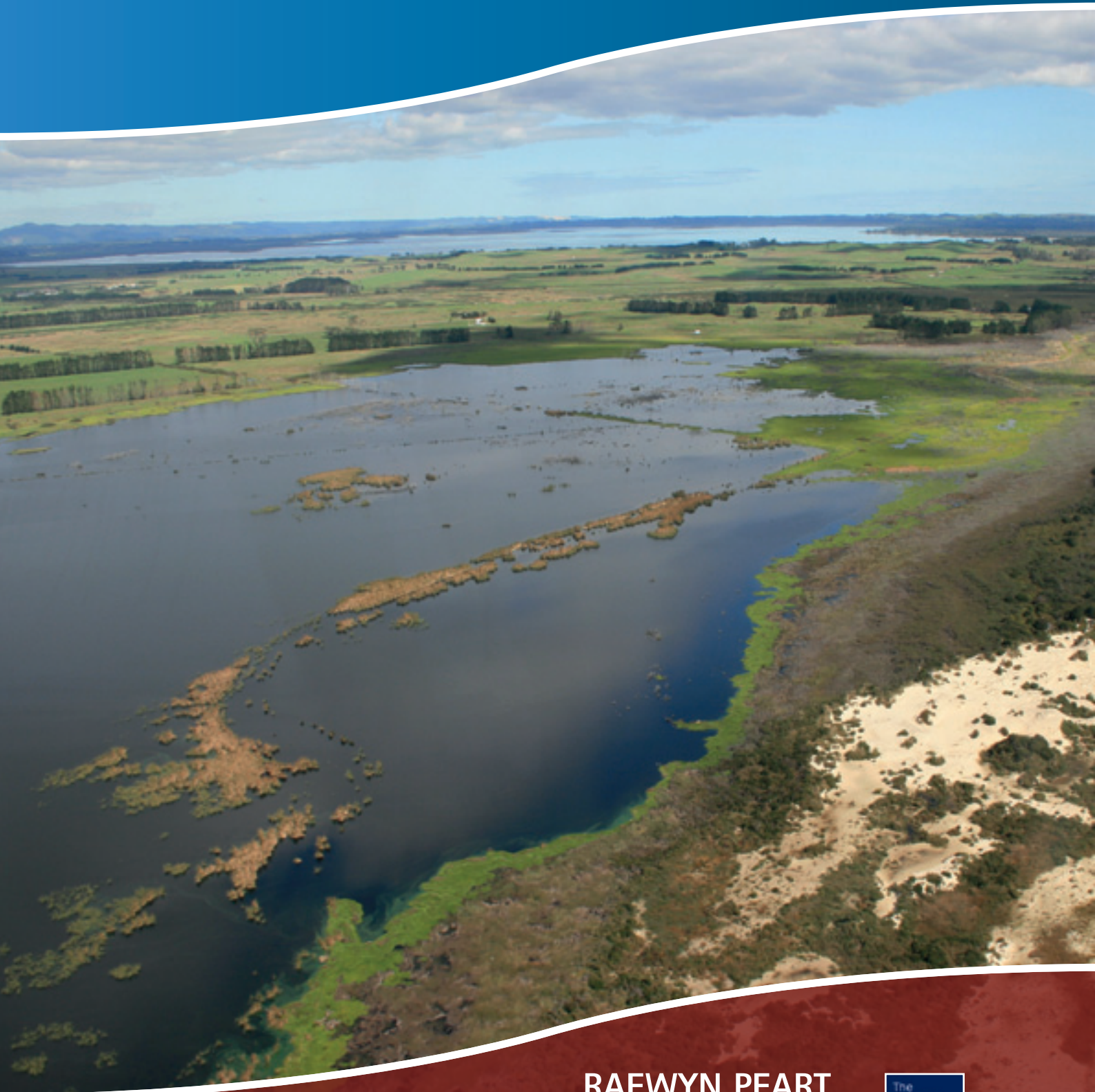


# IMPROVING ENVIRONMENTAL GOVERNANCE

THE ROLE OF AN ENVIRONMENTAL PROTECTION AUTHORITY IN NEW ZEALAND



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## Summary of recommendations

The government is proposing to establish an Environmental Protection Authority (EPA) in New Zealand. The Environmental Defence Society sees this as a major opportunity to strengthen environmental management within the country. To help inform the design of the new authority, EDS has undertaken a review of six EPAs in comparable jurisdictions, and an analysis of the current weaknesses in New Zealand's environmental governance system. Based on this work which is described in the paper, EDS has developed recommendations on the structure and functions of the new EPA. These are summarised below.

