Conflict in Godzone: The effects of political agendas on New Zealand’s environmental management.

Nigel Taptiklis

Environmental Studies, School of Earth Sciences, Victoria University of Wellington, PO Box 600, Wellington, New Zealand. Email niqel.taptiklis@gmail.com

Abstract

The Government has announced proposed reforms to New Zealand’s Resource Management Act 1991 (RMA) intended to “simplify and streamline” its processes to “remove barriers” that “stand in the way of the creation of new industries and jobs.” Environment groups contest that the proposed changes will adversely impact the environment and the rights of the community to seek the sustainable management of their natural resources. This conflict between environmental concerns and political agendas also set the stage for the development and implementation of the RMA. A literature review was conducted to assess the outcome of this conflict for environmental management; by investigating whether there is fair and balanced access to the Act’s processes; assessing the dairy industry’s effect on the environment; and assessing whether the RMA achieves sustainable management of New Zealand’s natural resources. The results show that New Zealand provides considerable regulatory liberty for developers; that non-corporate organisations face considerable barriers in accessing the Act’s processes; that the dairy industry is adversely impacting on New Zealand’s “clean green” competitive advantage; but that sustainable management is possible under the RMA. Overall various government administrations have either promoted or curtailed sustainability initiatives, resulting in slow and partial implementation of the RMA, and continued environmental degradation.

Keywords: New Zealand; Resource Management Act 1991; Environmental management; public participation; sustainability; political agenda.

Introduction

The National Party1 led Government is intent on reforming the Resource Management Act 1991 (RMA), with Prime Minister John Key calling it a “Handbrake on Growth” (Key 2009). In his announcement of the first phase of the Government’s reforms to “simplify and streamline” the RMA, Key (2009) expresses the Government’s pro-growth agenda, stating that the RMA has been a “huge source of frustration” and that “we need to remove the barriers that stand in the way of improving New Zealand’s infrastructure and the creation of new industries and jobs.”

Environment groups contest that many of the Government’s proposed changes to the Act will increase costs, delays and litigation (EDS, Forest and Bird 2009). The Environment and Conservation Organisations of NZ (ECO) calls the proposed changes “deforms” and states that the Government’s amendment bill is “bad news for the community and environment” and that it will “tilt the RMAs processes in favour of large projects and against communities” (ECO 2009). The RMA is the principle legislation governing environmental management in New Zealand. It incorporates the principle of sustainability as its central and overarching purpose, with an emphasis on the promotion of sustainability (Grinlinton 2002). Sustainability is framed as “sustainable management” within the RMA, and defined in section 5(2) as:

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1 The National Party is New Zealand’s primary center-right political party; the National lead administration replaced the previous government in November 2008. The Labour Party is the center-left party.
"...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing 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." (RMA 1991).

Bosselmann and Grinlinton (2002) note that the RMA "has the reputation of one of the most advanced models of environmental legislation in the world" and is an excellent example of "current state-of-the-art legislation." We live in an era where the effects of a wide range of human impacts on the environment, are accumulating with serious implications for the functioning of the Earth System on which our own welfare and future depends (Steffen et. al. 2005). The effects of human activity are such that "the ability of the planet's ecosystems to sustain future generations can no longer be taken for granted" (Watson and Zakri 2005). As the "most devolved system of environmental management in the world" (MfE 2004), the RMA is the legal framework that "enables" New Zealanders to manage or protect their "natural and physical resources" and to sustain their and their children's "wellbeing" (RMA 1991).

Section 3 of Agenda 21\(^2\), to which New Zealand is a signatory highlights that "One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making" (UNDSD 1992).

Figure 1. New Zealand Government administrations 1984 to present (Primary Political Party in office). The development of the RMA transgressed the change of administration in 1990.

The RMA has emerged against a bi-partisan backdrop of free market reforms and environmental concern. Grundy and Gleeson (1996) describe the RMA as "the product of conflicting political economic agendas." David Young (2001) interviewed key contributors to the development of the RMA, noting general agreement that while the development of the RMA was well funded, its implementation was under-funded to the extent that "its very own sustainability was seriously affected." Money was unavailable

\(^2\) Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which humans impact on the environment. Agenda 21 was adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janerio, Brazil, 3 to 14 June 1992 (UNDSD 1992).
for public education, resourcing, or specialist expertise, and local governments were left to fend for themselves (Young 2001). Simon Upton, who introduced the bill that became the RMA, made a number of unsuccessful attempts for more funding, and admits that his National Party caucus was not deeply sympathetic towards environmental matters (Young 2001). Guy Salmon, a prominent figure in the development of the RMA recalls addressing a National Party conference where the audience greeted each mention of the RMA with “hissing and boos” (Young 2001).

