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# An Institutional Framework For Sustainable Resource Management: The New Zealand Model

## ABSTRACT

*During the late 1980s, New Zealand underwent a period of dramatic economic, social, and administrative restructuring. Among the most fundamental reforms was the establishment of sustainable management as the guiding principle for decisions affecting the allocation and use of natural resources and the maintenance of environmental quality. The adoption of sustainability has been accompanied by numerous changes in land use and environmental planning processes and institutions. Prescriptive planning models have been replaced by a performance based planning paradigm. Environmental impact assessment has been strengthened. There has been widespread consolidation of governmental units and the creation of new, more powerful local (regional) governments, with boundaries drawn using a hydrologic criterion. Decision making processes have been shifted from central government agencies to the local level. This paper provides the context for the restructuring process, analyzes the administrative and legislative changes that support sustainable management, and, finally, discusses that critical issues that have affected implementation of sustainable management as well as offering comments about the future of the New Zealand reform process and its applicability to other nations.*

## INTRODUCTION

During the pre-conference discussions and post-meeting dialogue accompanying the 1992 United Nations Conference on Environment and Development ("The Earth Summit"), sustainability and sustainable development emerged as focal points for those wishing to implement new paradigms for meeting human needs without damaging global environmental systems.<sup>1</sup> While the notion of sustainability currently

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dominates the rhetoric of environmental policymakers and planners, the fundamental ideas surrounding a sustainable strategy for human development are not new. In particular, social scientists have long noted the interdependence between human activity and natural systems, including the significance of attempts to maximize societal interests without exceeding bounds imposed by environmental systems. As one analyst has noted, even a modest review of history makes clear that economic and social development are inextricably linked to the mobilization of environmental resources and the perception of resource limitations has, in turn, shaped human actions.<sup>2</sup>

The current interest in sustainable development is partially a consequence of timing. Over the past twenty five years environmental quality has been transformed from an insignificant public policy question to a major public concern. Issues surrounding environmental pollution and the maintenance and integrity of natural systems are global in scope and occur at all scales. The fact that major international political and corporate organizations have become active participants in the "environmental movement" is a strong indication of the cultural and societal importance attached to questions of environmental protection.

Within this framework, the concept of a model for development based on notions of sustainability was first espoused in 1980 in the World Conservation Strategy jointly produced by the International Union for Conservation, the World Wildlife Fund, and the United Nations Environmental Programme.<sup>3</sup> The discussion of sustainability was given much wider attention in 1987 when it framed the analysis and recommendations in the United Nations' World Commission of Environment and Development report, *Our Common Future*.<sup>4</sup>

In part the appeal of a sustainable approach to global environmental problems is that it steers a middle course, avoiding the substantial government intervention demanded by neo-Malthusian or limits to growth proponents,<sup>5</sup> as well as the technology and growth-based assumptions posited by revisionist solutions.<sup>6</sup> Advocates of the former

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1. Timothy Beatley & David Brower, *Sustainability Comes to Main Street*, 59 *Planning* 16, 19 (1993); Paul Selman, *Planning Post-Rio*, 79 *The Planner* 17, 19 (1993).

2. Judith Rees, *Markets-The Panacea for Environmental Regulation*, 23 *Geoforum* 383, 394 (1992).

3. INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE & NATURAL RESOURCES, *WORLD CONSERVATION STRATEGY* (1980).

4. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987).

5. See generally DONELLA H. MEADOWS ET AL., *THE LIMITS TO GROWTH* (1972); HERMAN DALY, *ESSAYS TOWARD A STEADY-STATE ECONOMY* (1971).

6. See generally JULIAN LINCOLN SIMON & HERMAN KAHN, *THE RESOURCEFUL EARTH: A RESPONSE TO GLOBAL 2000* (1984).

warn of resource scarcity and environmental collapse without strict controls on population increases and economic growth; while the latter perspective dismisses the negative impacts of population growth and envisions unfettered market forces and technological innovations permitting continuous economic growth. In a period marked by dramatic political restructuring, a weakening of highly structured centralized governments and a growing environmental consciousness of major political parties and factions, neither of these alternative prescriptions for resolving environmental problems garner much support.

While sustainable development dominates policy discussions at all levels, instances where the strategy has been articulated in local, regional, or national public policymaking are rare. Although the environmental issues which underline the need for, and shape the boundaries surrounding sustainability are recognized widely throughout the industrial world, evidence that the concept is being implemented is rare indeed.

The lack of application stems from two major issues. The first is definition. What is meant by sustainability or sustainable development is subject to considerable interpretation and disagreement. The conceptual basis of sustainability is shared by natural scientists and social scientists alike; but the lack of consistency in the assumptions and parameters within the framework are problematic. The ambiguities in meaning are perhaps most pronounced between economists and ecologists, but are also evident among other disciplinary perspectives (geography, sociology, anthropology). In the absence of any consensus over definition, it is difficult to envision the widespread political application of a fuzzy concept subject to a myriad of meanings.

The second issue, not unrelated to the first, is political commitment. No matter how sustainable development is laid out, its implementation represents a significant adjustment in institutional structures, in the distribution of wealth and resources, and in the patterns of human lifestyle. For example, sustainable development, as presented in the Brundtland Report and at the Earth Summit was as much about empowering people in the poor, southern nations as it was about protecting the environments.<sup>7</sup> What this would mean for the lifestyles of North Americans, West Europeans or Japanese is unclear. It raises awkward questions about how far rich nations and their citizens would be willing to share resources or change lifestyles in order to accommodate the needs of poorer nations.

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7. MICHAEL REDCLIFT, *The Meaning of Sustainable Development*, 23 *Geoforum* 395, 403 (1992); Selman, *supra* note 1, at 17.

Thus, while sustainability may have broad popular appeal at first glance, it is less clear that it would be as politically acceptable if understood fully by citizens in the industrialized nations. Even in its "mildest" form, sustainability requires constraints on environmental resources and changing patterns of consumption for non-renewable resources.<sup>8</sup> A democratization of decision-making authority and greater social equality are also a part of the strategy. Given the reluctance of wealthier nations to embrace significant environmental behaviors in the past, one might understandably question the political feasibility of sustainable development policies in the near term.

Nonetheless, beginning in the late 1970s, the Government of New Zealand undertook a fundamental statutory review of the legislative and administrative structures for environmental and natural resources and land use planning. The culmination of this process in 1986-87 was a restructuring of the local government framework and extensive legislative reforms to create a national framework for sustainable management. The centerpiece of this reform, the Resource Management Act of 1991,<sup>9</sup> creates a holistic, integrated approach to environmental and natural resource management. The Act enshrines sustainability as a guiding principle for resource management in New Zealand; as such, it is quite possibly the most far reaching effort in institutional terms directed toward meeting the goals set out in the World Conservation Strategy and later endorsed by the report of the World Commission on Environment and Development.<sup>10</sup> The New Zealand action moved sustainability from an abstract notion to a working suite of policies and structures which shape the way communities are planned, renewable and non-renewable resources (e.g. forestry, geothermal, fisheries, surface waters, soils) are managed, heritage values are institutionalized, and citizen concerns, especially the rights and treaty-guaranteed obligations to the Maori peoples, are incorporated into government actions. These actions represent a first national-level institutional framework for sustainable resource management; in this sense, it presents an interesting model for people elsewhere to consider. While the New Zealand experience is unique, there are lessons to be learned and experiences to be gained from what has taken place during the formulation of the sustainable management program in New Zealand and the initial implementation phase. This paper will address these issues. We will: (1) review the institutional background and social and economic conditions which lead to the New Zealand reforms; (2) present and discuss the elements comprising the realignment of resource and environmental planning policies and

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8. Beatley & Brower, *supra* note 1, at 17-19.

9. Resource Management Act, No. 69, (1991) (N.Z.).

10. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *supra* note 4.

structures; and (3) review the experiences surrounding the implementation of a sustainable management model in New Zealand.