EDS proposes that the new EPA have two key functions. The first should be strengthening and simplifying the environmental planning and decision-making system. The second should be integrating coastal and marine management. A major thrust of the EPA's work should be to support the development of a strong national and regional framework of environmental policies and standards, to increase the capacity of council staff, and to significantly beef up monitoring and auditing systems. Actual policy-making responsibilities would remain, however, with the Ministry for the Environment (MFE), regional councils and territorial authorities.

The EPA should be established as an autonomous crown agency under the Environment Act 1986. It should operate at arm's length from the Minister and be governed by a small professional board of between five and ten members. It should remain a small organisation, with two or three regional offices, and be largely staffed with people with strong scientific and technical skills.

The establishment of the EPA should be accompanied by the creation of the New Zealand Coastal Commission. The Coastal Commission would be an independent national body charged with protecting the coast in the long term. It would be an advisory body and standing board of inquiry with particular expertise in coastal and marine management. It would be serviced by the EPA and would not have its own staff.

Provisions should be made for effective Māori engagement in the work of the EPA and Coastal Commission. Active engagement of tangata whenua in policy-making and co-management arrangements would continue with central, regional and local government.

The EPA should undertake the following functions:

### *Environmental planning*

- Provide technical support for the preparation of national policy statements
- Prepare draft national environmental standards
- Approve proposed regional policy statements prior to public notification
- Develop a toolbox of standardised regional and district plan templates and provisions
- Develop and implement a national environmental monitoring framework
- Process RMA proposals of national significance
- Provide technical support to councils
- Administer a Quality Planning Fund
- Provide environmental planning guidance and training
- Appoint commissioners to council hearings panels
- Prosecute the Crown for breaches of the RMA
- Audit council performance in implementing the RMA

### *Coastal and marine management*

- Provide technical support for the preparation of the New Zealand Coastal Policy Statement (NZCPS)
- Prepare draft national environmental standards for coastal issues
- Approve proposed regional coastal plans and proposed provisions of regional and district plans applying to the coastal environment prior to public notification
- Prepare draft Exclusive Economic Zone (EEZ) regulations
- Enforce and monitor compliance with EEZ regulations

- Support the functions of the EEZ Commissioner
- Prepare draft environmental standards for fisheries
- Prepare draft standards for marine protected areas
- Provide coastal and marine management guidance and training

The EPA could also take over many of the functions of Environmental Risk Management Agency (ERMA). That agency could be disestablished with ERMA staff being absorbed into the new EPA and into MFE. The ERMA board could be retained as a standing specialist board of inquiry to decide applications under the Hazardous Substances and New Organisms Act 1996.

National state of environment reporting could be undertaken by the Parliamentary Commissioner for the Environment (PCE), but EDS recommends that this role be undertaken by the EPA. This is so that state of environmental reporting can more readily inform the EPAs work and so that the PCE can continue to focus on its watchdog role.

Regional councils and unitary authorities would retain all their current functions under the model proposed, but a review could be undertaken to examine more closely what their future role and constitutional position should be.

The Environmental Defence Society considers the establishment of an EPA in New Zealand to be a positive step. If well-designed, it could provide significant benefits for the entire country.

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# 1 Introduction

The government has recently embarked on an ambitious reform programme for environmental management in New Zealand. One of the key elements of the proposed reforms is the establishment of an Environmental Protection Authority (EPA). Details of the structure and functioning of the proposed new authority are being worked up by government officials during the next few months.

The Environmental Defence Society (EDS) sees the establishment of an EPA as a significant opportunity to improve environmental governance within New Zealand. However, the extent to which this opportunity is realised will depend very much on the structure of the new EPA, how well it is resourced, and what its functions might be.

EPAs are a common feature in other developed countries. There is much to be learnt from their experiences. To inform the design of the New Zealand model, EDS has undertaken preliminary research on EPAs in Western Australia, Victoria, Ireland, Scotland, Sweden and Denmark.

This paper draws on the results of this research. It is informed by previous work undertaken by EDS on the operation of the Resource Management Act 1991 (RMA) more generally, and on the effectiveness of landscape protection and coastal and marine management in particular. The paper also reflects EDS's long experience of litigating on RMA matters. A draft paper was circulated for peer review and this final paper has also benefited from the knowledge and insights of many of the reviewers identified in the acknowledgements.