David Young (2001) noted general agreement between those he interviewed that “there is little amiss with the current legislation that cannot be remedied, but a great deal wanting from its application.” However, unlike its original developers, the current Government and many other commentators are directing their attacks specifically at the RMA. Roger Kerr of the Business Roundtable (NZBR) lobby group calls the RMA “fundamentally flawed” (Kerr 2009). Kerr particularly objects to the “all-encompassing definition of the environment, sustainable management, treaty principles, kaitiakitanga, and intrinsic values,” calling them a “plethora of fuzzy terms” (Kerr 2009).

As the RMA enters another round of re-fashioning sound environmental management has never been more critical and the issues which have led to the emergence of sustainability are becoming increasingly acute. This essay explores how the often competing political agendas of sustainability and free-market ideology have shaped environmental management in New Zealand, through the development and implementation of the RMA.

**Aim and Objectives**

The aim of this study is to answer the following question: What effect have political agendas had on environmental management in New Zealand as shown by the development and implementation of the RMA?

Answering this question necessitated breaking the task into two main objectives as follows:

**Objective 1: Access to environmental management:** Do corporate organisations, community groups, Non Government Organisations (NGOs) and tangata whenua (people of the land) and ordinary citizens have fair and balanced access to the processes of the RMA?

Does the RMA create an excessive regulatory environment for businesses compared with other countries?

**Objective 2: Environmental Management in Practice:** Has the RMA been effective in mitigating the effects of the Dairy Industry?

Is “sustainable management” of New Zealand’s natural resources being achieved?
Methods
Information was gathered from peer-reviewed journal articles, books, OECD reviews, government and non-government organisation (NGO) websites. Search engines used were Web of Knowledge, Science Direct, Wiley Interscience and Google Scholar.

Search keywords:
Objective 2: “Resource Management Act” AND “New Zealand” AND “Public Participation.”

Results
Objective 1: Fair and balanced Access to the RMA’s processes
Wilson (1996) completed a thesis (MA Environmental Studies) on public participation and the RMA. Through surveying participants in the Regional Policy Statement (RPS) consultation process, Wilson found that the process was more accessible to those who could afford the time and expertise to take part. NGOs and individuals experienced difficulty understanding the information provided and in finding time to prepare submissions and attend hearings (due to family, work and travel demands); resulting in high attrition from the process. Individuals and NGOs were also less likely to be satisfied than corporate organizations that they had been heard and had been able to influence the decisions made. By contrast, respondent corporate organizations did not experience these barriers and participated to the full extent of the process. Corporate organizations also participated in higher numbers and were less likely to drop out. Wilson (1996) noted that the results of her survey were consistent with wider empirical research that indicated that the formal right of participation is not sufficient to ensure equal access to decision processes.

Respondents to Wilson’s (1996) survey expressed concerns about the attitudes of some local councils towards both the RMA and RPS’s in general. Respondents were concerned that consent applications were being “rushed through” with little or no community consultation, and with the way their views were received at hearings. Local government staff interviewed agreed that timeframes were restrictive, and benefited consent applicants whilst reducing the timeframe for potential submitters (Wilson 1996).

Maori access to Environmental Management through the RMA
The Parliamentary Comissioner for the Environment (PCE) (1998) investigated tangata whenua involvement in the RMA process. The PCE found that the RMA provides a strong basis for participation of tangata whenua. However, there are a multitude of barriers to their effective participation in environmental management. These include poor consultation and communication, complex and inefficient processes and the capacity of tangata whenua to participate effectively. Additionally, previous bad experience eroded trust and fostered hostile assumptions, attitudes and expectations. These patterns become reinforced when expectations are not met, including when official studies and reports do not result in constructive change and improved environmental results (PCE 1998).
The recommendation of the PCE (1998) to address the issues arising for tangata whenua was for the Ministry for the Environment (MfE) to prepare a National Policy Statement under the RMA for:

- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga,
- kaitiakitanga, and
- the principles of the Treaty of Waitangi.

