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Report on New Zealand Environmental Management 1987-91

Parliamentary Commissioner
for the Environment

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PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

PO Box 10-241, Wellington, New Zealand

YESTERDAY

THE PAST IS A
LIVING THING

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Preface

This report was prepared as an adjunct to the New Zealand country report for the United Nations Conference on Environment and Development to be held in Brazil in June 1992. The report is also a record of my five year term of office as Parliamentary Commissioner for the Environment.

In my role as Commissioner it has been my task to suggest needed improvements to the Government systems for natural and physical resource management as well as to public authority environmental planning and management. I found that the decision process used by both central and local government was often deficient in that appropriate criteria to guide decisions had not been determined. This is of concern and suggests far more attention needs to be given by politicians to how decisions should be made. Appropriate policies should guide decisions. I consider that the absence of comprehensive national policies on, for example, energy conservation and energy efficiency will not assist decisions for sound environmental management of the energy sector. Far more attention will need to be given to sustainable management policies for all sectors if New Zealand is to support UNCED proposals for sustainable development.

With the passage of the Resource Management Act 1991 major responsibilities for environmental management now rest with local government. My evaluation of public authority performance at this level suggests that city, district and regional councils need to give greater attention to setting environmental objectives, identifying ecological risks, improving public consultation procedures and enforcing compliance with environmental standards.

A challenge to all public authorities is the need to preserve the institutional memory and avoid the recurrence of major environmental problems. Given the willingness to listen to independent advice the New Zealand system for environmental management can be improved.



Helen R Hughes

Parliamentary Commissioner for the Environment

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1 Introduction

Sustainable development requires a comprehensive understanding of the interactions operating between the environment and the human use of natural and physical resources. Government environmental management policies and programmes play a key role in ensuring that this understanding is obtained before development decisions are taken. The 1992 United Nations Conference on Environment and Development (UNCED) provides an opportunity for the countries of the world to review their environmental management and to exchange information on policies and programmes.

Environmental management in New Zealand is based on the system of agencies and processes established by the Government to manage the allocation, use and preservation of natural and physical resources. The task of auditing this system (and the associated environmental management policies, laws and programmes) and assessing its effectiveness in maintaining and improving the quality of the environment is the responsibility of the Parliamentary Commissioner for the Environment.

This report provides a review of environmental management in New Zealand based on investigations carried out by the Commissioner since inception of the Office. The review outlines areas of the resource management system where the Commissioner has identified a need for the Government to develop policy and/or initiate legislative change and where specific actions need to be taken for public authorities to improve the effectiveness of their environmental planning and management.

2 Role of the Parliamentary Commissioner for the Environment

The Office of Parliamentary Commissioner for the Environment was established in January 1987 as part of a restructuring of government environmental administration. The Office is a response to significant public demands for an independent authority to review and publicly report on the environmental effects of central and local government works and policies. It is funded from public monies, is small with a staff establishment of 12 and a budget of approximately US \$592,000.

The independence of the Commissioner is obtained through the provisions of the Environment Act 1986, a law enacted by the New Zealand Parliament. The Act provides for appointments to the Office to have the approval of the House of Representatives and for the Commissioner's salary and allowances to be determined in the same manner as those for the judiciary. The approval of the House of Representatives is also required before the Commissioner can be removed or suspended from office.

The principal functions of the Commissioner, as set out in the Environment Act 1986, comprise reviews of Government's resource management system, investigations into the effectiveness of public authority environmental planning and management and investigations into matters where there is considered to be actual or potential harm to the environment. The Commissioner is also responsible for carrying out inquiries requested by the House of Representatives and for providing reports on proposed legislation, petitions and other matters of environmental significance under consideration by Committees of the House of Representatives.

The Environment Act sets out criteria for the Commissioner to consider when assessing the effectiveness of the resource management system and the environmental planning and management of public authorities. The criteria encompass matters as diverse as the maintenance and restoration of important ecosystems, protection of areas having cultural, recreational, or scientific value, the heritage of indigenous people, the prevention of pollution and the effects on communities of people of actual or proposed changes to natural and physical resources. These criteria are related to the basic duties for member countries suggested for the proposed UNCED Earth Charter.





The Environment Act also gives a number of powers to the Commissioner, including the right to report the findings of reviews and investigations to the House of Representatives, to publish reports, to obtain information and to participate in proceedings relating to the consideration of applications for resource management consents. With the exception of requests and directions made by the House of Representatives, the Commissioner also has the discretion to determine the reviews and investigations carried out by the office.