As the government has already committed to the establishment of an EPA, this paper does not debate the issue of whether an EPA is a good idea for New Zealand. Rather, it considers the key question: 'given that an EPA is to be created, how can it best be designed to maximise benefits for the environment?'

The paper takes into account recent policy announcements which have established a preliminary framework for the new EPA. In its environmental policy, released shortly before the 2008 election, the National Party made a number of policy commitments related to environmental governance.<sup>1</sup> These included:

- Inviting stakeholders to work with us to reach agreement on up to 20 national environmental goals to be achieved by specific dates, at the latest by 2030
- Introducing a new Environmental Reporting Act requiring independent five-yearly State of the Environment Reports as a new function of the Parliamentary Commissioner for the Environment
- Refocusing the Ministry for the Environment into a politically-neutral, highly skilled and respected policy advisor
- Expanding the existing Environmental Risk Management Authority (ERMA) into an Environmental Protection Authority with increased responsibilities, including
  - The national regulatory functions of the RMA, including 'priority consenting' (processing of called-in RMA proposals of national significance)
  - Development of national policy statements and national environmental standards. New national policy statements are envisaged for water, biodiversity protection, coastal management and home affordability. Consistent national environmental standards were foreshadowed for forestry, telecommunications, housing development, agriculture and energy.
  - Its existing functions under the Hazardous Substances and New Organisms Act
  - Possibly the power to prosecute the Crown for breaches of resource consents

The policy paper also indicated that ERMA would be merged into the EPA by 'reprioritising some of the resource currently allocated to the Ministry for the Environment' and that there would be 'no extra bureaucrats'.

The Resource Management (Simplifying and Streamlining) Amendment Bill proposes to establish a transitional EPA housed within the Ministry for the Environment (MFE). It is intended that a dedicated unit within the EPA would administer the call-in process for resource consents and provide support services to the boards of inquiry appointed by the Minister to decide the called-in applications.

The Minister for the Environment, Hon Dr Nick Smith, elaborated on some of these proposed governance reforms in his speech to the New Zealand Planning Institute's annual conference on 8 May 2009.<sup>2</sup> He referred to 'refocusing the Ministry [for the Environment] and rebuilding morale so it has the capacity to be a high quality, politically neutral advisor on climate change, and broader resource management issues'.

The Minister also described the transitional EPA as having the purpose 'to provide efficient and timely administration of the consent process for proposals of national significance such as major infrastructure or public work projects'. The EPA will receive, accept and process applications and provide the Minister with advice on proposals that should be called in. Decisions on the proposals, however, are to be made by a board of inquiry appointed by the Minister or the Environment Court.

As part of phase two of the reforms the Minister sees 'opportunities for the EPA to expand to include a wider range of environmental functions which are best performed at the national level'. He also suggested that there were a range of other potential functions which the EPA could perform including management of the proposed Exclusive Economic Zone (EEZ) legislation.

Ideas about potential functions were further expanded in the cabinet paper setting out the scope and timing of the phase 2 RMA reforms. This indicated that the EPA could have responsibility for administration and processing of national priority projects, development of national environmental standards under the RMA and administration of the EEZ legislation. The paper also notes that a more limited option would be for the EPA to assume only roles currently undertaken by the Ministry for the Environment (MFE) 'while more expansive options might include compliance and enforcement functions and/or some regulatory functions currently undertaken by other government departments'.<sup>3</sup>

The government aims to develop legislation fleshing out these broader roles for the EPA during 2009 with an expanded EPA being fully operational by 1 July 2010.

The Minister established a Technical Advisory Group (TAG) to provide advice on the RMA reform process. In February 2009, the TAG reported back to the Minister on Phase 1 of the RMA reforms which primarily focused on process issues.<sup>4</sup> In that report, however, the TAG identified a range of matters which might be addressed in Phase 2 of the reforms, some of which are relevant to the potential functions of an EPA in New Zealand. These are referred to in relevant sections of this paper.

Although not mentioned in government policy announcements, a key issue raised by the TAG was the future of regional councils. A majority view expressed in its report stated:<sup>5</sup>

In 2009, regional councils will have operated for twenty years. The TAG believes this is an appropriate time for a reappraisal of their performance. This should be carried out in the context of a larger question: whether New Zealand's three-tier political governance arrangements for resource management represent an efficient and effective framework for managing the environment. Or whether a two-tier system might serve the country better ...