"to ensure efficiency, consistency, reliability and accountability in the achievement by local authorities and other persons of the purpose of the Act" (PCE 1998).

Borrie et. al. (2004) compiled a report for local and central government looking at applying experiences gained from the RMA to the implementation of the Local Government Act 2002 (LGA). They found little evidence of policies in district plans showing issues of importance to Maori being implemented, and the commitment to involve Maori was also found to be generally low.

"There were so few references to hapū and/or iwi interests in resource consents that a valid random sample for analysis could not be attained" (Borrie et. al. 2004).

Ease of doing business in New Zealand

The Doing Business report by the World Bank (2009) compares regulation within 181 economies. This report ranks New Zealand second to Singapore for overall ease of doing business, and second equal with Singapore for dealing with construction permits. The report is based on the regulations faced by an entrepreneur in the construction industry who wishes to build a warehouse. The analysis includes:

"submitting project documents (building plans, site maps) to the authorities, obtaining all necessary licenses and permits, completing all required notifications and receiving all necessary inspections. They also include procedures for obtaining utility connections, such as electricity, telephone, water and sewerage. The time and cost to complete each procedure under normal circumstances are calculated" (World Bank 2009)

Objective 2: the efficacy of the RMA in mitigating the effects of the Dairy Industry.

Barnett and Pauling (2005) looked at the post-reform environmental effects of market liberalisation through an assessment of the environmental effects of New Zealand’s dairy industry. Barnett and Pauling (2005) assert that the RMA has failed to mitigate the environmental impacts associated with increased dairy farming for two principal reasons; firstly due to inadequate investment in its implementation; the RMA is knowledge intensive and many local governments have a small rate base and a questionable commitment to environmental issues; and secondly, it does not eliminate biases towards developers and resource-rich stakeholders (Barnett and Pauling 2005).

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1 Dairy farming is classed as a permitted activity under the RMA, therefore consents are 'non-notified' and dealt with out of the public arena.
Key points made by Barnett and Pauling (2005):

- Under the RMA the trend away from direct disposal of dairy effluent to waterways (point source pollution) has continued with substantial results in some regions.
- By May 2001, over half of all local government proposed plan policy statements were not operative, making regulation of dairy farms impossible.
- There is general agreement between stakeholders (industry, local government and environment/cultural groups) on the mitigation measures required. However, the dairy industry favors voluntary compliance to implement these measures.
- Since these mitigation measures incur costs, voluntary compliance is unlikely to achieve real progress.
- The RMA is potentially capable of controlling the effects of the dairy industry; however, its implementation was "slow and piecemeal" and environmental policy was limited at the time the dairy industry was expanding. This combination created a situation of "largely uncontrolled increasing environmental impacts from dairy production" (Barnett and Pauling 2005).

Achieving Sustainable Management

McKenzie (2004) conducted a case study of the RMA and environmental governance with regard to Lake Taupo. Environment Waikato4 (EW) raised concerns about increasing nitrate concentrations affecting the water quality in 1999 and began to develop the Lake Taupo Water Quality Project (LTWQP). In response to consultation, and with the farming interest group willing to negotiate and work with EW, the focus of the LTWQP strategy shifted from a regulatory approach to a more comprehensive package of measures. These measures included: funding for the purchase and retirement of land; research funding and establishment grants for alternative land use and low nitrogen farming; and environmental education programmes and sewerage upgrades. Central government support was required since it is a major landowner through state-owned enterprises Landcorp, and Corrlands; and since the project implementation costs exceeded EW's means. The pro-sustainability Labour Government announced a formal partnership in the project in 2003 (McKenzie 2004). Key actors credit the projects success to EW's ability to build strong relationships between the stakeholders, and to its ability to tailor its policy and strategies to evolving political dynamics (McKenzie 2004).

McKenzie concludes that the LTWQP example provides a "powerful tool" for understanding the impact of the RMA on environmental governance. It helps redirect the focus away from the history, structure and wording of the legislation, towards an analysis that recognises the unique and multifaceted aspects of the environmental problem.

