

Sustainable management, a sustainable ethic?



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Overview

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- **New Zealand is country rich in biodiversity and natural resources, steeped in Maori culture and indigenous values, that legislated for sustainability in 1991**
- **Despite the rhetoric of sustainability, NZ environmental law and governance continue to grapple with persistent challenges**
- **New strategies are however emerging for promoting environmental justice and using the law to promote sustainability**

Sustainability

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- **Sustainable development**
 - “sustainable development” is ... a synonym for “rational development” because it is a process of making the best practicable use of natural resources for the welfare of people
 - Martin Holdgate, former IUCN Director-General, *How can development be sustainable?* RSA Journal, November 1995, 15 at 25
- **Sustainable management**
 - Overriding statutory purpose: To promote the sustainable management of natural and physical resources
 - *Resource Management Act 1991 (RMA)*

Sustainable management

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- **Sustainable management is not sustainable development**
 - One disadvantage of adopting the term “sustainable development” is that the concept outlined in “Our Common Future” embraces a very wide scope of matters including social inequities and global redistribution of wealth. It is inappropriate for legislation of this kind to include such goals.
- **Report, Resource Management Bill Review Group, February 1991**

Semantic debate

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- **Semantic debate 1994-1997**
 - The fundamental difficulty ... is that whilst the political intent (underpinned by neo-liberal ideology) of the resource management legislation is to limit intervention in resource allocation decisions and to curtail the role of planning in regional and district affairs in preference to market processes, the legislative wording in general and the concept of sustainable management in particular, paradoxically, requires increased intervention and more comprehensive planning ...
- **Grundy, KJ *In search of logic: s 5 of the Resource Management Act* New Zealand Law Journal, February 1995, 40 at 44**

Johannesburg 2002

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- **Sustainable development in New Zealand**
 - Emphasized the role of sustainable management “as an ethical concept that, like justice, our law should seek to embrace, and that will require major structural reforms”
 - Persistent challenges relating to water allocation and water quality, and Maori engagement had not been addressed under the RMA
 - RMA debate was focused on process rather than substance
- **Justice Peter Salmon QC CNZM, inaugural Salmon Lecture 2002**

Persistent challenges

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- NZ is a significant contributor to global biodiversity but has one of the highest species extinction rates due to continued habitat loss
- Supply of clean water is plentiful, but water demand from agriculture and urban growth is increasing, and 50% of rivers and aquifers have elevated nutrient levels
- Recognition of Maori interests in resource management has not been reflected in practice

New strategies

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- **New strategies are emerging for promoting environmental justice and using the law to advance sustainability**
 - National policy statements (NPS) prepared on freshwater management, renewable energy and indigenous biodiversity
 - Regional rules prepared to allocate freshwater resources and allow nitrogen offsetting
 - Co-management of freshwater resources has been enacted to ensure Maori participation in environmental decision making
 - But protecting biodiversity on private land has continued to rely on voluntary methods due to “property rights” resistance to district rules

National policy statements

- **NPS for Renewable Electricity Generation 2011**
 - Ensures a consistent approach to planning for renewable electricity generation in New Zealand by giving clear directions on the benefits of renewable electricity generation and requiring all councils to make provision for it in their plans
- **NPS on Freshwater Management 2011**
 - Sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits defined via local authority plans
- **Draft NPS on Indigenous Biodiversity**
 - No provision for hearing on submissions/regulatory methods

Freshwater allocation

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- **The significance of Variation 6 for the Waikato region is obvious. The rules are more restrictive than previously and the policy guidance contained in the new plan provisions will be given significant weight in decisions on applications for water take and use permits. The real significance of Variation 6 is that it is one of the first examples of a more comprehensive approach to water allocation. The impetus for such fresh approaches has now increased with the coming into force of the NPS on Freshwater Management ... [Source: Severensen]**

Nitrogen offsetting

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- Waikato Regional Council has recently addressed ... diffuse nitrogen discharges from land use in the Lake Taupo catchment ... to preserve the clarity of the water in the lake. It did so via a novel suite of regulatory and non-regulatory measures involving a variation to its regional plan, Variation 5 (RPV5), to ... impose a “cap” on nitrogen discharges ... and establish a trust which administers a public fund to achieve a 20 per cent reduction ... of historical discharges of nitrogen that are in transit to Lake Taupo via groundwater. [Source: Berry & Malone]

Nitrogen trading

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- RPV5 makes provision for nitrogen trading by means of changes to resource consent conditions and controlled-activity consents. For example, farmers who have consents can agree between themselves that one will increase an NDA and the other will reduce an NDA by the equivalent amount. The changes in NDAs are then secured by the simultaneous processing of s 127 application for changes to the NDA conditions of each consent.
- Berry, S & Malone, C *Dealing with nitrogen leaching into Lake Taupo* April 2012 RMJ 17

Co-management of resources

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- **Traditional and pragmatic views**
 - Water was both an everyday resource which sustained life and facilitated travel, and a ritual resource which was incorporated into ceremonies which sustained the spiritual health of the tribe.
 - The importance of water to ritual was that it had the capacity to absorb and nullify spiritual pollutants.
 - The main ritual use of water was to release *tapu* from people, in order to prevent or destroy the spiritual harm which accrued to them through activities such as the fact of being born, fighting, accidents or the malevolence of enemies
- **Mikaere, B *Designing our future – A new whakaaro*
RMLA Conference 2000**

Waikato River

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- **Treaty settlement process**
 - The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations
 - Deed of Settlement, 22 August 2008
- **Waikato-Tainui Raupatu (Waikato River) Settlement Act 2010**
 - Vision and Strategy for giving effect to the objective of restoring the river included in the statute and inserted into the regional policy statement (RPS)
 - Provision made for equal Maori membership on all decision making local authority committees

Settlement Act

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- Previously, methods used to protect Maori culture and traditions included statutory acknowledgements of sites of special significance, coupled with enhanced provision for public notice of applications and third party participation in appeals
 - The co-management regime established by the Settlement Act ... is radically different to what hitherto existed under the Resource Management Act and what currently exists elsewhere in New Zealand
- *Carter Holt Harvey v Waikato Regional Council* [2011] NZEnvC 380 at 39

Conclusion

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- Arguably the New Zealand debate about sustainable management remains focused on process rather than substantive outcomes
- Failure to provide timely national guidance has been a major stumbling block
- Continued reform of the RMA provides an opportunity to lay some ghosts to rest
- But the history of ongoing legislative reform indicates that major structural reform is unlikely
- To an extent the same challenges continue to persist

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