One of the options that should be considered is to move toward a two-tier resource management system, in which the functions and activities currently performed at the regional level are split between the new EPA, which would need to have a regional presence, and territorial authorities.

A minority on the TAG expressed a contrary view as follows :

A minority view on the TAG holds that any review of regional government with a view to nationalizing some or all of the functions currently exercised needs to be based on more than selective 'public' surveys and *ad hoc* student research. Similarly, any qualitative criticism of environmental outcomes needs to be more sophisticated than observing how many regional councils comprise farmers ... Another option that should be considered in any review is for the fusion of regional and district councils.

Given the context outlined above, the paper briefly describes the key elements of the EPA model as applied in other countries. It canvasses the key problems with the current environmental management system in New Zealand. It then outlines how a new EPA could be designed to help resolve these problems, drawing on the models applied elsewhere.

The establishment of the EPA will be part of the biggest reforms to New Zealand's environmental administration since the 1980s. It is important to get it right.





## 2 The EPA experience

Environmental protection agencies or authorities were established in many developed countries the late 1960s and early 1970s in response to the rise in environmental concern, particularly about increasing levels of industrial pollution. The United States Environmental Protection Agency, established in 1970, is one of the best known agencies and now employs around 17,000 people. The main concept behind the EPA model was to establish an agency which was independent from political and business influence, which was technically highly skilled, and which would focus on addressing key environmental issues.

The model has evolved in very different ways in the various jurisdictions. EDS has examined six models from Western Australia, Victoria, Ireland, Scotland, Sweden and Denmark. These models have been selected because they are from areas with broadly comparable population sizes and legal systems to New Zealand.

The two Australian EPA models examined are at the state level, which in terms of environmental management functions is broadly comparable to the national level in New Zealand. There is no EPA at the Australian Commonwealth level. There are several other state-level EPAs in Australia which were not included in the study. The EPAs in Queensland and New South Wales are government departments. South Australia, Tasmania and the Northern Territory have independent EPAs.

Each of the models examined differed significantly in terms of its structure, functions and degree of independence. This section provides a brief description of the different models and then a comparison across different key attributes. The key points are summarised in Figure 1.

### *Western Australian Environmental Protection Authority*

The Western Australian EPA was established in 1972 and currently operates under the Environmental Protection Act 1986. The objectives of the EPA, as stated in section 15 of the Act, are 'to protect the environment' and 'to prevent, control and abate pollution and environmental harm'. The focus of the EPA is therefore on environmental protection rather than on sustainable management or development.

The prime function of the EPA is to conduct environmental impact assessments (EIAs) of significant development proposals and planning schemes, many of these related to the mining, oil and gas industries. The EPA has developed a sophisticated and internationally recognised EIA process, but this has become cumbersome, and it can take three to five years for a large proposal to get approval. The EIA system has been reviewed and changes are currently being implemented. The new Western Australia state government has also initiated a major overhaul of the entire approvals process. There is some concern that the EIA approach is too reactive and the EPA is starting to apply strategic environmental assessment approaches to areas likely to come under development pressure in the future.

The EPA is not the consent authority for the projects which it assesses, nor does it enforce the conditions of consent. The Minister makes the decision on whether or not to grant consent after being advised by the EPA of the environmental acceptability of the proposal. The Minister takes into account a broader range of issues than the EPA, including economic and social considerations, and does sometimes grant consent against the recommendations of the authority. Enforcement of conditions is undertaken by the Department of Environment and Conservation. This split of functions means that the EPA does not gain first-hand knowledge of the effectiveness of its recommended conditions of consent.

As well as undertaking EIAs, the EPA formulates statutory environmental protection policies which are approved by the Minister. These can set environmental standards or targets. The EPA also prepares special reports on environmental issues of concern, prepares five-yearly state of the environment reports and provides general policy advice to the government on environmental matters.

The EPA is governed by a board of five professional, skills-based, independent directors appointed by the Governor on the recommendation of the Minister. Before making the appointments, the Minister is required to publicly call for expressions of interest in the positions. The EPA is independent. The Environmental Protection Act specifically states that neither the EPA nor the Chairman 'shall be subject to the direction of the Minister' (section 8). A Stakeholder Reference Group of people from broader backgrounds provides advice to the EPA.