## BACKGROUND

New Zealand is a young nation, both in terms of geologic age and human settlement. Located in the South Pacific, the archipelago nation covers 269,000 sq.km, primarily on two islands stretching 1,600km from north to south. The nearest large landmass is Australia, located over 2,000km to the west. As a result of its isolation and island status, biodiversity in New Zealand is high. A very large percentage of its 50,000 native plants and animals are found only in New Zealand.<sup>11</sup>

New Zealand sits astride the boundary of the Pacific and Indo-Australian tectonic plates. As a consequence, the landscape is active and dominated by mountains, and other rugged terrain. Of the total land area, only about 6 percent is considered suitable for agricultural usage, while 44 percent is classified as being unsuited for agriculture or having severe limitations for agricultural or forestry land uses.<sup>12</sup>

New Zealand was not settled until 800 to 1,000 years ago. The Maori are the descendants of the initial settlers who arrived at that time from eastern Polynesia. European settlement began in 1820. The population of New Zealand was 3,430,000 in 1991. Compared with other nations, New Zealand's population density is low, but settlement is concentrated. Most New Zealanders live in urban areas.

Throughout its eurocentric history, New Zealand's economy has been dependent on the development and export of natural resource-based products. During the initial European colonization phase, seals, timber, gold and flax were valuable export commodities to British markets. Later, meat and dairy products and other agricultural commodities emerged as the dominant exports. Although the land based economy which evolved in New Zealand over the past 150 years has a propensity to generate significant pollution problems, widespread environmental disruption has generally been avoided. This has largely been a consequence of the extensive rural territory, throughout which resource development activities have been dispersed, so that polluting impacts of economic activities are "diluted" by distance from other economic operations and urban populations.

Internationally, New Zealand has enjoyed a widespread reputation for environmental consciousness. Nearly 20 percent of the

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11. NEW ZEALAND'S NATIONAL REPORT TO THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT MINISTRY FOR THE ENVIRONMENT, FORGING THE LINKS (1992).

12. *Id.* at 30.

nation is held in national parks or reserves and the long tradition of protecting native species of plants and animals are evidence of environmental sensitivity within the nation.<sup>13</sup> But the image of 'clean, green New Zealand' masks the problems of non-point pollution inherent in agricultural and forestry production and a growing number of individual environmental policy conflicts that emerged beginning in the early 1970s.<sup>14</sup>

Moreover, a number of studies done during the early 1970s indicated that New Zealand was poorly prepared for dealing with long-standing environmental quality issues such as soil and water pollution, as well as an expanding set of new problems in municipal and hazardous waste disposal, water resource allocation, and the effects of increasing industrialization.<sup>15</sup> The environmental management and planning framework which was in place had evolved in an incremental fashion over a long period of time. It was characterized by poorly defined pollution controls standards, weak inter-governmental cooperation and coordination, and a lack of effective citizen participation in environmental policy formulation. A 1981 study by an OECD committee called for better coordination of environmental policy and the integration of environmental concerns into the economic development decision-making process.<sup>16</sup> Improvements in citizen participation were also needed. Later that year, a New Zealand Nature Conservation Council report identified three major flaws with the existing administrative framework: overlapping institutional responsibilities, conflicting mandates of government agencies, and poor coordination among agencies.<sup>17</sup> When a 1983 study compared New Zealand's environmental policy and planning with other Pacific rim nations, using a four stage model of policy adoption, New Zealand ranked last, behind Indonesia, Malaysia, Australia, and Japan; and the nation's environmental protection mechanisms were assigned to the lowest level in the model.<sup>18</sup>

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13. *Id.* at 32.

14. See generally S. RAINBOW, *GREEN POLITICS* (1993); T. BÜHRS & R. BARTLETT, *ENVIRONMENTAL POLICY IN NEW ZEALAND* (1993); R. WILSON, *FROM MANAPOURI TO ARAMOANA: THE BATTLE FOR NEW ZEALAND'S ENVIRONMENT* (1982).

15. Chris Cocklin, *The Restructuring of Environmental Administration in New Zealand*, *J. Envtl. Mgmt.* 312, 317 (1989).

16. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *ENVIRONMENTAL POLICIES IN NEW ZEALAND* 26-27 (1980).

17. NEW ZEALAND NATURE CONSERVATION COUNCIL, *INTEGRATING CONSERVATION AND DEVELOPMENT* 46 (1981).

18. H. WALLER & J. WALLER, *ENVIRONMENTAL POLICY AND PLANNING IN NEW ZEALAND*, COMMISSION FOR THE ENVIRONMENT, SPECIAL REPORT 9 (1983).

## FORMER ENVIRONMENTAL MANAGEMENT STRUCTURE

Under the former institutional regimen, New Zealand's environmental policies and policy-making were uncoordinated and often fragmented. There was evidence that earlier governments had not shown much initiative nor leadership in developing a broadly based environmental management system.<sup>19</sup> While there were over 100 statutes having "particular relevance to the environment"<sup>20</sup> and various governmental organizations at the national, regional, and local levels held mandates relating to the environment, New Zealand lacked a national environmental policy. As a result, environmental decisions often were reactive and failed to consider the full implications of a particular action.

At the national level, several agencies with sectoral responsibilities were directly involved in natural and environmental resource planning and management (Fig 1). These included the Ministry of Energy, the Ministry of Agriculture and Fisheries, the Forest Service and the Department of Lands and Survey. Additionally, other nonsectoral agencies had significant roles in environmental policy. Among these the most important was the Ministry of Works and Development. This Ministry had responsibilities over local government planning; water and soil management; and engineering, construction, and design of public works. In several instances, individual government agencies had seemingly conflicting assignments. They were charged to manage resources for development while also working for environmental preservation. This dual responsibility was characteristic of agencies like the Department of Lands and Survey and the Forest Department, and produced a growing number of resource allocation conflicts between development and environmental interests during the 1970s.<sup>21</sup>

Leadership in the environmental area was provided by the Minister for the Environment, a portfolio created in 1972.<sup>22</sup> The Minister was supported by a Commission for the Environment, a small agency positioned at the central government level. The major responsibilities of the Commission were to administer the national Environment Protection and Enhancement Procedures and to work with other governmental departments to promote environmental coordination and the consideration of environmental issues in decision-making process. Unfortunately, neither the Minister nor the Commission had any "statutory authority,

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19. *Id.* at 20.

20. A GUIDE TO ENVIRONMENTAL LAW IN NEW ZEALAND IX (N. Wells 2d ed., 1984).

21. CHANGING PLACES IN NEW ZEALAND, A GEOGRAPHY OF RESTRUCTURING 89 (S. Britton, et al. eds., 1992).

22. Cocklin, *supra* note 15, at 318.

management or executive responsibility".<sup>23</sup> This omission was critical and seriously reduced their effectiveness.

Also operative at the national level were a number of independent environmentally related quasi-autonomous non-governmental organizations, known by the acronym quango.<sup>24</sup> The quangos were established to supply government with alternative sources of information, monitor public participation and to carry out independent research. The most important of these in terms of environmental issues and policy in general were the Nature Conservation Council and the Environment Council.<sup>25</sup> Established by Act of Parliament in 1962, the Nature Conservation Council was vested with the power to "inquire into the scientific and technical aspects of nature conservation, to encourage surveys and research, and to report on any matter which it considers to be of importance".<sup>26</sup> A sister organization, the Environmental Council was established in 1970. It served as an independent advisory body with the function of providing information and advice to government and the public on matters relating to the environment.<sup>27</sup>

At the sub-national scale, there were a wide array of local government bodies with varying degrees of influence in respect of environmental matters. At the regional level, 22 councils existed. One of these, the Auckland Regional Council, had been established by Parliamentary Act in 1963, primarily in recognition of the need to provide coordinated planning for New Zealand's largest metropolitan center.<sup>28</sup> The other 21 councils were established in 1978, in an effort to provide some coordination of the fragmented system of territorial governments.<sup>29</sup> An essential difference between the Auckland council and all of the others was that the representatives in Auckland were elected officials, whereas in the other regions they were political appointees. The primary responsibility of this middle-level of government was to coordinate regional planning, which could extend to water supply, energy reticula-

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23. *Id.*

24. A. GRZBOWSKI, *NEW ZEALAND'S NEW ENVIRONMENTAL ADMINISTRATION: THE QUEST FOR SUSTAINABLE DEVELOPMENT* 15 (1989).

25. Several other quangos with narrower mandates were established in New Zealand. These included the Queen Elizabeth II National Trust (QE II Trust), established in 1977 to encourage the protection of open space resources. The National Parks and Reserves Authority, established in 1980, had responsibility for policy relating to national parks. Established under the Water and Soil Conservation Act 1967, the National Water and Soil Conservation Authority, held responsibility for policy relating to soil and water resources. Of these agencies, only the QE II Trust remains.

