



Progressive Thinking:

Ten Possible Futures for Public & Community Services

The Future of Environmental Regulation

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The role of environmental regulation is to prevent harm to the natural world, not only for its sake but to save humankind from self-destruction. When framed as this fundamental need to maintain the planet's [life supporting capacity](#) the importance of regulation is clear. We maintain the planet's ability to support life, or we have nothing. Thus, it overshadows anything else we care about. The [evidence](#) is crystal clear that we have crashed through the known safe limits our [planetary boundaries](#). We are in global ecological [deficit](#).

Here in New Zealand the failure of environmental regulation is stark and tragic. The Ministry for the Environment's five-yearly [summary](#) of the state of the environment outlines a litany of neglect and dereliction. To put this in a global perspective, a 2010 [comparison](#) of the environmental impact of 179 countries showed that New Zealand ranked 161st in the world on a per capita basis and 124th on overall impact. In the race to the bottom, we are highly competitive.

For the last three decades the mainstay of our environmental regulation legislation has been the Resource Management Act (RMA) [1991](#). At its core is the goal of "sustainable management of natural and physical resources" while considering future generations.

However, the reality we have seen is that government at both central and local levels has spectacularly failed to apply or enforce this legislation. As a result, the life supporting capacity of our ecosystems terrestrial, freshwater, marine and atmospheric has not been protected, and the foreseeable needs of future generations prescribed in the RMA will not be met. We have fuelled the economic growth of the past several decades by burning our children's future.

One big reason for the failure of environmental regulation is the inevitable twisting and usurping of the ideals of any such legislation by the literally thousands of well-resourced and well-paid people funded by the industries harming the environment to find ways to evade or avoid them.

Another reason for failure stems from political exigencies at all levels of government. The problem is that Government at any level operates in an [economic growth](#) paradigm and this inevitably clashes with the uncompromising and [non-linear](#) reality of [biophysical limits to growth](#). These are real inescapable [limits](#), they cannot be fiscally [ameliorated](#) over the long term and claims that environmental harm can be decoupled from economic growth have been [debunked](#).

This politicisation of environmental regulation can be seen in many ways, but at local government level in New Zealand it is revealed by the capture of regulators by vested interests, known as [agency capture](#). A recent comprehensive report [evaluating the environmental outcomes of the RMA](#) highlighted this agency capture of Regional Councils revealed for example as "a lack of enthusiasm for setting strong limits for freshwater due to a preponderance of agricultural interests in the



council” ([page 20](#)). The report found that the weakest limitations on implementing the RMA are on managing cumulative effects.

An example of the failure to manage the impact of cumulative effects highlighted in the [report](#) is the hundreds of consented discharges into the Manawatu River I looked at in depth a few years ago. All these discharge consents were granted because their effects were, purported by the applicant to be ‘less than minor’. Clearly however hundreds of less than minor impacts added to many other diffuse impacts not requiring consent inevitably results in a major impact. Almost every one of the many tens of consent applications I have read over a few decades has claimed that the effects of the action the consent is being applied for would be “less than minor”. Consents officers and scientists at Auckland Regional Council a decade ago told me of a local consultant they openly referred to as Dr. Less-than-minor because that was his conclusion on every consent application.

The resource consents nearly all have conditions assigned giving limits on a range of parameters in the discharge and any effects on the river receiving it. These parameters are monitored (nearly always by the applicant) and results reported to the Regional Council as prescribed in the consents. Again, using the Manawatu River as an example, one of the consents I looked at in detail was for a discharge of wastewater into the Oroua River by the Manawatū District Council. I found this District Council often failed to provide the results of monitoring as required and in more than a decade of reporting they had never fully complied with their consent conditions. The penalty for their non-compliance was a sad face icon on the Regional Council compliance summary report sent back to them. Obviously, this sad face stamp had not had the desired effect and the breaches had not stopped years later when I again looked at the compliance reports.

For humankind to have a future we must ensure that our environment is regulated putting life supporting capacity above all other considerations and furthermore the regulations must be enforced. The clear lesson from the way different countries handled the Covid-19 pandemic is that strong government regulation based on independent non politicised science is crucial for a successful outcome. Thus, I suggest the solution for New Zealand is truly independent monitoring and enforcement of environmental regulation so that agencies undertaking this work are no longer captured by vested interests financial or political.

There are potentially many ways to achieve this, but one model exists and could be built on and that is the Parliamentary Commissioner for the Environment. Properly resourced this office could take on the task of overseeing independent monitoring and enforcement of the environment. For freshwaters particularly another option, a [Waterways Commission](#) has been suggested by the New Zealand Maori Council as a solution to the failings of the Crown to protect freshwaters. The models exist, the [mandate](#) is there it is now up to government leaders to ensure the crucial changes happen immediately.

While Government leaders remain focused on navigating the current crisis, we argue in this brief note that making smarter investments in Iwi, in Māori institutions and in the Whānau Ora Commissioning agencies has the potential to both accelerate the nation’s COVID-19 response while also ensuring COVID-19 does not raise inequality in the same way past pandemics have.





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