The EPA does not employ its own staff but is serviced by a unit located in the Department of Environment and Conservation which has around 50 staff members. This arrangement has proved problematic for the EPA, as it is not able to directly control its resources. The EPA is headquartered in Perth and the Office of the EPA has a budget of around A\$1.2 million (NZ\$1.5 million) excluding service staff costs which are covered by the department.

### *Victorian Environmental Protection Authority*

The Victorian EPA was established in 1970 under the Environment Protection Act 1970. The purpose of the Act is to 'create a legislative framework for the protection of the environment of Victoria having regard to the principles of environmental protection' (section 1A). The first such principle stated in the Act is the integration of economic, social and environmental considerations (section 1B). This has meant that the Victorian EPA has had a broader focus than the Western Australian EPA, and considers the economic and social implications of environmental protection.

In its early years, the Victorian EPA was primarily a pollution control authority and it focused on cleaning up air and water pollution through licensing and policing emissions from factories. More recently, the work of the authority has broadened. The EPA has focused increasingly on the efficiency of resource use and has sought to reduce the use of resources and emissions throughout the entire supply chain.

One initiative designed to achieve this is the industry greenhouse programme, where high energy-using businesses are required to conduct an energy audit and to implement any energy efficiency measures identified which have a payback of three years or less. The EPA has also developed a corporate licensing regime which replaces plant-by-plant licensing with one agreement which covers all of a company's operations within the state.

As well as directly regulating emissions, the authority recommends environmental quality standards to government. The EPA does not undertake state of the environment reporting which is carried out by the Victorian Commissioner for Environmental Sustainability.

The EPA is an independent body corporate which legally consists of one person, its chairman. There is also provision for the appointment of a deputy chairman. The chairman and deputy are appointed by the Governor-in-Council. The EPA is advised by a three member Environment Protection Board, also appointed by the Governor-in-Council, which maintains an overview of the administration and policies of the authority.

The EPA has around 400 employees and a budget of A\$84 million (NZ\$102 million). It has a head office in Melbourne and five regional offices. All licensing is centralised in head office. The EPA is structured around five directorates – Sustainable Development; Water and National Program; Environmental Science; Regional Services; and Corporate Services. The Victorian EPA is generally regarded as the most successful EPA model in Australia.

### *Irish Environmental Protection Agency*

The Irish EPA was established by the government of the Republic of Ireland in 1993, under the Environmental Protection Agency Act 1992, primarily to undertake pollution control. The EPA licenses major activities including large scale manufacturing plants, waste facilities, intensive agriculture and genetically modified organisms. The EPA also enforces the conditions of the licences issued and oversees the environmental enforcement activities of local authorities.

As well as pollution control, the EPA has a range of other functions including waste management, monitoring, five-yearly state of the environment reporting, coordination of national environmental research and administration of greenhouse gas emissions trading. The EPA also produces guidance documents and school resource material.

The EPA is governed by a full-time board of five headed by a Director-General. The board members are appointed through a process designed to ensure political independence. Up to three candidates for each position are selected by an independent committee and the government appoints one of those candidates to the position.

An advisory committee of 12 members meets several times a year to provide advice to the board. Members are nominated by prescribed organisations representing a range of concerns and are appointed by the Minister for the Environment, Heritage and Local Government. The director-general of the EPA is an ex officio member and chairperson of the committee. The EPA and the

Minister are required to 'have regard to' any recommendations of the Advisory Committee (section 28). The committee has just finished its first three year term and some members would like to see the committee providing stronger oversight of the EPA.

The EPA has 340 employees of which around 300 are scientists or engineers. It has a budget of Euro 59 million (NZ\$138 million). The agency is headquartered outside the capital in Wexford and has five regional environmental units which undertake enforcement and liaise with local authorities. All licensing is centralised in head office. The EPA is structured around four offices – Climate; Licensing and Resource Use; Environmental Enforcement; Environmental Assessment; and Communications and Corporate Services.

The government is currently undertaking a review of the functions of the EPA and is considering establishing an environment court.

To overcome delays in obtaining planning approval, and to streamline the consent framework for infrastructure of public importance (defined as projects of strategic, economic or social importance which contribute to national or regional strategies), the Irish Government introduced the Planning and Development Strategic Infrastructure Act 2006.

The Act provides for a one-step consent process for energy, transport, waste and water infrastructure projects. This allows projects to go straight to the Planning Board, rather than first having to get local authority approval, thus reducing the length of time it takes to get development consent planning permission.

