

## RETHINKING NEW ZEALAND'S ENVIRONMENTAL ADMINISTRATION

A presentation to the Environmental Defence Society Conference, "Reforms in Paradise", Auckland, 8-9 June, 2009

Hugh Logan

The current structure of New Zealand's environmental administration is nearly twenty-five years old. The context in which this administration was formed has changed. Environmentalism is no longer a peripheral concern. Environmental issues challenge national economies and social harmony. They sit at the heart of government both in New Zealand and worldwide.

In examining how New Zealand's environmental administration works, and could work better, I will begin with four propositions.

First, we haven't viewed our policies, institutions and knowledge bases as components of an integrated environmental management system. This has resulted in a lack of clarity about the overall outcome we expect this system to deliver.

Second, we haven't developed clear expectations of performance of the system and only recently reinvigorated measuring its results.

Third, we haven't given enough attention to how the system works, or could work better. For example, important aspects of management have a peculiarly devolved approach which is long on democratic process (which most will argue is a good thing) and rather shorter on examining the environmental results (which some will say is not such a good thing). Co-ordination efforts, while commendable, have little formality, and operate under the radar screen, while formal co-ordination tools have been little used and are complex; cynics might argue deliberately so.

Fourth, our approaches tend to focus on the pragmatic, with a 'fix it' mentality, and hence tend to miss the bigger drivers or those issues which will present environmental problems further down the road.

### 1. Getting Clear About What Environmental Administration Is For

Just short of twenty-five years ago, there was radical institutional reform of environmental administration in New Zealand. Prior to that, environmental administration was co-ordinated through centralised development-oriented departments of state, with a more subservient role played by local government, and an ad hoc plethora of quasi government agencies, regulatory and management boards, and advisory groups. The co-coordinating departments tried to balance development with better environmental practice. The mix of development and environmental administration in single agencies usually resulted in the development imperative overriding the environmental one. The reforms, in the late 1980s, saw the large departments abolished. Three specific central government agencies were set up for policy (Ministry for the Environment [MfE]), operations (the Department of Conservation [DoC]), and audit and review (the Parliamentary Commissioner for the Environment [PCE]). Central government shed much of its previous operational and regulatory roles, and generous grants and subsidies were limited or withdrawn. Local government was overhauled, particularly regional government. Environmental management responsibilities were more firmly grafted into their functions. It was a rare example of conscious overall governance design.

There has been evolution since, with the creation of Environmental Risk Management Agency (ERMA), fisheries management taking a wider marine environment management role, biosecurity changes, and environmental management roles taken on by multipurpose agencies such as the Ministry of Agriculture and Forestry (MAF), Ministry of Economic Development (MED) and others. In my view, however, developments have been iterative and somewhat reactive.

At the same time we have seen an enormous growth in public and private expectations of environmental performance. Despite this, there is a singular lack of awareness about the New Zealand environmental management system. If you asked someone in the street to describe that system they probably wouldn't know what you were talking about. They might be able to relate to the Resource Management Act (RMA) but would be hard pressed to link the other elements of environmental management such as biosecurity, nature conservation, mitigating natural hazards waste management, and climate change response. They would know, however, about the health system or the education system, if you asked them. A consequence of this, in my view, is that there is neither a clear expectation of an overall outcome from the system nor consistent approaches to performance.

What is the goal of New Zealand's environmental administration? It is often portrayed as supporting a "Clean green NZ". But this doesn't fit the bill. Clean green NZ is a 'brand' statement, not a goal. Some say that the stated goal for the nation's economy is growth (although there exists a body of opinion would argue this objective is ultimately environmentally destructive), and for the social sector it is harmony and social opportunity for all (another body of opinion argues this objective stifles opportunity for the individual to excel). I don't think we have the same degree of clarity of purpose for the environment sector at present. Environmental administration is about influencing human behaviour and activity, and mitigating the effects of that activity on the natural environment. I could suggest that our goal might be "A Valued Natural Environment", but the finalisation of any goal is a social and political decision. So, building on my first proposition, we should be clear about the overall outcome we want from our environmental management system. In order to know how to proceed, we need to state what we want.

## 2. Targets, Monitoring and Measurement

My second proposition was about performance expectations. Currently, there is a focus on efficiency, but what is efficiency for? There are examples of objectives and targets- the Biodiversity Strategy has them - but such examples are few and far between. Besides needing to say what the system is for, we should be clear about where it is intending to go. Stringent targets provide a necessary direction for environmental management.

Targets, to be of value, require good environmental reporting. The recent work in MfE has gone a long way down the right track, but we need to develop better national/regional coordination of reporting and an approach that links reporting of state and condition to assessment of the effectiveness of policies and programmes. There is currently a debate on how national reporting in New Zealand should be organised. I am relatively agnostic about this as long as it involves independently verified data and

avoids negative operational or policy interference, as opposed to positive operational and policy engagement. I have reservations about the proposal that the PCE should do the reporting, as I think it would jeopardise the PCE's defacto auditing responsibility of reviewing agencies and their performance. The way the Australian federal state of environment reporting is run could be a better model.