"The law should be assessed on the basis of whether it opens political space for the consideration of environmental governance problems and provides political space for the resolution of these issues in a manner that is environmentally, economically and socially sustainable" (McKenzie 2004).

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4 EW is a local government entity.
Analysis and discussion

The World Bank report (2009) shows that in comparison to other economies the regulatory burden placed on the economy by the RMA is minor, and Wilson’s (1996) thesis shows that corporate organizations are fully able to participate in the RMA’s processes. By contrast the public, NGOs and tangata whenua face significant barriers to participation, despite the legislative provisions for participation. Additionally, public participation in the consent process is only possible if the application is notified, and statistics from the MfE’s RMA surveys show that notification has declined in every year of the eight years surveyed, from 14% of applications in 1997/98, to just 6% 2005/06 (MfE 2007). Grinlinton (2002) raises a significant concern regarding the Assessment of Environmental Effects (AEE) required in the RMA consent process. In comparison with similar countries such as Canada and Australia environmental impact assessment in New Zealand is very light-handed, and subject to little independent analysis or auditing. Verification of the AEE relies heavily on council vigilance and active participation, which in effect unfairly devolves the role of (unpaid) public watchdog and auditor to individuals and public interest groups. These groups could also face crippling costs if they take a dispute to court and lose (Grinlinton 2002).

Despite the recommendation of the Parliamentary Commissioner for the Environment for a National Policy Statement to address the issues raised in its report, and despite the PCE’s (1998) finding that inaction following official reports reinforces communication barriers, there is not yet a NPS or proposed NPS to address the concerns of tangata whenua. This may indicate that key issues that require addressing to achieve a functional degree of environmental management such as with the LTWQP, are failing to get government support. Under the previous Labour administration some positive steps were made, including the MfE quality planning website, funding for an Educational and Advisory Service and for Environmental legal assistance; and additional funding for the Environment Court (Heitzmann 2007).

The RMA replaced 70 statutes and laws relating to the environment to create a more streamlined, integrated and comprehensive approach to environmental management (MfE 2006). Prior to the RMA there were significant legislative barriers to public participation in environmental management since only individuals who were “affected” (i.e. had an interest in property) or were able to demonstrate representation of some “relevant aspect of the public interest” had the right to participate under the Town and Country Planning ACT (Wilson 1996). Under the National Development Act (NDA) of 1979 (National Party Government) public participation became further limited: the intention of the NDA was to “fast track” the necessary procedures for development to occur. Wilson (1996) quotes MP Ian Mclean saying that the Act was needed to “get rid of delays that [were] costing New Zealanders jobs” (Wilson 1996). Very similar language has been used to justify the recently proposed RMA reforms, which also threaten to further limit public participation by removing the ability of a person “representing a relevant aspect of the public interest” to become a party to appeals; shortening the timeframe for joining an appeal from 30 days to 15 working days; and by allowing the court to oppose security of costs on parties to an appeal (EDS 2009). Additionally, despite only 6% of consents being notified under the present presumption of notification, the proposed bill reverses
this presumption to that of non-notification (EDS 2009). Non-notification excludes public participation as the application is dealt with out of the public arena (Grinlinton 2002).

Barnett and Pauling’s (2005) analysis questions the broader economic sustainability of New Zealand’s free-market reforms, on the basis that focusing on the dairy industry’s competitive advantage is seriously undermining our “clean green” competitive advantage. Ironically, increased production of the commodities in which a country has a competitive advantage, (e.g. dairy products) provides the major negative environmental effect of neoliberal reform (Barnett and Pauling 2005). A further irony is that the dismantling or weakening of environmental legislation is an additional objective of free-market reform since it is seen as state intervention, and therefore opposed fundamentally by neo-liberal ideology, and more subtly, is desirable since compliance costs can reduce the competitive advantage of exports (Barnett and Pauling 2005).