26. Wells, *supra* note 20, at 194.

27. Cocklin, *supra* note 15, at 312.

28. H. PERKINS, ET AL., *The Urban Environment*, in *ENVIRONMENTAL PLANNING IN NEW ZEALAND* 11-32 (A. Memon & H. Perkins eds., 1993).

29. *Id.* at 25.



tion, forestry, reserves and parks, and waste disposal. The regional authorities had a statutory obligation to develop statements of regional policy. For the most part, the regional councils did not exhibit a strong interest in environmental issues. Analysts working for the Commission for the Environment noted: "It is generally accepted that the main preoccupation of the regions in present times is economic development and that environmental concerns are secondary".<sup>30</sup>

At the local government level, there were two types of authority—special purpose (ad hoc) and territorial authorities. The ad hoc authorities were established under various legislative bills and included harbour boards, catchment authorities, electric power boards and pest destruction boards. Territorial authorities included counties, boroughs and cities, and community councils, all constituted under the Local Government Act of 1974.<sup>31</sup> Under the Town and Country Planning Act 1977, territorial authorities were obligated to provide district planning schemes.<sup>32</sup> These planning documents regulated land use and shaped the pattern of community growth. In doing so, local plans played a potentially important role in environmental quality. Unfortunately, the planning legislation set out a highly structured code. It resulted in mechanical plans which were inadequate for future growth.<sup>33</sup> Public policies for sustainable development were largely precluded by the administrative framework and planning case law.<sup>34</sup>

### REALIGNMENT OF PUBLIC POLICY

The origins of sustainability-based environmental policy in New Zealand can be traced back to the World Conservation Strategy. The Strategy was adopted by the Labour Party as a part of its election manifesto in 1984.<sup>35</sup> In the campaign Labour emphasized the need for a comprehensive environmental program, one which was sensitive to long-term ecological needs and reflective of traditional New Zealand values of conservation, social justice, and the protection of natural resources.<sup>36</sup> Winning the election, Labour replaced a long-standing incumbent National Party Government. Late in 1984 the government

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30. Waller & Waller, *supra* note 18, at 29.

31. The Local Government Act, No. 66, (1974) (N.Z.).

32. Richard Welch, *A Perspective on Planning in New Zealand*, 82 N.Z. J. of Geog. 11, 13 (1987).

33. *Id.*

34. A. Memon, *Planning for Resource Utilization: A Political Administrative Perspective*, 79 Plan. Q. 17-19 (1985).

35. BÜHRS & BARLETT, *supra* note 14, at 115

36. *Id.* at 76.

began work on a new environmental policy framework. These environmental reforms and outcomes have taken place within the libertarian ideology of the government. At the core of this philosophy is an almost doctrinaire belief in the market as the dominant mechanism in the economy. In the eyes of government leaders, regulations and intervention by central government in economic life had stifled New Zealand's economic growth in the post-World War II period.<sup>37</sup> Moreover, the same interventionist approach had resulted in environmental deterioration, growing out of resource policies and subsidies which fostered the exploitation of marginal lands. In attempting to address these twin issues, the new government represented an uneasy alliance between neo-liberal and environmental reformers.

As a part of the reforms, the government was also committed to reforming local governmental structures. These actions were focused on consolidating the large number of government units and their functions.<sup>38</sup> A streamlined local government system would be more efficient and capable of assuming responsibilities which central government wished to devolve.<sup>39</sup> It was also argued that a streamlined structure would be more responsive to the citizenry.<sup>40</sup>

In the end governmental reforms did not, at least in the environmental arena, create a free market type regulatory setting. Most government-owned natural resources were put under the control of state-owned enterprises, which have a statutory responsibility to operate on a fully commercial basis.<sup>41</sup> Some natural resource sectors have been fully privatized. However, at the same time, government environmental policies and agencies were strengthened, and, most critically, government embraced the concept of sustainable management as a fundamental guide post for any public action affecting the environment.

That sustainable management became a guidepost for public environmental action was primarily the result of two sets of closely related actions: administrative reform and legislative reform. In the case of the former, central government departments and quangos have been restructured to streamline management and to define more clearly operational goals and objectives, while in the later case, statutory reform has created a new legislative framework, under which agencies of the

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37. L. Gow, *RMLR in the Context of other reforms*, in *IMPLEMENTING THE RESOURCE MANAGEMENT ACT 13-19* (R. Morgan et al. eds., 1991).

38. W. Moran, *Local Government Reform*, in *CHANGING PLACES IN NEW ZEALAND: A GEOGRAPHY OF RESTRUCTURING* 215-38 (S. Britton et al. eds., 1992); J. Dixon & A. Wrathall, *The Reorganization of Local Government*, 89 *N.Z. J. of Geog.* 2, 6 (1990).

39. *Id.*

40. J. Palmer, *Political Perspectives*, in *DEVOLUTION AND ACCOUNTABILITY* 1-7 (J. Martin & J. Harper eds., 1990).

41. BÜHRS & BARTLETT, *supra* note 14, at 93.

state have been given a broader set of responsibilities and powers in respect of resource management.

### ADMINISTRATIVE REFORM

The reorganization of New Zealand's environmental administrative structure was not a simple process. It took longer than originally expected and was fraught with struggles between conservatives and environmentalists. The resulting restructuring included a shift in the control of production oriented resources from government agencies to state-owned enterprises (SOEs). Commercial forests, for example, were transferred from a dismantled state-owned New Zealand Forest Service to a commercially managed Forestry Corporation.<sup>42</sup> Subsequently, most of the cutting rights to commercial forests have been privatized. Crown-owned land managed for production was transferred to the Landcorp SOE, while energy resources were transferred to the Coalcorp, Electricorp and Petrocorp SOEs.<sup>43</sup> The last of these has now been privatized. At the same time, the responsibilities for environmental management and for conservation were vested in three new agencies of the state - the Department of Conservation (DOC), the Ministry for the Environment (MFE) and the Parliamentary Commissioner for the Environment (PCE).<sup>44</sup> The separation of production activities from environmental management and protection meant that restructured agencies could focus on environmental administration and conservation goals without pressure for economic gain. Thus, clarity of objectives was achieved, along with the potential for improvements in accountability.

The creation in 1987 of DOC, a proactive conservation oriented government agency, was a critical recommendation of New Zealand environmental groups. The primary goal of DOC, set forth in the Conservation Act of 1987, is to act as an advocate for the conservation and protection of the natural environment, and other resources warranting preservation.<sup>45</sup> The Act provides for:

- the management of all land, natural and other historic resources under the control of the Department;
- advocacy of conservation of natural and historic resources;
- promoting the benefits of conservation for future generations;
- information dissemination; and

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42. Cocklin, *supra* note 15, at 319.

43. *Id.* at 320.