The establishment of the Commissioner's office has assisted a number of community groups and public authorities concerned about potential or actual environmental degradation or inadequate control provisions. In many instances progress in achieving environmental objectives has been made with the Commissioner's assistance thus avoiding the need to report formally to the House of Representatives. This has meant delays in obtaining consents for industrial or commercial developments have been reduced and potentially divisive situations within a community have been avoided.

3 Background

The New Zealand system of government can be described as a monarchy with a parliamentary government. The Governor-General is the representative of the Sovereign in New Zealand and is appointed by the Sovereign on the Prime Minister's recommendation. The Parliament of New Zealand consists of the Sovereign (normally represented by the Governor-General) and an elected House of Representatives (ninety-nine Members in 1991). There is no Upper House. Officers of Parliament have been appointed whose function is to keep the government (the majority party in the House of Representatives) accountable to Parliament. These officers include the Ombudsman and the Parliamentary Commissioner for the Environment.

New Zealand has a separate system of local government which is mainly independent of the central executive government. The emphasis in local government is on local accountability to electors. There are two principal types of local authorities:

- (1) directly elected regional authorities with a major role in resource management;
- (2) directly elected city and district councils carrying out functions at a more local level.

The Treaty of Waitangi is seen by many as New Zealand's founding document. Signed in 1840 by representatives of the Crown and five hundred Maori (New Zealand's indigenous people) chiefs, the Treaty ceded the right of "kawanatanga" (governorship) to the Crown and in return recognised and guaranteed the "tino rangatiratanga" (absolute authority) of Maori over their lands, villages and all taonga (all things of value). The rights and privileges of British citizenship were also granted to the Maori.

For most of New Zealand's history the Treaty was considered a "simple nullity" by a 1877 Court of Appeal ruling. However in 1975 the Waitangi Tribunal was established to address Maori grievances under the Treaty and in 1986 the Tribunal was empowered to consider and make recommendations to the Government on claims dating back to 1840.

The status of the Treaty in legislation has been given added weight in recent times with further Court of Appeal rulings and references such as that in the Environment Act 1986 obliging Crown agencies to take full and balanced account of the principles of the Treaty of Waitangi in the management of natural and physical resources. Reference to the treaty in the Conservation Act 1987 requires it to be so interpreted and administered as to give effect to the Treaty of Waitangi.

New Zealand is fortunate to have a number of environmental groups whose activities include surveillance of resource management issues on a local and a national scale. Many communities in New Zealand are aware and informed on environmental management issues. This expertise, knowledge and concern for the environment is of benefit to all levels of government. Public participation and involvement in decision making is reinforced by freedom of information under the Official Information Act 1982 and by statutory requirements to consult with the public.

4 Institutional Reforms Affecting Environmental Management

Considerable reform of the public sector has taken place since 1984. The 1986 restructuring of environmental administration included the separation of commercial from regulatory activities of government. The management of New Zealand's conservation estate was consolidated into one agency (the Department of Conservation). Policy advice on environmental matters became the function of another agency (the Ministry for the Environment).

Another aspect of reform that has occurred over the past four years is the transfer of central government responsibilities to regional or local government. This transfer has occurred for environmental management, health and transport.

In 1989 local government in New Zealand was reorganised to rationalise some 800 local government and special purpose agencies into a framework of regional and local government agencies.

Separation of planning and regulatory functions from service delivery functions was achieved by allocation of the former mainly to regional authorities and the latter mainly to district level. The new structures were set up to improve the accountability of local government to electors through the use of annual plans and better financial management systems.

One of the effects of these institutional changes on environmental management systems has been to generate transitional problems when agencies have had to devote resources to internal reorganisation and management at the expense of their environmental management responsibilities.

5 Review of Systems and Processes Established by Government

In reviewing the system of agencies and processes established by Government to manage the allocation, use and preservation of natural and physical resources, the Commissioner is concerned with the effectiveness of the environmental management system and the quality of decisions made within this system. The Commissioner has undertaken several systems investigations since 1987 and made a number of recommendations to Government for improvements to the system.

5.1 Establishment of new systems of agencies

The decision to separate central government's commercial activities through the establishment of State Owned Enterprises did not initially take account of social and environmental concerns. Government accepted recommendations that appropriate criteria(1) were needed before decisions were made on allocating Crown land between conservation and commercial activities,(2) or on allocating forest areas for recreational access or erosion control.(3) In respect of Crown land detailed criteria under categories such as land tenure, existing use, cultural values, ecological constraints, recreation, commercial and management issues were developed as a basis for reaching allocation decisions.