### *Scottish Environmental Protection Agency*

The Scottish EPA was established in 1995. It is primarily concerned with regulating water and air pollution, waste, radioactive materials and land contamination. The EPA licenses and monitors activities, but does not have the ability to bring its own prosecutions. The EPA also manages flood warning systems and monitors and reports on the state of the environment.

The Scottish EPA is actively involved in managing diffuse sources of pollution. Controlled activities regulations apply to a range of rural activities and provide for three levels of control. Low risk activities are required to comply with general binding rules which establish a statutory baseline of good practice. Small-scale activities that individually pose a small risk of pollution, but which cumulatively can result in environmental harm, are required to register with the EPA and comply with standard conditions. Activities with more significant effects require licences which have individually tailored conditions attached. The range of rural activities covered by these rules is broad and includes the storage and application of fertilisers, keeping of livestock, cultivation of land and application of pesticide.

The EPA is also involved in coordinating river basin planning in Scotland to implement the European Union (EU) Water Framework Directive. For diffuse sources of water pollution, this directive requires EU countries to implement measures that prevent or control the 'input' of pollutants,<sup>7</sup> thereby focusing on controlling inputs rather than on managing effects.

The EPA has established a national advisory group, as well as a network of area advisory groups, to input into the river basin planning process. The area advisory groups are tasked with identifying priorities, setting environmental objectives, and selecting implementation measures for their area. Members of the advisory groups include representatives of the various statutory management authorities and key interest groups. Each area has an EPA area coordinator and an advisory group forum which includes members of the public who wish to become involved in the process. The EPA also administers a water environment restoration fund to help incentivise good land management.

The EPA is an independent body corporate responsible to Parliament through the Secretary of State and other Ministers. The Board consists of 12 members appointed by the Secretary of State. Meetings of the Board are open to the public. The EPA has also established three regional boards (North, East and South West) which are responsible for engaging in dialogue with local communities and stakeholders. There are 32 unitary authorities in Scotland formed in 1996 from the merger of regional and district councils.

The EPA has 1300 employees located in 22 offices. It has a budget of £70.5 million (NZ\$177 million). Its head office is located in Stirling, outside the political centre.

### *Swedish Environmental Protection Agency*

The Swedish EPA was established in 1967, and during its early days, took responsibility for most environmental policy in Sweden. More recently the EPA has taken on a greater coordination, monitoring and information sharing role. The key functions of the EPA are to develop proposals for environmental policy and legislation and to ensure that the government's environmental policy decisions are implemented. Its areas of responsibility include environmental protection, nature conservation, outdoor recreation and hunting.

Implementation on the ground is undertaken at a regional level by 21 county administrative boards and at a local level by 290 municipalities. The county administrative boards are directly accountable to central government and are chaired by a politically

appointed Governor. In 2002 membership of the boards was changed from local government politicians to Governor appointees. This was to strengthen the accountability of the boards to central government.<sup>8</sup>

Environmental management in Sweden is guided by sixteen national environmental quality objectives adopted by Parliament and designed 'to pass on to the next generation a society in which all major environmental problems have been solved'. Each objective is overseen by a responsible authority, with the EPA being responsible for 10 of the objectives. Measurable interim targets have been developed for each objective.

The Environmental Objectives Council has been established to oversee the achievement of objectives. Members include the general directors of the authorities responsible for each objective as well as experts representing sector groups which are appointed by central government. The Council reports annually to government on progress towards achieving the objectives and undertakes an in-depth evaluation every four years. The Council may propose changes to the objectives and interim targets and any additional measures required to meet them. The entire system of Environmental Quality Objectives is currently being reviewed by a government committee.

Specific functions of the EPA include the implementation of national environmental quality objectives, monitoring and reporting on the state of the environment, bringing actions in the Environment Court on behalf of the environment, purchasing land for nature conservation, developing fiscal instruments and coordinating the implementation of environmental policy more generally.

The EPA is an independent agency managed by a Director-General and it reports to the Ministry of the Environment. Each year the EPA is consulted by the Minister of the Environment over its letter of instructions and budget. The letter of instruction lists the things that the EPA will do during the year and reflects political priorities. Although politicians can influence what the EPA does in this general way, they cannot interfere in individual matters.

An Advisory Council provides advice to the Director-General of the EPA, but makes no decisions itself. The 12 members are appointed by government and include people from industry, parliamentary parties and non-governmental organisations.