44. Cocklin, *supra* note 15, at 318.

45. The Conservation Act, No. 65, (1987) (N.Z.).

the use of resources for recreation and tourism where this is consistent with conservation.<sup>46</sup>

The DOC consolidated the stewardship role, which previously had resided with several agencies of government. Under the umbrella of DOC, all publicly held (Crown) environmental resources are managed by a single agency. This allows for a holistic approach within a singular management structure. Consistency in the approaches to management across different settings and different environmental conditions is facilitated. As a part of subsequent legislative reforms, specifically the Resource Management Act, the DOC was given the responsibility to develop a National Coastal Policy and to take on a strategic role in managing coastal land and water resources. The assignment of coastal resource management to DOC, an agency which emphasizes protection of natural resources, reflects the level of importance which New Zealanders assign to conserving shoreline resources.<sup>47</sup> But it is notable that in bestowing this responsibility, this was the first major advance in a campaign for the appropriate management of the coastal and marine environment that has spanned more than three decades.<sup>48</sup>

The Ministry of the Environment (MFE) is a policy oriented agency. The specific functions of MFE include providing counsel to government and the public on issues relating to the environment and facilitating the resolution of conflicts surrounding environmental management.<sup>49</sup> From the inception, the MFE has been intertwined with sustainable management initiatives. The statutory authority creating the Ministry charged it to observe principles of sustainability.<sup>50</sup> The Environment Act refers to the need to take "full and balanced account of the intrinsic values of ecosystems, the sustainability of natural and physical resources, and the needs of future generations."<sup>51</sup> The declared mission of the MFE is "to ensure that natural and physical resources are managed to sustain and enhance environmental quality and human well-being".<sup>52</sup> During legislative reforms, MFE assumed a leadership role in terms of the incorporation of sustainable management into statutory actions and

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46. *Id.*

47. DEPARTMENT OF CONSERVATION, NEW ZEALAND COASTAL POLICY STATEMENT (1994).

48. T. Hickman & C. Cocklin, *Attitudes Toward Recreation and Tourism Development in the Coastal Zone: A New Zealand Study*, 20 *Coast. Man.* 271 (1992); G. Miller, *A Special Case for Our Coast*, 97 *Plan. Q.* 24 (1990).

49. Cocklin, *supra* note 15, at 318.

50. The Environment Act, No. 127, (1986) (N.Z.).

51. *Id.*

52. *Id.*

in helping to put into operation the concept of sustainable management.<sup>53</sup>

The role of an environmental ombudsman is filled by the Parliamentary Commissioner for the Environment (PCE).<sup>54</sup> Operating 'independently of the government, the PCE has the mandate to "review the agencies and processes established by government to manage the allocation, use, and preservation of natural and physical resources"<sup>55</sup> and to investigate the effectiveness of environmental planning and management by public authorities.<sup>56</sup> If requested by Parliament, the PCE can conduct inquiries on matters of environmental concern.<sup>57</sup> Under a Parliamentary democracy, the PCE plays an important role checking potential environmental abuses by government, as well as the public at large.

Two other important authorities were held over from the previous administrative framework. One is a judicial authority, known as the Planning Tribunal. Under both the previous administrative system and under the new arrangements, the Planning Tribunal rules in any dispute regarding planning and resource management.<sup>58</sup> The second agency of note is the Waitangi Tribunal, established by Parliament in 1975.<sup>59</sup> The Waitangi Tribunal hears claims by the Maori in respect to their rights enshrined in the Treaty of Waitangi, the agreement signed in 1840 between the British Monarchy and the Maori people of New Zealand.<sup>60</sup> Many of the claims put before the Tribunal refer to the rights to natural resources. On these claims, the Waitangi Tribunal can make recommendations to government, but the recommendations are not binding.

## LEGISLATIVE REFORM

While the realignment of administrative agencies provided a coherent structure necessary for the implementation of sustainable management policies, the fundamental policy shift to sustainability was made through legislative reform. Carried out in parallel, the Local Government Act of 1989 (LGA)<sup>61</sup> and the Resource Management Act

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53. M. Roche, *Environmental Administration, in CHANGING PLACES IN NEW ZEALAND: A GEOGRAPHY OF RESTRUCTURING 190-92* (S. Britton et al. eds., 1992).

54. *Id.*

55. N. Z. Stat. No. 127 § 16 (1991).

56. *Id.*

57. Cocklin, *supra* note 15, at 318.

58. N. Z. Stat. No. 69 Part XI, § 269-288 (1991).

59. Treaty of Waitangi Act, No. 101 (1975) (N.Z.).

60. Treaty of Waitangi, Feb. 6, 1840, Eng.-Maori, No. 101 (1975) (N.Z.).

61. Local Government Act, No. 31 (1989) (N.Z.).

1991 (RMA)<sup>62</sup> provided the statutory framework within which to implement the sustainable management concept. They were overseen by the same Cabinet Committee and, more importantly, decisions made in the context of one reform were contingent on decision-making in the other case.<sup>63</sup> As a consequence, the practical implementation of sustainable management is enhanced because local government institutions and responsibilities are defined in terms of reference obtained from the RMA.

### LOCAL GOVERNMENT REFORM ACT

Local government reform was one of the most contentious actions taken by the Labour government. The main objective of the revision was ". . . to establish a system of local government . . . which is more efficient, effective, simple and easily understood by the people it is designed to serve and which recognizes wider communities of interest."<sup>64</sup> The net effect of the LGA has been a great reduction in the number of local government bodies, especially ad hoc authorities. Prior to reorganization there were 453 ad hoc authorities; nearly 300 were eliminated.<sup>65</sup> The number of regional governmental units was also reduced initially from 22 to 14 through consolidation, but later increased to 16.<sup>66</sup>

The LGA created a two-tier local government framework comprised of regional councils and territorial authorities. The intent was to develop complementary rather than competing bodies. The objective was ". . . two components seen as part of a total system, each performing different functions".<sup>67</sup> Regional Councils were given broad responsibility for large-scale, strategic planning issues. Those land use, infrastructural, or economic development issues which transcended local boundaries were assigned to the regions. Management of environmental resources was similarly assigned. The result was a more holistic planning framework. In the words of one analyst:

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62. N. Z. Stat. No. 69 (1991).

63. Dixon & Wrathall, *supra* note 38, at 3.

64. LOCAL GOVERNMENT COMMISSION, DRAFT REORGANIZATION SCHEMES 15 (1988).

65. Dixon & Wrathall, *supra* note 38, at 2.

66. The original 14 regional councils consisted of 13 regional councils and one unitary authority. The distinction is that within the latter, there are no territorial local authorities, whereas the regional council areas incorporate territorial local governments. Following the initial determination, the three local territorial government authorities that comprised one region nominated to become independent unitary authorities. Thus, the number of regional councils was reduced to 12 and the number of unitary authorities increased to four.

67. Local Government Commission, *The Reorganization of Local Government., Background and Objectives*, 87 N.Z. J. of Geog. 17, 22 (1989).

Thus, control of environmental resources in a region is to be managed alongside social and economic issues such as urban expansion and planning for transportation and other infrastructure. This combination under a single authority makes considerable practical and political sense.<sup>68</sup>

Because of their strong environmental responsibilities, the regional council boundaries were drawn to conform with water catchment boundaries. A water catchment is "that entire area providing runoff to and sustaining all of the stream flow of the mainstream and its tributaries".<sup>69</sup>

While there were some deviations from catchment borders based on localized social factors, called "communities of interest", the overriding definitional criterion was hydrologic. Although the environmental orientation of the regional council boundaries has been criticized for ignoring traditional political and economic considerations, the application of "natural system" boundaries for environmental and natural resource planning has long been advocated, but rarely used on a comprehensive scale.<sup>70</sup>

## THE RESOURCE MANAGEMENT ACT

The Resource Management Act is the centerpiece of New Zealand's sustainable management strategy.<sup>71</sup> It is comprehensive in its scope and lays out a holistic and integrated approach for the use of natural and physical resources. The RMA repealed and consolidated most former environmental and land use planning legislation. The Act provides for integrated management of land, water, and other natural resources.

### *Principles*

At its core the RMA establishes the sustainable management of natural and physical resources as the guiding principle of New Zealand's resource management decisionmaking. The statutory weight given to sustainable management is unique to New Zealand. The definition of sustainable management used in RMA is straightforward:

sustainable management means managing the use, development and protection of natural and physical resources in a

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68. Moran, *supra* note 38, at 232.