### 3. The Operation of the System and Its Agencies

New Zealand has a very highly devolved approach to environmental management. We have a limited number of national environmental standards, even though much energy is being devoted at present to some standards. The general absence of standards baffles international observers such as the OECD. As a general rule devolved management operates best with well-designed standards, especially where the work is generic. This not to deny that regional or even local environmental conditions are different and can require different approaches at times. But there is a fine line between true difference and special pleading. The 1990's approach of hands-off devolution and the 2000's approach of 'local knows best' is based on deep-seated countervailing cultural norms of individual rights and egalitarian participatory decision-making. But these norms have also given rise to detailed process substitution, and higher than acceptable regional variation in environmental bottom lines. Devolved environmental management provides benefit in understanding local conditions and tailoring local solutions, and can be effective in bringing about local normative change. It is, however, difficult to manage coherently on a national scale, and is prone to interest capture. The great weakness of the present approach is the lack of national integration in management of the core environmental parameters of water, land, natural hazards, and air (although to a lesser degree because of the presence of national air quality standards since 2005). Nature conservation and marine management are better integrated (there are other institutional problems with marine management which I'll mention later). I want to stress I am NOT advocating rigid centralisation, and but I am advocating better integration. This will require a more active approach to national standards. It will require stronger nationally led co-ordination. We need to go beyond the informality of present mechanisms where everything is a negotiation and agendas are ad hoc.

This brings me to issues of organisational design of government agencies in the system. What we have at present is still built around the core features of the 1980s reforms, but it has been stretched and rather distorted since then. Originally it was predicated on creating a highly skilled, policy-focused environment ministry (MfE), an operational broad-focus conservation organisation (DoC), and an independent reviewer and auditor of the system (The PCE). What has happened since? First and foremost, the context has change. The environment sector is no longer a peripheral concern of government as it was in the 1980s and 1990s. The policy ministry has taken on regulatory and operational roles. This was always inevitable, unless something else was created to carry these roles. The conservation organisation has fallen back to a narrower nature conservation role; also an inevitability given the demands of ecological pressure on biodiversity, enormous size of task originally envisaged for DoC, and resource and relationship issues when faced with development interests. The PCE's audit role has been too wide-ranging and unfocused.

What are the challenges for government environmental organisations in 2009?

- One is expectation. Theoretically the environment sector now sits alongside the economic and social sectors as one of the three legs of sustainable development. Public expectation is that that is where it should sit. Anyone who thinks otherwise needs only to look around at the international developments over climate change, water security, eco-system services, consumer demand for quality and ethics, the debates over genetic engineering, and emerging concerns over nano-technology.
- Another challenge is the marine environment. There are inconsistencies in organisational arrangements, ones which the Fisheries Ministry and Fisheries Minister have tried hard to fill. But the conflicting drivers in institutional arrangements and the litigious nature of the fisheries sector hamper wider, non-fisheries efforts.
- Other challenges lie in how to manage an emissions trading system, which carry complexities on a par with managing exchange rates. Emissions trading systems exist to produce environmental outcomes.
- Government agencies will have to deal with thorny problems of materials flows and materials risks, of which waste management is just a subset.
- New Zealand has a particularly high level of natural hazards. There is a wide range in variability in the standards applied to mitigate such hazards. Mitigation measures require at least some degree of national oversight.
- Environmental agencies will need to design and regularly update a suite of national environmental standards, and have these applied well.
- Finally, the challenge of indigenous biodiversity loss isn't going to go away.

Thus the question arises, “Is the environment sector sufficiently organised at a national level to take on these challenges, in the way the government economic sectors and social sectors are organised at a national level?” I think not.

Nothing I have said here will surprise those close to the action in Wellington. The ‘sustainability’ push of the last government showed that organisational arrangements were struggling. The specific initiatives of that push may have been eclipsed with the new government’s priorities, but the drivers haven’t gone away. In many senses they are increasing. An “environment sector” Chief Executives group<sup>1</sup> has been created to coordinate central government activity. It’s a sensible move. Such semi formal mechanisms do work and have helped, but I hold the view that more clarity is needed around roles and structures.

Short term requirements call for high quality environmental policy advice on the one hand, and on the other hand regulatory and operational capacity to deal with an emissions trading system, with climate change response and mitigation, with waste management and wider material issues including hazardous substances and new organisms, the complexities of water management, with environmental standards and resource use and planning, and with natural hazard mitigation. I would also throw in capacity and capability to oversee the environmental issues in New Zealand’s EEZ, distinct from the nation’s interests in its commercial use. All of this could be provided in either separate policy, regulatory and operational agencies, or in a ‘nested agency’

---

<sup>1</sup> It is called the ‘Resources Sector’, on the grounds that the word ‘Environment’ might scare some interest groups.

approach, with separate internal governance for the respective functions. The former approach provides clarity but risks heavy transaction and integration costs, while the later can more efficient and integrative, but has to be well managed with separate internal governance to avoid one function dominating over another.

In addition we must sort out the respective environmental management roles of central, regional and local government, particularly regional government. Sorting out the roles is an essential precursor to any decisions about any regional or local form and function for national agencies.