Transitional problems were experienced with State Owned Enterprises accepting Crown assets and privileges but not Crown responsibilities.(2) Intervention by the Commissioner resulted in an important geological area being withdrawn from a land sale agreement.

Some environmental managers of new government agencies found the task of developing new environmental management systems to operate efficiently and effectively was complex. Time was required for the new system to be fully understood by both the public authorities and the general public.(4)





5.2 Development of new legislation

Government moved in 1991 to pass legislation for resource management based on sustainable management. This legislation consolidated previous environmental legislation but gave an overall direction of sustainable management.

The Commissioner had identified, from a number of investigations, factors which affect the quality of decisions made on environmental management issues. The decision process was not catered for in previous legislation which was fragmented and unable to integrate consideration of air, water and land use consents. In this respect there was a deficient framework for good environmental management.

The Commissioner assessed the proposed new resource management legislation in light of the need to improve the decision-making process. The Commissioner advised Parliament(5) that an appropriate policy framework for an issue should first be put in place, before decisions are made. Decisions need to be integrated so that a decision affecting one sector of the environment does not adversely affect another sector. Decisions need to be taken following wide consultation with appropriate agencies, the public and the Crown's Treaty partner, (the Maori people), so that conflict can be minimised. Decisions would be assisted when early environmental impact assessments have been carried out. Decisions would also be assisted when monitoring systems are put in place so that information from monitoring determines whether objectives have been achieved and compliance has been enforced. Provision for these aspects has been made in the new Resource Management Act.

Until the resource management legislation is understood and implemented, its capacity to improve the quality of the New Zealand environment remains to be demonstrated.

5.3 Adequacy of existing legislation

A number of statutes were found to be deficient in that they provide insufficient guidance to those responsible for making decisions which impact on the environment. On the Commissioner's advice,(8) Government amended the Animals Act 1967 to ensure that decisions on the importation of exotic species had regard to environmental consequences. Advice on changes to the Marine Pollution Act(9) to ensure that it provides for a comprehensive national oil pollution contingency plan has resulted in Government proceeding to initiate amendments and speed up the development of a national contingency plan. Changes to a Building Bill were made on the Commissioner's advice(10) so that energy efficiencies could be provided in a building code. Advice was given on the need for decisions on wild game management to be addressed.(11) Government did not accept the need to revise the Wild Animal Control Act but is issuing management policies for specific wild game.

The Commissioner also identified deficiencies in some regulations. Government has accepted advice(12) that safety provisions for offshore petroleum platforms require review. Advice(13) that the use of tributyl tin (in paint) on boats needed to be controlled was accepted by Government which has since banned its importation. Current investigations suggest conditions placed on mining authorizations(14) and conditions of licences under the Clean Air Act 1972(15) are unenforceable. Guidance on the appropriateness of conditions is required by public authorities. Advice was also given to the Wellington City Council on the need to strengthen bylaws for controlling airport noise.(16)

5.4 National policy formulation

An absence of clearly defined national policies has impeded the ability of public agencies to make appropriate environmental management decisions. Government has accepted advice from the Commissioner on the need for a policy on irradiation technology for food(17). So far there has been a reluctance by Government to develop policies on land subsidence caused by mining,(18) energy conservation and energy efficiency,(19) and sewage treatment and disposal.(5)

The Commissioner advised Ministers that if Government was prepared to license mining operations which left leachate and dam safety hazards, then Government should

take responsibility for the long-term management of the land(20) and develop an appropriate hazards policy. So far Government has not been prepared to accept responsibility for long-term management of hazards although a Hazards Control Commission is to be appointed.

Public transport and transport route policies which take account of social concerns have not as yet been developed.(21),(22) The need to develop an overall strategy to improve public transport is beginning to be recognised in some major urban areas but progress is slow. Government has indicated that restricting entry of motor vehicles to central business districts is a responsibility of local government.

5.5 Establishment of sustainable management programmes

International efforts to achieve sustainable development are reflected in New Zealand's attempts to put in place sustainable management systems. New Zealand's natural resources include a number of slow-growing, long-lived animal and plant species such as indigenous timber trees,(23) tussock grassland(24) and fish such as orange roughy.(26) To date no sustainable management system has proved appropriate. Satisfactory policies other than absolute protection policies have yet to be developed although considerable effort is being expended by the Government system.