69. LOCAL GOVERNMENT COMMISSION, *supra* note 64, at 18.

70. See generally I. McHARG, DESIGN AND NATURE (1969).

71. BÜHRS & BARTLETT, *supra* note 14, at 10.

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.<sup>72</sup>

Specific criteria surrounding the definition are provided on two accompanying lists. These lists provide more specific language concerning the components which are included within the Act and standards by which sustainable management is measured. There is an implied hierarchy with one labeled "Matters of national importance" and a second "Other matters", but both have statutory recognition.<sup>73</sup> All decisions made in the course of implementing the RMA are required to consider and provide for the "Matters of national importance." They include:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.<sup>74, 75</sup>

The second list, "Other matters," is of lesser weight but still requires consideration during decision-making processes. Items included on this list are:

- (a) Kaitiakitanga:
- (b) The efficient use and development of natural and physical resources:

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72. N.Z. Stat. No. 69, Part II § 5 (2) (1991).

73. *Id.* at Part II, § 6-7.

74. *Id.* at Part II, § 6. Following the lead provided by the legislation, we use appropriate Maori terminology throughout the text of this paper.

75. The respective terms are defined in the glossary at the end of the paper.



- (c) The maintenance and enhancement of amenity values:
- (d) Intrinsic values of ecosystems:
- (e) Recognition and protection of the heritage values of sites, buildings, places or areas:
- (f) Maintenance and enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources:
- (h) The protection of the habitat of trout and salmon.<sup>76</sup>

The Act is further strengthened by language which directs all decision-makers and actions surrounding the RMA to take into consideration the principles of the Treaty of Waitangi.<sup>77</sup> This requirement reflects recent judicial decisions which have given treaty obligations new legal standing and obligated New Zealand governments to, at least, consider the ramifications of natural resource decisions on Maori rights.<sup>78</sup>

Unlike the former environmental and land use legislation, the RMA is not prescriptive. The Act focuses on the regulation of the effects of human activities on the environment, rather than on regulating human activities per se.<sup>79</sup> It is a performance based approach to regulation. As the Minister for the Environment noted in his reading of the Act, the RMA promotes sustainable management in two ways:

[F]irst, through the allocation of resources in public ownership such as the coast and geothermal energy; and, secondly, through limiting the adverse environmental effects of the use of natural and physical resources. For the most part decision makers operating under the Bill's provisions will be controlling adverse effects, especially in relation to the use of private land.<sup>80</sup>

The use of performance-based regulations introduces a set of potential difficulties that traditional prescriptive standards avoid. Performance assessment can require larger amounts of information and longer periods for analyses. Because of the analytical requirements associated with performance structured planning, the time needed to formulate policies and programs may actually be greater; sacrificing the objectives of "streamlining" the decision-making process. However, performance based management allows for greater precision in resource

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76. N.Z. Stat. No. 69, Part II, § 7 (1991).

77. *Id.* at Part II, § 8.

78. See generally R. Cant, *Waitangi. Treaty and Tribunal*, 89 N.Z. J. of Geog. 7-12 (1990); WAITANGI, MAORI AND PAKEHA, PERSPECTIVES OF THE TREATY OF WAITANGI (I. Kawharu ed. 1989); J. KELSEY, A QUESTION OF HONOUR? LABOUR AND THE TREATY 1984-1989 (1990).

79. G. Banks, *Society and the RM Act*, 19 Terra Nova 7, 8 (1992).

80. Gow, *supra* note 37, at 18.

decisions and is more compatible with a sustainable management framework.

A second important change in policy direction relates to environmental impact assessment. Under the former policy regime, environmental impact assessment was an incremental process largely carried out on a project or site specific basis. In addition, the process by which environmental impacts were addressed, the Environmental Protection and Enhancement Procedures, lay outside of the primary planning legislation—the Town and Country Planning Act 1977.<sup>81</sup> The process was non-statutory, with most local governments as well as central government policies avoiding impact assessment. The RMA framework addresses these concerns and incorporates environmental impact assessment directly into the planning process. The Act is founded on the principle of "avoiding, remedying or mitigating any adverse effects of activities on the environment".<sup>82</sup> The definition of environment used in the Act is broadly framed so as to include social, economic, aesthetic and cultural conditions as well as physical and biological factors.<sup>83</sup> Similarly, effect is also broadly defined.<sup>84</sup>

While the term environmental impact assessment is not used in the RMA, governments at all levels are required to measure and consider the consequences of their proposed actions on the environment. Environmental assessment is called for at all stages in resource management process. The consideration of environmental consequences is built into the process from the preparation of natural resource policies and local government land use plans to the granting of development consents by government bodies.<sup>85</sup> For example, before the adoption of any policy or regulation territorial or local governments are bound to consider alternatives as well as assess the costs and benefits of the proposed action.<sup>86</sup> Similarly, regional and district plans also require an assessment of environmental results prior to implementation.<sup>87</sup>

### ADMINISTRATIVE RESPONSIBILITIES

Another improvement in the RMA is administrative. The Act clearly identifies the role that each level of government, central,<sup>88</sup>

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81. Town and Country Planning Act, No. 121 (1977) (N.Z.)

82. N.Z. Stat. No. 69, Part II, § 5 (2)(c) (1991).

83. *Id.* at Part I, § 2.

84. *Id.* at Part I, § 3.

85. C. Barton, *Not Just An Add-On*, 108 Plan. Q. 18-20 (1992).

86. N.Z. Stat. No. 69, Part IV, § 32 (a)-(c) (1991).

87. *Id.* at Part V, §§ 62, 67 & 75.

88. *Id.* at Part IV, §§ 24-29.

regional;<sup>89</sup> and territorial, will perform in the environmental management process.<sup>90</sup> It cuts through administrative inconsistencies and overlaps which characterized the former structures. The RMA shifts key decisionmaking powers from the central to local level, reflecting the view within government that decisions about resource use and the environment should rest in the first instance with local communities.

Figure 2 presents the administrative framework laid out by the Act, with individual agency responsibilities and specific examples of program management identified. The MFE is charged with monitoring the effectiveness and implementation of the RMA. Under statutory authority the MFE is given the authority to prepare national environmental standards and regulations to control specific pollutants, including air, water, noise, soil, and contaminants.<sup>91</sup> The MFE is empowered also to prepare National Policy Statements on matters of national significance relating to resources and the environment.<sup>92</sup> In deciding whether to prepare a National policy statement, the MFE can consider a number of specific points, including: "(a) The actual or potential effects of use, development, or protection of natural and physical resources and (b) New Zealand's interests and obligations in maintaining or enhancing aspects of the national or global environment . . . ."<sup>93</sup> If a National Policy Statement has not been prepared, and so far only a national coastal policy is mandated under the legislation, the MFE, through the Minister, can "call in" a specific proposal which raises matters of national or global environmental significance.<sup>94</sup> If a determination is made that adverse effects will occur as a result of the proposal, development consent might not be granted.

Playing a supporting role at the national scale is DOC. Although governed by separate legislation, DOC was given administrative responsibility under RMA to guide the management of coastal resources, through the development of a national coastal policy.<sup>95</sup> The DOC also has authority to review all local policies and plans relating to coastal resources, rejecting those local actions which do not meet the RMA requirements.<sup>96</sup> In some circumstances, the DOC is assigned responsibility for issuing development consents for the coastal zone.<sup>97</sup>

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89. *Id.* at Part IV, § 30.

90. *Id.* at Part IV, § 31.

91. *Id.* at Part IV, § 24 & § 52.

92. *Id.* at Part V, § 45.

93. *Id.* at Part V, § 45 (2).

94. *Id.* at Part VI, § 140.

95. *Id.* at Part IV, § 28.

96. *Id.*

97. *Id.*

Although the RMA explicitly channels most of the decision-making authority to subnational governmental agencies (the regional councils and the territorial authorities), the powers and mechanisms assigned to MFE and DOC discount the notion of a complete abdication of decision-making authority. Thus, the Act provides for selective decentralization of authority. On issues of special environmental interest or global environmental significance, the RMA is crafted to allow for overriding national-scale decisions.<sup>98</sup> This check is seen as an important counter balance for any potential local decisions which could marginalize large scale sustainable management goals.