Hand in hand with clarifying the respective roles of various levels of government (and it should be debated whether they are actually separate “levels”, or one level of national interest delivered regionally, or locally), we should also consistently develop more sophisticated approaches to driving environmental change. Environmental management as a systems issue is still in its infancy. I liken it to management of the economy in the 1920s, or social policies of an earlier era. We obsess about the respective merits of first generation management tools such as regulation, or economic instruments, or guidance and voluntary compliance. We experiment with various means of engagement at all levels of government. The Europeans, who are far ahead of us in this respect, recognise that environmental issues are more often than not deep-seated and long-term. They involve grappling with social norms and behaviours, just as much as with technical problems. The technical response or the first generation tools alone do not provide the complete answer. The Europeans place more emphasis on the power of organised public discourse (such as the Nordic model), or transition management (an idea pursued by the Dutch). I think we should seek to adopt the best of overseas experience, with the proviso that it works in the New Zealand socio-cultural-economic context.

Besides better integration, we need rigorous assessment of organisational performance in terms of environmental results. A more active approach than occurs at present is needed. In my view, the performance of all governmental organisations in the system, central, regional and local, must be consistently and regularly examined in terms of environmental expectations, objectives and performance.

#### 4. Dealing with the Short and Long Term

Finally I want to talk about our tendency to take the pragmatic path. This can result in incrementalism, and sets up a ‘fix it’ mentality, whereas we also need to look at the wider picture. Pragmatism is a worthy attribute and evident in the most recent Cabinet paper setting out Phase 2 of the Resource Management Act changes. I would characterize these as being divided in ‘easy things’, ‘hard things’ and ‘missing bits’.

The ‘easy things are the proposals to sort out the procedural or overlapping matters between the RMA and the Forest Act, Conservation Act, Historic Places Act, and the Building Act, issues relating to designations (Designations involve the exercise of executive power. It is commonly held that exercise of such powers should be wielded by those who are in some way held to account regularly by the voter rather than by state owned firms, or private companies, as is currently implicit in the RMA), and a National Policy Statement on urban growth- at least if it provides for better urban design and it is not simply a move back to the early 1990s philosophy of anything goes. Look where that got Christchurch and parts of Auckland!

The “hard bits” are proposals for an Environmental Protection Agency (EPA), and water management – the latter because it involves so many vested interests other than environmental ones – business interest, access to a free public good, and thorny questions of property rights, real, perceived, and desired. The EPA is ‘hard’ because it involves reform of agencies and treads into the realm of the relationship between central and local government. Nevertheless, as I have already said the respective roles of central, regional and local government must be sorted out if national environmental standards and their effective implementation are to be achieved.

The ‘missing bits’ are things that flow from other policies. They aren’t necessarily missing from the Phase 2 of the RMA, as I know the issues they present are not far from the minds of the policy makers. But their absence, in my mind, shows the way a focus on pragmatism, fixing things, and the immediate issues can tend to shunt important big picture stuff out of contention. Just consider two examples: energy and transport. These are two areas, which, alongside land use, have enormous influence on environmental outcomes at a technical level. How we generate, distribute, use and conserve energy will have a big influence on the environmental, let alone the economic and social future of this country. We have an opportunity to set a trajectory for an efficient, resilient and environmentally benign energy system. The omens are, in fact, quite positive, and I suspect that despite the rhetoric there is considerable caution regarding any increase in thermal generation in New Zealand, and a commitment to more supply and efficient use of renewables. The overall trajectory, I suspect is positive. I am not sure this is the case with transport. The trajectory seems wrong. The emphasis on roading might be temporarily justified as a catch-up, but the high profile of special interests pushing the cost-distance model seems to put us on a long-term trajectory of a particular type of roading reliance that drives out flexibility and makes us prone to energy shocks.

## Conclusion

I am suggesting an approach to environmental management which is more integrative, and based around much clearer expectations and agreed standards, and which focuses on longer term issues as well as the more immediate ones. Such an approach requires stronger national leadership than the system is currently used to, and more efficient processes. It requires smarter ways of creating normative understanding of the social and economic value of environmental quality that goes beyond the current heavy reliance on an institutionalised adversarial approach. It also requires sophisticated use of a mix of voluntary, economic and regulatory instruments in a way that I fear the New Zealand body politic is not yet ready to embrace. This debate is currently much too black and white – stuck in the mantra: regulation bad, voluntary good. If we are going to improve environmental management it is going to need sound national standards in key areas. There is a risk that the current thrust towards a Productivity Commission and Regulatory Responsibility Act might condemn New Zealand to yet another decade of non-action if not well handled.

I would advocate re-examining the organisational basis of national environmental management. The focus of any change should seek to improve capacity and capability for high quality policy development, and to meet regulatory and operational challenges of social engagement, marine management, climate change and emissions trading, water management, materials management, new technologies, environmental risk and hazards,

environmental standards and their implementation, and biodiversity loss. We must sort out the perceived constitutional issues concerning the roles of central, regional, and local government. In addition we must improve our auditing and review of the system's performance against clearly measured results.

That's a very big task. It is one that would take at least five years to achieve. But achieve it we must if we are to fit our nation's environmental management for the next 25 years.