The Agency also has attached to it the following 10 councils, which have a total of 140 members, some of which provide the EPA with advice on specific issues:

- Environmental Objectives Council
- Marine Environment Council
- Waste Council
- Scientific Council for Biological Diversity
- Council for Predator Issues
- Council for Allocation of Emission Allowances
- Council for Outdoor Recreation
- Environmental Research Council
- Investment Support Council
- Enforcement and Regulations Council

The EPA is headquartered in Stockholm and has two regional offices. It has 550 employees (compared to 200 in the Swedish Ministry of the Environment) of whom around 70 have PhDs. The EPA employs people from a range of professional backgrounds, mainly life scientists but including lawyers, sociologists and economists. It has an annual budget of 3.5 billion Swedish Kroner (NZ\$750 million) a year, of which NZ\$73 million covers administration costs, with the balance funding implementation programmes.

### *Danish Environmental Protection Agency*

The Danish EPA was established in 1972 and operates under the Environmental Protection Act 1974. It is mainly concerned with water, soil and air pollution. The EPA permits major projects and biotechnology sites. It approves pesticides, the import and export of waste, and supervises compliance with regulations on the use of chemical substances. The EPA also develops strategies and actions plans on waste, environmental health and chemicals. The EPA does not prepare the national state of environment report which is undertaken by the National Environmental Research Institute which is attached to Aarhus University.

The Danish EPA is part of the Ministry of the Environment and is based in Copenhagen. It has around 300 employees of whom around 250 have a post-graduate degree. The EPA's annual budget is around Euro 41 million (NZ\$94 million). A sister agency, the Agency for Spatial and Environmental Planning, deals with land use planning, nature protection and water management. The Ministry for the Environment itself has only around 70 staff.

In 2007 Denmark underwent major local government reform which abolished elected counties and replaced them with seven regional environment centres. The environment centres are overseen by the Agency for Spatial and Environmental Planning

and they largely absorbed the staff from the old counties. At the same time 271 municipalities were amalgamated into 98. Implementation of environmental policy is largely undertaken by the regional environment centres and municipalities.

### *Characteristics of EPAs*

The EPAs described above exhibit differing characteristics. They range from having a high degree of independence from political control (Western Australia, Ireland and Victoria) to being more directly part of the machinery of government (Denmark and Sweden). Four of the EPAs have independent boards (Western Australia, Victoria, Ireland and Scotland) and three also have broader advisory councils or committees (Western Australia, Ireland and Sweden).

In terms of functions, the EPAs range from having a largely advisory role (Western Australia), to playing a coordinating role (Sweden), to being implementers of policy (Victoria, Ireland, Scotland and Denmark). Four of the EPAs studied were directly involved in the licensing of large plants (Victoria, Ireland, Scotland and Denmark). Four were involved in reporting on the state of the environment (Western Australia, Ireland, Scotland and Sweden). In Victoria, state of environment reporting is undertaken by the Victorian Commissioner for Environmental Sustainability (similar to New Zealand's Parliamentary Commissioner for the Environment (PCE)). In Denmark such reporting is undertaken by a University.

There are quite marked differences in the extent to which the EPAs interact with local government and with land use planning issues. There is little interaction with local government by the Australian EPAs studied and the land use planning system operates pretty much independently of the environmental management system. This was seen as a major problem by many interviewees. In Western Australia there have been attempts to build linkages between these two areas with the EPA reviewing some land use plans. But this intervention, after the plans have been developed, was seen as being far too late in the process to have real influence on achieving environmental outcomes.

The Irish EPA directly interfaces with local authorities through providing support for and oversight of their enforcement role in respect of air quality, noise, planning, waste and water quality. In 2003 the EPA was given stronger powers, which now enable it to give binding directions to councils requiring them to undertake specific tasks. The Swedish EPA has a close relationship with the county administrative boards which are the regional implementation arm of government. In Denmark, the main interface with local government is through the seven regional environment centres which are under the direct control of the Agency for Spatial and Environmental Planning.

In Ireland, Scotland, Sweden and Denmark the EU has had a strong influence over environmental policy and the EPAs have been instrumental in implementing supra-national policy in the form of EU environmental directives. In Europe, between 70 and 85 per cent of domestic environmental legislation is EU driven.<sup>9</sup>

Where the EPAs have been established as traditional pollution control agencies, such as in Victoria and Ireland, they have proved effective at reducing point-source pollutants. They have, however, had little impact on reducing diffuse discharges or addressing cumulative environmental impacts. The Scottish EPA is the notable exception, being directly involved in addressing diffuse pollution issues in rural areas. Strategic environmental assessment in Western Australia is used as a means of addressing cumulative impacts.

