biodiversity.

1 Ministry for the Environment, *The State of New Zealand’s Environment* (1997).

Water resources

Focussing on water management, recent initial research on “bad bugs” in fresh water showed levels of micro-organisms, cryptosporidium, giardia, and campylobacter, which are of real concern. A recent issue of Auckland’s *Metro* magazine² also makes sobering reading with many of Auckland’s popular bathing beaches failing to meet the latest guidelines for marine bathing water standards. The visible signs of “Don’t Swim Here” and “Shellfish Unsafe to Eat” are ones that jar with our popular self-image of clean and green New Zealand.

I use this example to illustrate a point. These environmental problems do not simply lie with discharges from industry, and the direct effects of sewage discharges are decreasing as we clean up our act. The problem now is stormwater, a subtle, insidious, and invisible problem that arises from our day-to-day use of urban areas. Here is what the *State of the Environment Report* said about stormwater:

Contaminants that are washed off streets, construction and industrial sites, and other surfaces, include sediment, organic matter, nutrients, disease-causing organisms and toxic substances ranging from oil products and contaminated dust from vehicle exhausts to industrial chemicals.

The problem is not with a specific sector or group within society, but with all of us. The solution will be part of a complex debate about the way we live in urban communities and manage our interactions with each other and the environment.

Sustainable land management

What about our land? Here, let us acknowledge that we do not live with the vast legacy of industrial contamination suffered in Europe or North America. But our track record on soil conservation is far from impressive. Some 50 per cent of our land is classified as eroded, with 10 per cent of it severely eroded. Doing something about the issue of sustainable land management involves complex connections: markets for agricultural products, the financial health of the rural economy, and patterns of land ownership. We cannot address the environmental problem without recognising these connections.

Climate change

Climate change is widely acknowledged to be one of the key global environmental challenges. This is certainly so for New Zealand, which faces high marginal costs for abatement of greenhouse gas emissions. But the definition of the problem, and solutions to it, is fraught with uncertainties and, perhaps more than any other issue, the climate change issue illustrates the dilemma of needing to make choices now in the face of uncertainties about the science, and about

2 Wilson, T., “Catchment 22” *Metro*, April 1999, 52–59.

international policy frameworks. The contents page of the *State of the Environment Report*³ immediately points to the problem that is greatest of all and illustrates all three characteristics of complexity, interconnectedness, and uncertainty.

Biodiversity

Over the last few hundred years, New Zealand has seen a rate of change in its natural ecosystems that is probably unparalleled globally. In the last 800 years we have seen the extinction of 32 per cent of the endemic land and freshwater birds and three out of seven species of frogs. Seventy-five per cent of our native birds are also classified as under threat. This is not just about what is happening on the conservation estate. The main pressures on biodiversity today are insufficient habitat in lowland areas, declining quality of many of the remaining land and freshwater habitats, impact of pests and weeds and, for some marine species and ecosystems, human fishing activities, all of which illustrate the issues of complexity and interconnection.

The current debate over the biodiversity strategy also points out the inadequacy of our knowledge base. Although we have a lot of valuable information in disparate databases, little of it is capable of depicting trends over time.

How does this analysis square with people's perceptions? Last year's Environmental Monitor Survey tells us that New Zealanders value their environment, and think it is a significant issue. Although only 10 per cent rate it as the top issue, nearly 90 per cent express concern about environmental problems. Depletion of natural resources such as forests, farmlands, and fish was rated the most important environmental problem to address.

Emerging Issues

Inevitably, we look to comparisons outside New Zealand as well as within. Let me digress for a minute with some impressions from a very recent trip to Europe.

When I boarded my plane in Brussels, I was handed British Midland's upmarket reading, the *Daily Express*. Those of you who know the British papers will know that that paper is better known for the vital statistics of its page three girls than for statistics about anything environmental. So, I was surprised to find the "centrefold" a piece of serious reporting on genetically modified food, and the impacts of biotechnology on the environment. And what is more, it was not a one-off — it was part of a week-long series. The same paper carried stories about air pollution, and transport. Next day, the *Financial Times* led with stories on the erosion of Britain's countryside. Throughout the week I was there, you could not avoid being confronted with stories about people, their environment,

3 Supra note 1.

and sustainability. That reflected the increasing level of interest, not only in food quality, but the health of the environment and broader questions of sustainability.