The view that the RMA suffers from poor implementation but is basically sound is widely held (Heitzmann 2007, Barnett and Pauling 2005, Young 2001, Zuur 2001). This view is also shared by Hon. Justice Randerson, (now Chief High Court Judge) who chaired the original Resource Management Bill review group appointed by Simon Upton. Randerson (2001) says the criticism is “not well informed” and the difficulties “have much more to do with process rather than the basic concepts and provisions of the Act”. Yet Prime Minister John Key and others continue to attack the RMA – and sustainability in general. On expunging the previous Labour Government’s Govt3 sustainability programme Key referred to them as “hug a polar bear” initiatives – “well intentioned but ultimately futile” (MacDonald 2009). Bosselman (2002) notes that at one end of the sustainable development debate is the neo-liberal view that “sustainable development poses a threat to ongoing growth and prosperity.” The statements made by Key and others are consistent with this neo-liberal ideology. Additionally, business sector claims of excessive costs and delays through RMA compliance are not supported statistically (Zuur 2001), or are based on limited case studies which do not support general conclusions (Heitzmann 2007).

Borrie et. al. (2004) highlight that in addition to failing to adequately fund its agencies to implement its RMA mandate; the 1990 to 1999 National Government also cut annual budgets to these agencies over its first five years in office, despite the increased RMA workload of these agencies. Borrie et. al. (2004) also highlight that many responsibilities have been devolved to local government and are either unfunded or only partly funded, thus putting a great deal of pressure on most councils, which also have a poor capacity to implement the RMA. It is not surprising then that at the regional level, Borrie et. al. (2004) found a lack of commitment to involving Maori; Barnett and Pauling (2005) note “questionable commitment” to environmental issues; Wilson (1996) negative attitudes to

5 New Zealand’s free-market reforms were primarily instrumented by the 1984 to 1990 Labour Government.
6 The dumped Govt3 sustainability programme had actually resulted in savings across the involved public service departments of $4.7 million (Hansard 2009), and many of these savings will be ongoing (IRD 2009).
public participation; the PCE (1998) found reinforcing hostility; and that the RMA has never engaged the imagination of the wider public (Young 2001).

"[These results] are symptomatic of a failure by the Government to accept the importance of ensuring that councils were capable of fulfilling the mandates devolved to them" (Borrie et. al. 2004).

**Conclusion**

Throughout the development and implementation of the RMA, the prevailing neo-liberal political ideology has sought to minimise regulation and to maximise competitive advantage in trade. The development of the RMA was shared by both National and Labour administrations and produced sound legislation which promotes sustainability and devotes environmental management to local government, and provides for public participation. A National Party administration then constricted funding to agencies tasked with the increased responsibilities of implementing the Act. Local government also lacked the capacity "to fulfil the mandate devolved to them" (Borrie et. al. 2004), and the MfE lacked the capacity to provide support for local government.

So what effect have political agendas had on environmental management in New Zealand? While some political administrations have made attempts to promote sustainability, others have treated the concept with distain and dismantled many of these attempts. Regarding the RMA itself, from the words of newspaper columnist and television presenter Finlay MacDonald, commenting on Prime Minister John Keys “hug a polar bear” remark; the pervading neo-liberal agenda could be accused of “smothering this nascent green bureaucracy in its cot” (MacDonald 2009); by restriction of the necessities required for the RMA to be used effectively to its capacity. Additionally, individuals, tangata whenua and public interest groups, have been left, in their limited capacity, to take the role of public watchdog and auditor, unpaid, and at considerable risk to themselves.

McKenzie’s (2004) case study shows that sustainable management is possible7 under the RMA, and more importantly that “the RMA is but one tool in the toolbox” (Heitzmann 2007). However, the rapidly expanding dairy industry has caused considerable decline in water quality in New Zealand due to non-point source pollution (MfE 2007b, OECD 2007, Barnett and Pauling 2005). The studies accessed for this essay provide valuable insights into the issues that need to be addressed to achieve sustainable environmental management as defined in section 5(2) of the RMA (see introduction). However, despite the considerable regulatory freedom experienced in New Zealand by developers and resource-rich stakeholders; the threat of continued environmental degradation to New Zealand’s “clean green” competitive advantage; increasingly acute global environmental concerns driving the need for sustainability; and despite the considerable barriers faced by individuals, NGO’s and tangata whenua; it is the quests to further minimise regulation and lower compliance costs that have captured the current political agenda.

7 After the 2007 local body elections, 2 former Waikato region Presidents of farm lobby group Federated Farmers became chair and co-chair of Environment Waikato (EW 2007). An updated analysis of the LTWQP is beyond the scope of this study.
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