Sustainable land use is particularly difficult in lands at risk from extreme climatic events. Recommendations have been made to Government to assist landholders experiencing severe soil erosion following cyclonic storms(25) and those experiencing land degradation from too much grazing pressure from sheep and rabbits.(24) Land management programmes have now been initiated by Government. Public authorities and landholders were encouraged to form cooperative ventures and establish stewardship groups. These are starting to be established. Careful stewardship of the land is often dependent on access to appropriate information, and closer links have been recommended between farmers, local government and research institutions.(24)

Sustainable management of New Zealand's marine fish resource is a matter of considerable public interest and concern. A quota management system is constrained by the lack of necessary biological information. Inappropriate decisions have been made which have put fish stocks at risk. In addition, there have been difficulties in reducing catches and quotas, constraining fishing activity and in ensuring compliance.(26) Government has accepted advice on the need to improve its research capability, to review fisheries legislation and to carry out a process of environmental impact assessment on aspects of marine fisheries management.

5.6 Importance of an environmental assessment process

Central government has an environmental assessment process in place but, with a decreasing role for the Government in development, there is a perception that the environmental impact assessment process is no longer required. The Commissioner has, however, advised Government(27) that the cessation of Government activities such as small post offices and small rural schools, the decommissioning of facilities and the upgrading of infrastructures have resulted in environmental impacts causing considerable social stress. The recognition that these types of policy decisions also require environmental assessment is slow in coming.

The movement of responsibility for environmental assessment to the local government level has resulted in the Commissioner being asked to give advice on how to ensure the process is credible. This can be achieved by having the assessment reviewed by independent citizens.(28)

When independent reviews are requested by local government, the way in which New Zealand's indigenous people contribute needs to be determined by themselves. In several cases Maori groups have presented an entirely separate report which assists the public authority in making decisions.(29)(42)

The necessity for the assessment process to have regard to ongoing monitoring was underlined with the referral of monitoring provisions to a special planning authority hearing applications for waterfront development in the City of Auckland(6),(7)





6 Performance of Public Authorities

The Commissioner has a major role in scrutinising the environmental planning and management responsibilities of public authorities. To assess whether environmental management is effective requires the Commissioner to not only identify any undesirable results arising from inadequate planning, but also to develop an understanding of why the results were less than satisfactory. In some investigations where allegations of inadequate public authority performance were made(31), the Parliamentary Commissioner considered these could not be sustained. A number of investigations have concluded that effective environmental management had been initiated. In one investigation(30) the Commissioner found that the local authority had, through a process of public consultation, decided that the community would retain its rural character by not providing reticulated sewerage schemes. The local authority had set in place appropriate policies and monitoring procedures to give effect to that objective.

In another investigation into sewage and flooding overflows in an urban area(43) the Commissioner found that the local authority had approved a comprehensive strategy to address both the stormwater flooding problem and the sewage overflow problem and was about to design and construct separate sewers, a stormwater detention basin and measures to increase the hydraulic capacity of the small stream.

6.1 Willingness to act

At the time the Parliamentary Commissioner for the Environment's Office was established, there were environmental management problems brought to the Commissioner's attention which had been unresolved for some years. There were instances where public agencies showed a lack of commitment, at the political level, to make decisions which would result in improving environmental conditions. For example, it has taken some public authorities a very long time to deal with pollution problems.(32) These have included up to 30 years for dealing with one sewage disposal problem, 17 years to put a system in place to manage hazardous chemicals (and still no solution), 17 years to deal with an odour problem and 20 years to ameliorate geothermal discharges to receiving waters.

It has also taken five years for Government to agree to clean up a known hazard (phenol ponds) left by an insolvent carbonization plant,(33) partially owned by a government trading agency.

In 1988 the Commissioner investigated the process by which New Zealand's indigenous people may claim redress from the Crown for environmental management issues, *inter alia*, through presenting information to a quasi-judicial body, the Waitangi Tribunal.(34) The slowest of responses has been evident in the Crown acting on the Waitangi Tribunal recommendations following claims by Maori groups. Although progress has been made in recognising claims, tangible redress of past wrongs has been slow, and for a majority of the claims, non-existent.