My impression was that European consumers and governments are putting environment and sustainability issues, if not centre stage, then certainly in a prominent position. And, increasingly, they want guarantees, not just claims. The European Environmental Management and Audit system goes beyond ISO 14000 to spell out requirements for public disclosure of environmental performance. There are active expectations about environmental labelling. Trade and environment issues are actively on the European agenda, fuelled by the BSE crisis and the desire for assured product quality.

Governments, and business, are working actively to improve performance. Why recount all of this in relation to environmental issues for New Zealand? I do not for a minute suggest that a perfect model exists elsewhere, especially in Europe, where agricultural subsidies continue to exacerbate environmental problems rather than solve them. But it seems to me that it is not enough for New Zealand to recognise its “own” environmental problems at a pace that suits us. Given the nature of our export markets, our reliance on food and fibre exports, and the growing expectations of our consumers (including tourists), we run significant risks if we fail to anticipate the environmental dimension of those expectations, and to do something about meeting them and being seen to meet them. Waking up on the day that our clean and green products and services are branded unsound will be too late.

The Role of Legislation

So what is the role of legislation in addressing these significant issues we face? First, let me adjust your expectations. I do not intend to talk in any detail about the current proposals for changes to the RMA. What I would like to do is provide a framework, which might be useful as we discuss the role of law for sustainability. Again, I would like you to consider three propositions:

- (a) In the light of environmental issues that are complex, interconnected, and involve substantial uncertainties, legislation will play a significant part, but not necessarily a principal one, in the realisation of sustainability. We will also need an effective armory of non-legislative approaches.
- (b) Environmental legislation will work effectively if we focus more on environmental results than process, and if we have the capacity to recognise problems and measure progress in resolving them.
- (c) Environmental legislation will make a useful contribution if we, as individuals who live in communities, recognise that in using resources we exercise both rights and responsibilities.

The ability of individuals and communities to grapple with difficult environmental issues on the path to sustainability is influenced by a large number of factors:

- Our access to information about environmental problems, and our ability to judge the scale and priority of the problems we face;
- Our access to practical information about solutions that are relevant and doable;
- The influence of prices — economic signals — on our behaviour: prices for those things we consume, or the things we produce, and the availability of economic incentives for environmentally appropriate behaviour;
- The availability of public funds — the taxpayer and ratepayer dollar — to meet the costs of public environmental goods;
- Culture — our norms about acting as individuals within a community, and the influence of our peers and neighbors on our behaviour; and
- The availability of leaders in the community or community institutions to initiate voluntary, community-based initiatives.

Legislation is, of course, one of these elements. Legislation sets the foundations for the community to make choices about actions (at least those within the ambit of the legislation) and their impacts on the environment. Legislation can set out the objectives and purposes that decision-makers should strive to achieve; it can identify the environmental factors that are valued by the community so that these are recognised in decision-making. But, legislation cannot achieve everything, and the earlier comment that the RMA is legislation flawed by overambition is a telling one.

Feedback on performance under the RMA, and the proposals for amendment, indicate both common themes and diverging views:

- Most people believe that the basics of the Act are sound, that its aims and the values it recognises are relevant, appropriate, and supported by the community. In other words, it is seen as a useful *contributor* in the community's "search for sustainability";
- Many people are concerned about the costs and inefficiencies of putting the law into practice and, for the most part, the finger is pointed at the inadequacies of local government. There is support both for improved practice in implementation, and its reinforcement by legislative amendments that change some elements of current process;
- Many people see enhanced national guidance, via standards, national policy statements, and guidelines, as desirable though there is little detail or consensus about what shape this guidance might take, or how diverse values and aims might be recognised in its preparation; and finally
- Some people believe that the legislation could be used more actively, by central and local government, in pursuit of sustainable outcomes.

There is still relatively little comment about whether the legislation is achieving its aims as a contributor to improved environmental results. We hear anecdotes about environmental investment that has been catalysed by the requirements of the RMA. However, if you were to judge the RMA on the basis of media comment, the overwhelming impression left is that we are spending too much money and effort addressing problems that do not matter very much. Overall, investment in environmental performance is all too often labelled as a cost or constraint.