Among local government units, the regional councils are presented with the greatest responsibilities and the most far reaching potential to implement sustainable management. The councils play a pivotal role in resource management administration at the community level. The use of catchment boundaries to delineate the territories of the regional councils is logical given their environmental management duties. Indeed the retention of the former non-physical boundary system would have impeded these efforts.

The power vested within the regional councils is a consequence of several factors. First, as a part of the local government restructuring the councils were given primary responsibility for environmental and natural resource management. In particular, the elimination of various independent ad hoc agencies allowed the consolidation of a variety of resource functions. Today water resource development, water and soil conservation, geothermal resources, pollution control, and regional natural hazard mitigation are handled by the regional councils. In carrying out the responsibilities in these areas, each council is directed by the RMA ". . . to achieve integrated management of the natural and physical resources of the region: (b) to [prepare] objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance".<sup>99</sup> The charge to the councils is clear; they are to develop integrated policies which weave together natural and human environmental concerns, and to ensure that their policies and programs avoid negative environmental impacts. This holistic approach is an important advance over the former incremental process, providing environmental benefits to local communities while complementing national sustainability goals.

Secondly, the regional councils have been given the assignment of taking the broad framework of sustainable management and turning it into locally focused guidelines. The RMA directs each council to

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98. *Id.* at Part VI, § 140.

99. *Id.* at Part IV, § 30 (1).

develop a regional policy statement.<sup>100</sup> The purpose for the policy statement is to "achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region."<sup>101</sup>

The regional policy statements present an assessment of existing conditions and a direction for resource management in the region. They provide policies and guidelines for achieving integrated and sustainable resource management.

The regional policy statement is shaped by the objectives of sustainable management and related national-scale policy statements and environmental regulations, but it reflects each specific physical and human environment setting. How individual regional councils choose to attain integrated sustainable management is not prescribed by RMA. In fact, local flexibility is at the core of the Act. In practical terms, the regional policy statement is the nexus wherein sustainable management is realized, emerging from national guidelines and local resource policy decisions.

In addition to regional policy statements, RMA enables regional councils to prepare regional plans. Regional plans are optional, except for development of a mandatory regional coastal plan. These plans represent a more detailed scale of environmental management and regulation which regional councils can undertake in order to foster regional resource goals. The RMA encourages the use of this tool to avoid or mitigate conflicts between economic and conservation interests, to protect or restore natural or physical resources of regional significance, reduce the threat of natural or technological hazards, to address specific pollution concerns, or to help implement a national policy statement at the local level.<sup>102</sup> Under the Act concerned citizens or groups can petition a regional council to prepare or change a regional plan.<sup>103</sup>

Local territorial governments, the district and city councils, retain their traditional authority over land use planning, subdivision consents, and the control of noise, natural and technological hazards, and water quality, but they have lost their independence on strategic planning and environmental management issues. Although the Local Government Act portrayed regional councils and territorial councils as complementary equals, the districts and cities have far fewer powers in terms of resource management. Similarly, the position of regional planning in comparison with town planning has been strengthened. Through the preparation of

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100. *Id.* at Part V, § 60.

101. *Id.* at Part V, § 59.

102. *Id.* at Part V, § 65 (3).

103. *Id.* at Part V, § 65 (4).

regional policy statements and the management of regional environmental resources, regional councils can map out strategic plans and directions which shape the form and character of city and district development. Regional policy statements and plans, like national policy statements and environmental standards, must be followed by territorial councils.

Local councils continue to exercise control over the pattern of community growth through the planning and consent processes. However, the decision-making process is guided by the goals and policies contained in the RMA and the regional articulation of policies provided by individual regional councils. Local governments are free to engage in community development programs which further the purposes of RMA, but not circumvent the goals of sustainable management.

The Planning Tribunal is the authority which adjudicates appeals over development consents. Appeals can be lodged by members of the public, government agencies, iwi authorities, and resource developers.<sup>104</sup> Specific provisions have been made for mediation and conciliation prior to the formal hearing process.<sup>105</sup> If the dispute is not resolved, evidence is heard before the Planning Tribunal and the decisions are binding on all parties,<sup>106</sup> subject to appeals to a higher court on points of law only.<sup>107</sup> The Planning Tribunal occupies a role of fundamental importance, since it is through the decisions of the Tribunal that the intent of the Act will be interpreted. Hence, what indeed is defined as sustainable management will be determined in no small part by the rulings of this judicial authority.

### CRITICAL ISSUES IN IMPLEMENTATION

As with any major new policy initiative, the road to developing sustainable management strategy in New Zealand has been long and fraught with controversy. And it remains unsettled in many respects. Because of the scale and complexity associated with the task, the implementation of the sustainable management edict is still in its incipient phase. Nonetheless, a review of the experiences that have arisen in the course of proceeding toward implementation exposes several important questions which warrant consideration.

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104. *Id.* at Part VI, § 120-121.

105. *Id.* at Part XI, § 267 (1).

106. *Id.* at Part XI, § 295.

107. *Id.* at Part XI, § 299.

### *Regional Differences*

One primary goal of the governmental restructuring which accompanied New Zealand's environmental reform was to change power relations between the central government and localities. At the core local decision-makers have been given the authority to make determinations in respect of the management of resources. Decisions surrounding how the local natural resource base is to be utilized should be guided by locally determined goals and policies, operating within a framework of specific national interests. The prescriptive formulas and very active role assigned to central government resource management agencies contained in the former land use planning and environmental management legislation are excluded by the RMA. While individual regional policy or planning initiatives must reflect sustainable management, they are more accountable to local concerns and needs.

This empowerment of regional councils has raised many questions concerning the ultimate effect on policy formulation. The most widespread concern is the potential lack of policy consistency between regions. Under the former environmental management regimen, national rules and policy guides assured that resource management plans and land use planning schemes were carried out throughout New Zealand on a broadly consistent basis. Resource management and land use planning programs could not be ignored, even in areas where local officials were not particularly supportive of environmental agendas. The new institutional structures remove the even-handedness mandate. On the one hand this is desirable, since it permits direct expression of the goals and values of local communities. However, some people worry that resource policies reflective of short term economic and social concerns or the ethos of the local setting rather than large scale, longer term issues might eventuate. Similarly, funding questions and planning sophistication could also foster substantial regional differences. Those regions with better funded planning staff or more progressive planning efforts might be expected to develop more thorough, effective policies. In either case, critics warn that significant differences in environmental and natural resource management will evolve between regions.

The key issues are, of course, how much regional differentiation will take place and how much variation is bad. Early evidence suggests that regional policy guides will not vary too dramatically between different areas. Regional councils are sharing copies of draft guides with other councils as they are prepared, and planners are generally communicating among themselves on policy issues. Moreover, regional council staff are extremely sensitive of the requirements contained in the RMA, especially sustainable management goals, and are working toward crafting regional policies and plans which meet statutory requirements.

Finally, it might be posited that some regional differences in policy guides are to be expected and necessary if a sustainable approach to resource management is to be implemented. A number of researchers have noted that sustainability embodies locally driven, flexibly structured development forms.<sup>108</sup> A "top-down" planning model, which does not allow for localized differences in policy development cannot engender public commitment and support necessary to bring about a sustainable alternative. As long as regional policies and directions are shaped by the national interests, as contained in the RMA, regional flexibility strengthens the implementation of sustainable management.

### *Protecting the National Interest*

A concern not unrelated to the question of regional differentiation is that relating to the protection of national interests in the decisions made in respect of resources. In many cases, and particularly in a small nation like New Zealand, the only sensible boundary to draw is the national one, since citizens have a vested interest in many aspects of resource use, irrespective of location. In a direct sense, the RMA removes decision making authority over resources from the wider citizenry and relocates this decision making power at the regional level, for reasons that have been identified already. If this authority was unfettered, then the protection of the national interest would not be insured.