6.2 Fragmentation of responsibilities

Several investigations have identified that where there was an overlap in responsibilities between different tiers of government or between different government departments at the same level, environmental management issues have not been adequately addressed. For example, where water quality issues have involved both a local authority for water resource management and a health board looking after public health, inadequate consultation between the public authorities has sometimes resulted in neither agency addressing the problem satisfactorily.(35)

6.3 Constraints on public authority performance

During the first five years of the existence of the Office, the Commissioner has investigated 18 instances of the environmental planning and management performance of public authorities. The following constraints on the performance of public authorities have been identified:

6.3.1 Lack of environmental objectives

The Commissioner investigated the manner in which a district council was proceeding with a water classification under the Water and Soil Conservation Act 1967.(36) The classification was intended to improve the water quality of a marine area adjacent to a city. The district council, however, did not agree on this environmental objective until late in the overall process. This lack of early identification of an objective hindered the council's ability to achieve the results it was seeking.

6.3.2 Lack of criteria for decisions

The Commissioner evaluated the process followed by a regional authority in making long-term decisions on sewage collection, treatment and disposal.(29) The process was considered to be effective provided the regional authority politicians developed and used criteria to assist their decision making. The need for criteria was accepted by the regional authority and they were used in reaching decisions.

6.3.3 Lack of national environmental standards

Four investigations concluded that national environmental standards would have assisted government agencies to carry out their environmental management responsibilities. One concerned road transport noise(21), while another addressed odour nuisance control.(15)

A national airport noise standard would assist a local authority trying to develop effective regulatory control of aircraft noise at a city airport.(16)

In the instance where an application to import catfish was considered by Government, advice was given to a working group (June 1989) on the development of environmental standards so that ecological risk could be determined. Biological standards would provide a benchmark by which a risk assessment of new species could be measured.

6.3.4 Inadequate attention to ecological risk

The evaluation of the process for making long-term decisions on sewage collection, treatment and disposal referred to in section 6.3.2 also identified that the regional authority had not fully evaluated the ecological risk associated with discharge of treated wastewater into semi-enclosed marine waters. This lack of consideration of ecological risk was seen as a constraint to effective decision making.(29)

6.3.5 Inadequate communication and consultation with the public

The Commissioner found that public authorities are sometimes reluctant to release information to their constituents.(37) A well informed public, consulted and listened to, can assist in the process of achieving good environmental management.(38) Sufficient time for meaningful consultation should be allowed when public authorities have major decisions to make.

Poor consultation by public authorities with Maori people is partially due to a general absence of legislative direction and a lack of knowledge of how tribal organisations are structured. However, it is mostly attributable to a legacy of political inequity.

Public authorities have sometimes been slow to recognise the value of local information from indigenous people.(39) Although a number of authorities have recently built up good working relationships(12), in general the process of consultation to identify and provide for Maori concerns remains a developing one. The Parliamentary Commissioner is investigating ways in which to improve this.(40)

6.3.6 Management of long-term or recurring problems

There has been at least one investigation(24) carried out by the Commissioner in which a public authority did not have adequate information systems to manage similar environmental management issues which recurred over a period of time.





The management of long-term environmental risks has also been identified as an issue which public authorities must address(20). Public authorities should retain an "institutional memory" to be able to manage long-term risks in an effective manner.

6.3.7 Enforcement of compliance with environmental standards

Enforcement of environmental conditions has been made difficult through lack of resources(35),(41) and trying to ensure compliance with inappropriate conditions.(14),(15) Where legislation has promoted an industry and also tried to regulate the industry, compliance has been less than satisfactory as inspectors have assisted the industry instead of the environment.(14)

6.3.8 Inappropriate committee organisation

The changes to local government administration in 1989 were based on a separation of functions so that within any one organisation the planning and regulatory functions were separated from the service delivery or operational functions. The Commissioner investigated the adequacy of a district council's committee structure(36) to achieve its environmental management responsibilities. The perceived roles of the committees as being separate from the full council was considered a constraint to effective environmental management.

7 Conclusion

Since its establishment the Parliamentary Commissioner for the Environment has presented 16 reports to the House of Representatives and four reports to Parliamentary Select Committees on major environmental concerns and 18 reports to public authorities concerning their environmental planning and management.

The establishment of this independent Office has achieved:

- 1 identification of deficiencies in New Zealand's environmental management system;
- 2 assistance to local government in improving their environmental management performance;
- 3 assistance to both central and local government in resolving potentially divisive situations where communication between agencies and the public had broken down.

The new Resource Management Act 1991 has the potential to improve New Zealand's environmental management by adopting a sustainable management principle and by considering the environment in a more integrated manner than has been possible up till now. There will be a transition period however, in which awareness and attitudes of local government authorities will have to change to meet the challenges of this new legislation.

The need for an independent Office to check and report on the effectiveness of New Zealand's environmental management system will continue.

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