In terms of “missing ingredients”, what I see as three of the key barriers to our environmental legislation playing a full and effective role relate back to the propositions I outlined earlier.

1. We need realistic expectations of what legislation can and cannot do, and a commitment to creating the tasks and approaches that complement and support legislation:
 - Visionary community initiatives to tackle complex problems in our urban and rural communities;
 - Practical approaches to improve environmental management systems, at a sector or industry level; and
 - A willingness to share information, and to work co-operatively towards new solutions, including those linked to subordinate legislation such as National Policy Statements and National Environmental Standards, without seeing these as a panacea.
2. We need to shift our debate about the performance of environmental legislation to one that is more about the environmental results:
 - This is partly attitudinal — a shifting out of denial mode and shaking our sense of complacency; and partly about access to the tools — creating “signposts for sustainability” and linking these to our efforts.
 - This is also about support for active public debate. The role of the media is critical, but it is questionable whether the New Zealand media is playing the role it could play in building an informed community.
3. We need to think again about our expectations as individuals and the way we live within communities. Most environmental legislation, including the RMA, rests on the premises that:
 - We have both rights and responsibilities; and
 - We cannot expect our interests to be recognised by the community unless we recognise the interests of others.

We have an active debate on property rights, but how many times do we hear “rights and responsibilities” mentioned together in that discussion? Not very often, I would suggest. I am reminded of the perfect two-rule plan where “I can do as I wish on my property without interference from others. My neighbours can do what they wish provided I agree”.

Clearly, this plan will not take us far. If there is a tension between acknowledging rights and responsibilities, how do we resolve this?

Ways Forward

My comments so far have focussed on the challenges. But is there light at the end of the tunnel for dealing with complex issues, seeing individuals and communities as part of the problem and the solution, and using legislation in realistic and effective ways? I believe that the answer is yes. We have good and practical examples in the following areas:

Tools and approaches:

- (a) The existence of community fora, such as the Auckland Regional Growth Forum and the Canterbury Dialogues, show that people are coming together to talk about creating sustainable features and their efforts are moving beyond legislation and parochialism.
- (b) Industries and sector groups, for example, the mussel and viticulture industries, are getting onto the front foot to develop codes of practice and practical systems for environmental management. These efforts underpin the clean and green claims we make about our products.
- (c) Innovative approaches to creating solutions (eg, the biodiversity strategy) are bringing large groups of people together to discuss issues and identify solutions.

Information:

- (a) The creation of “signposts for sustainability” give us indicators for the success of our efforts.
- (b) There are positive signs in emerging practice on State of the Environment reporting. The launch of Manukau City’s report just a week ago quite bravely addressed the question of environmental problems belonging to the community, and being the logical consequence of people’s lifestyle choices.
- (c) There are even signs that the media is taking environmental issues more seriously. For example, a recent *Christchurch Press*⁴ had as its leader a discussion on why the urban community should invest in developing a water resources strategy.

Recognising rights and responsibilities

We are also starting to see a maturing of the property rights debate, and acknowledgment of the responsibilities that go with resource use. Here, perhaps, is where we can learn from some of the Maori concepts, such as *kaitiakitanga*.⁵

4 *The Christchurch Press*, 16 April 1998.

5 See s 6(a), RMA.

Conclusion

I hope this paper has been sufficiently pithy, conceptual, and visionary to serve a useful purpose at this seminar. Of the key messages, I hope you will recall during the course of the Forum that:

- The environmental issues and challenges of the millennium will be complex, involving interconnections between social, economic, and environmental systems, and living with uncertainty.
- Environmental legislation can play a role, but only if we:
 - (a) Also create a wide menu of methods that go well beyond legislation;
 - (b) Focus more attention on the environmental results and see these as the benchmark for judging the success of legislation; and
 - (c) Develop an environmental paradigm where rights and responsibilities always go hand in hand.

If recognition of these realities stays with us, then we have a chance, at least, of developing economic and social systems and lifestyles wherein the cumulative limit is within the environment's capacity to sustain.

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