The RMA sets in place several mechanisms by which the national interest can be guarded. Most of these have been identified in the discussion above, including the rights of the MFE to set national environmental standards and of the Minister to call-in controversial developments. There is also the provision to prepare national policy statements, as is already required in respect to the coastal environment. In respect to the national interest as well, it is relevant to also note that all of the regional policy statements must be approved by the Minister for the Environment. Moreover, the rights to appeal decisions and to appear before the Planning Tribunal have been extended considerably, with the effect that any interested citizen, irrespective of their geographic location, can become involved in decisions over the issuing of resource use consents.<sup>109</sup> There is also the fact that the resource management system is subject to continuous review by the Parliamentary Commissioner for

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108. See generally Beatley & Brower, *supra* note 1; HERBERT GIRARDET, *THE GALA ATLAS OF CITIES, NEW DIRECTIONS FOR URBAN LIVING* (1993); FREDERIC O. SARGENT ET AL., *RURAL ENVIRONMENTAL PLANNING FOR SUSTAINABLE COMMUNITIES* (1991).

109. N.Z. Stat. No. 69, Part VI, § 120 (1991).



the Environment; decisions that might jeopardize the national interest significantly are likely to come under the scrutiny of this office.

Thus, while there is a strong tendency within the RMA to devolve responsibility for resource use decisions, the legislation establishes also a system of checks in support of the national interest. The effectiveness of the system in balancing local and national priorities is yet to be tested.

### *Environmental Impact Assessment*

Prior to the restructuring, environmental impact assessment (EIA) was ad hoc in scope and reactive in approach. The emphasis of the RMA is on the holistic use of natural and human resources, and includes the assessment of environmental consequences prior to taking action. In practical terms, EIA has been incorporated into the RMA planning process. The Act explicitly defines the critical terms "environment"<sup>110</sup> and "effect"<sup>111</sup> so as to provide broad legal boundaries for what sorts of human and natural components must be examined, and how significant impacts are defined. Additionally, the requirements for public involvement provide citizens and environmental interest groups with new accessibility to data and for greater opportunities to participate in the EIA process.

Proponents of the new environmental framework see the internalization of EIA as one of the strongest innovations coming from the RMA.<sup>112</sup> EIA is perceived as complementing sustainable management. It is a planning technique which is to be used on a variety of levels, from measuring the achievement of sustainability among individual policies on programs to assessing the conformity of individual regional and territorial policies and plans with national policy guides.

Some commentators are more cautious in their evaluation, however. While there is a general recognition that EIA could be strengthened by the changes, there is also the concern that the shifting EIA responsibilities to regional and territorial governments could weaken it.<sup>113</sup> In other words, EIA which is internalized within resource management and planning processes and decentralized to the local levels may be less effective. This could be the case particularly for those regional councils with little experience or resources to scrutinize EIA carried out

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110. *Id.* at Part I, § 2.

111. *Id.* at Part 1, § 3.

112. Gow, *supra* note 37, at 17.

113. R. Morgan, *Approaches to Environmental Impact Assessment Under the Resource Management Act*, in *IMPLEMENTING THE RESOURCE MANAGEMENT ACT 39-49* (R. Morgan et al. eds., 1991).

within their jurisdictions, or in regions where local perspectives present problems in weighing the various tradeoffs (e.g., economic impacts versus environmental impacts).

### *Regional Boundaries*

From the outset the use of catchment boundaries to define the territories of regional councils has been controversial and potentially problematic. Also, local territorial boundaries, e.g. city and district council boundaries, were not redrawn to fit catchments. Thus, some districts have been split between regional councils. This partitioning affects 10 district councils in 10 regional councils. Potentially, the splitting of territorial governments could create serious resource management dilemma for district councils faced with reconciling differing regional policy statements.

The more fundamental issues, though, are associated with the use of physically-based criterion to establish boundaries for a governmental unit. Political structures are thought to represent human values, and ideally boundaries delineate populations with shared interests and characteristics. The adequacy of catchment boundaries for representing smaller scale "communities of interest" has not been strongly argued. Clearly, social and cultural cohesion are not necessarily fostered by boundaries demarcated by environmental parameters. Nonetheless, given the emphasis on resource management issues, the use of non-environmental boundary delineation methods might have been less appropriate overall.

### *Representation of Maori Rights*

The statutory language of the RMA clearly obligates government to consider the rights of the Maori people and the principles of the Treaty of Waitangi in applying the legislation.<sup>114</sup> Accordingly, national and regional resource management policies should identify values and interests of the tangata whenua and ensure that these concerns are incorporated into the processes of managing natural and environmental resources. At a general level, this duty to recognize and provide for concerns of the tangata whenua is straightforward and reasonable; but in practical terms it raises serious questions concerning the scope of Maori rights and control over natural resources. How much input should iwi in each region have in the decision-making process? How far should national and regional policies go in accommodating the wishes of the

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114. N.Z. Stat. No 69, Part II, § 8 (1991).

tangata whenua. These are operational issues embedded in larger questions of Maori mana, kaitiakitanga and rangatiratanga. The vexing problems of environmental and natural resource management are but symptomatic of a larger fundamental issue of Maoridom's position in New Zealand society.

Ironically, the achievement of Maori aspirations would greatly strengthen the goals of sustainable management. Maori traditions and approaches to environmental management are far more compatible with ideas of sustainability than Pakeha (European) norms. As the Resource Management Law Reform Group noted in their assessment of the proposed sustainable management policy:

The protection of environmental integrity and the sustainable use of natural resources is entirely consistent with traditional Maori practices of resource husbandry such as rahui. "Sustainability" is a Pakeha concept which reflects principles at the heart of traditional Maori lore. The concept of "intrinsic values" can be related to the Maori concept of mauri; concern about the needs of future generations is an approximation of the more fundamental Maori concept of the continuity of all life, including people, over the past, the present and the future.<sup>115</sup>

### *Political Feasibility*

Ultimately, the "bottom line" for New Zealand's sustainable management program will be determined by political resolve. Does the public support a sustainable approach to development, are they willing to make the inherent social and economic adjustments associated with the policy and will they continue to support this model in the future?

To date, experience suggests that the support for individual environmental reforms which comprise the sustainable management approach remains strong. Public participation in environmental management issues is widespread and intensive. Citizen involvement and participation in formulating the national coastal policy statement, for example, has been unprecedented. At the same time, both major political parties, Labour, which initiated the reforms and National, which currently administers the programs, support sustainable management, in words if not deeds.

New Zealanders have seen a decade of tough economic and social change. The restructuring of the economy and social life have had profound affects on quality of life and livelihood.<sup>116</sup> The hallmark of

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115. RESOURCE MANAGEMENT LAW REFORM CORE GROUP, RESOURCE MANAGEMENT LAW, OBJECTIVES FOR RESOURCE MANAGEMENT: WHY, WHAT AND HOW (1988).

116. Britton et al., *supra* note 21, at 288.

this era has been a substantial reduction of state intervention in economic and social affairs. At the same time, however, the character and degree of government involvement in environmental issues, vis a vis the RMA and related actions, was accelerated. These two seemingly conflicting trends reflect the growth of support for "green" political positions in New Zealand, and the acceptance of government activism in environmental quality matters.

## CONCLUSION

At a time when many governments are just beginning to consider sustainability as an alternative course for future development, New Zealand is in the midst of implementing a pioneering effort. Underpinning the move toward the sustainable management program has been widespread and fundamental changes in the administrative and statutory framework surrounding environmental quality and natural resource management. Equally dramatic shifts have restructured political boundaries and responsibilities. All of these changes have taken place in a context of government reform which emphasized the decentralization of government authority for local-based decisions but nationalized larger policy decisions and removed prescriptive regulations, while providing safeguards for central government involvement in national and international scale policy questions.

Over the past two years substantial progress has been made toward translating the broad language of the legislation into working policies and guidelines. The initial planning documents and management directions indicate that sustainable management is translating into new approaches to natural resource management and land use planning which combine earlier management strategies with progressive initiatives. Along the way challenges, often based on tensions created by the new approach or expectations based upon earlier ways of managing natural resources, have slowed policy implementation. This is to be expected. But it has not stopped movement toward fuller implementation.

The experiences and approach to sustainable development adopted by New Zealand are colored by its history setting, and cultural context. It can only be a general model for other places. Nonetheless, it clearly illustrates that sustainability can be articulated in real world legislative language and supported by administrative forms. Although the New Zealand experience cannot be translated unmodified to North America, Europe, or any other place, it stands as a general example to be watched and learned from.

## Glossary of Maori Terms

iwi	tribe
Kaitiakitanga <sup>2</sup>	the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.
mana <sup>3</sup>	authority; control; influence; prestige; power
mauri <sup>3</sup>	life principle
pakehal	not Maori; European
rahui <sup>3</sup>	a mark to warn against trespassing; a closed season
rangatiratanga <sup>3</sup>	chieftainship
tangata whenua <sup>3</sup>	people of the land
taonga <sup>3</sup>	highly prized possession; treasure
tapu <sup>3</sup>	under religious or superstitious restriction
waahil	part; place; small (placed before noun)

1. P. Ryan, *The Revised Dictionary of Modern Maori* (1989).
2. Resource Management Act, No. 69, Part I, § 2, (1991) (N.Z.).
3. Ministry for the Environment, *New Zealand's National Report to the United Nations Conference on Environment and Development: Forging Links* 102 (1991).

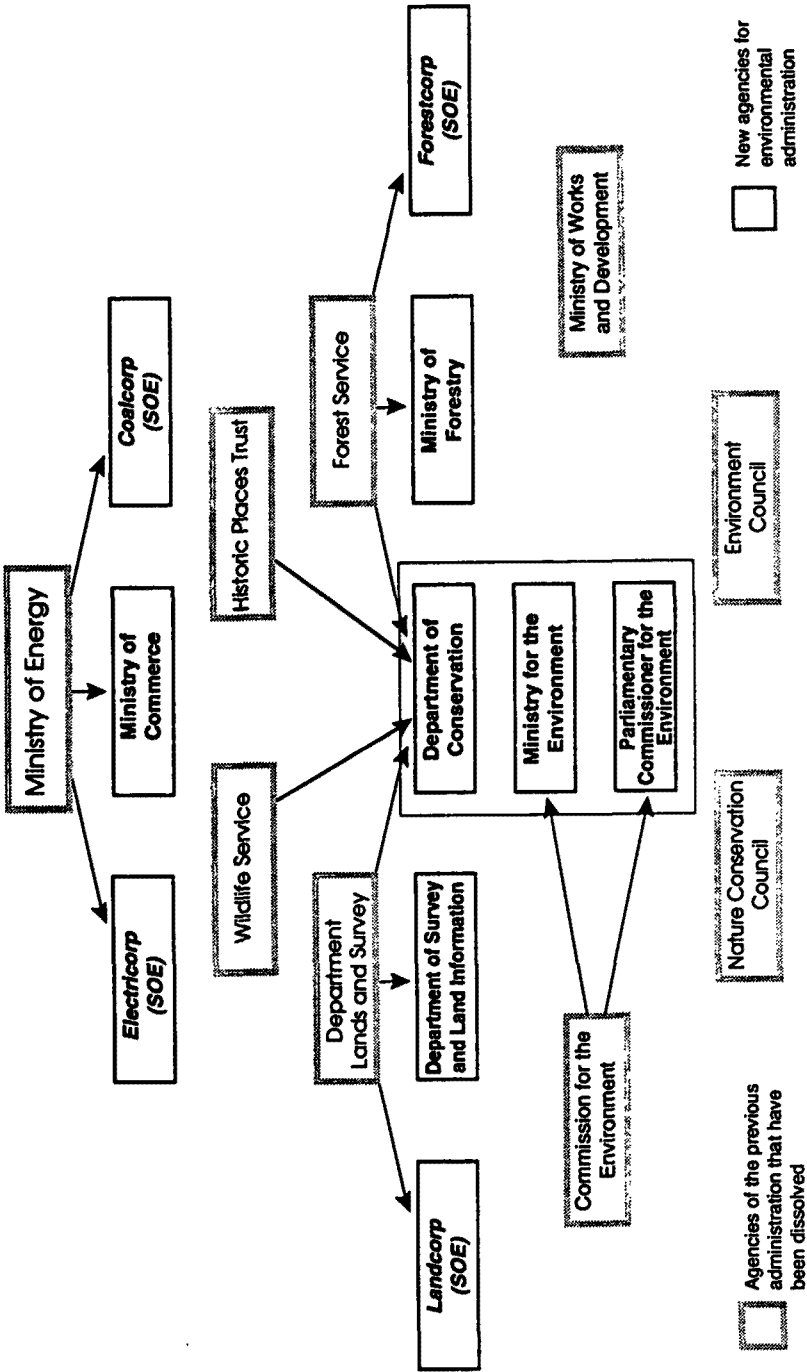


Figure 1. The Existing Environmental Administration in Relation to its Predecessor

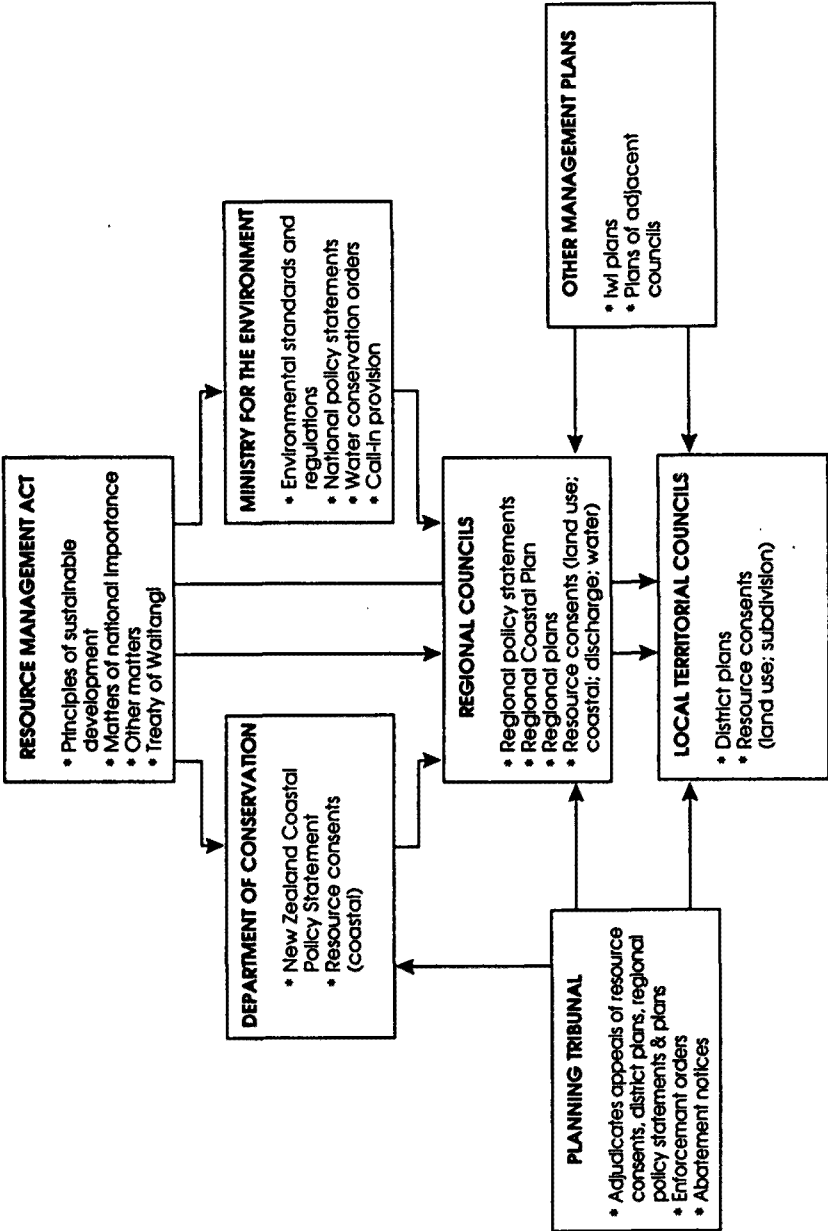


Figure 2. The Resource Management Planning Framework