	New Zealand (MFE)*	Western Australia	Victoria	Ireland	Scotland	Sweden	Denmark
Population (million)	4.2	2.1	5.2	4.2	5.1	9.0	5.4
Land area (km <sup>2</sup> )	270,500	2,529,875	227,416	70,282	78,772	410,335	43,000
Regional and local governance	12 regional councils; 69 territorial authorities	141 local councils	79 local councils	34 county and city councils; 80 borough and town councils	32 unitary authorities	21 county administrative boards; 290 municipalities	7 environment centres; 98 municipalities
Year established	1986	1972	1970	1993	1995	1967	1972
EPA staff	300	50 (in DEC)	400	340	1300	550	300
EPA budget (NZ\$)	\$68 million	\$1.5 million	\$102 million	\$138 million	\$177 million	\$750 million	\$94 million
Head office location	Wellington	Perth	Melbourne	Wexford	Stirling	Stockholm	Copenhagen
Number of regional offices	2 (EPA functions largely undertaken by 16 regional and unitary authorities)	0	5	5	21	2	0
Governance	Secretary for the Environment	5 member independent board	Chairman who constitutes the EPA	5 member board	12 member board and 3 regional boards	Director General	Director General
Appointment process	Appointment by State Services Commission	Appointment by Governor on recommendation of Minister	Appointment by Governor-in-Council	Appointment by the government from a short list selected by an independent committee	Appointment by Secretary of State	Government appointment process	Government appointment process
Advisory body	No	Advisory Group	3 member Environmental Protection Board	12 member Advisory Committee	No	12 member Advisory Council	No
Key functions	Policy advice	Undertaking EIAs of major projects and environmental policy advice	Pollution control	Pollution control	Pollution control including diffuse pollution of water	Overseeing implementation of environmental policy	Pollution control
Policy formulation	Yes	Statutory environmental protection policies and state environment policies	Environmental quality standards	Environmental quality objectives		Yes	Yes
SOE reporting	Yes	Yes	No	Yes	Yes	Yes	No
Licensing	No	No	Yes	Yes	Yes	No	Yes
Enforcement	No	No	Yes	Yes	Partial (can't bring prosecutions)	No	Yes

\*Note: MFE is not an EPA, and many of the functions undertaken by other EPAs are currently undertaken in New Zealand by regional councils. It has been included in the table to provide some New Zealand context.

Figure 1 : Summary of key features of EPAs

## Pros and cons of EPAs

So what are the pros and cons of creating an EPA? In small countries which are short on environmental expertise, it enables a critical mass of technical expertise to be brought together into one agency. It enables a separation to be created between the development of policy, which is a political function, and its implementation which requires a different set of skills.

EPAs can serve to create a level of independence, so that the implementation and enforcement of environmental standards and rules is not subject to political interference or captured by those being regulated. This model also enables the monitoring of environmental outcomes to be undertaken by an agency independent from the government of the day. And it enables an agency to be strongly focused on solving key environmental issues rather than being bogged down with general administration and policy advice.

There is now considerable experience worldwide in the operation of EPAs and a large international network which can be accessed by new authorities. There are, for example, 31 EPAs in the EU network and seven state-level EPAs in Australia, the most recent established in 2007 in the Northern Territory.

As already indicated, EPAs have proved particularly effective at addressing point-source pollution discharges through licencing polluters and enforcing conditions of consent. They have not, however, been as effective in addressing diffuse sources of pollutants which are interlinked with more complex land use and management issues.

There are other potential shortcomings of the traditional EPA model. The split of environmental functions between an independent agency and government departments can make integrated action on environmental issues more difficult. If the EPA focuses solely on environmental protection, it is likely to clash with other politically-directed bodies which need to take into account economic, social and cultural as well as environmental issues.

Although a centralised regulatory agency is well placed to implement a rigorous consenting, enforcement and monitoring regime, it is not as suited to the development of proactive, voluntary and community-based programmes. These require a strong presence on the ground, a focus on relationship-building and tailoring to local circumstances.

## Contemporary approaches to environmental governance

As well as looking at existing models of EPAs, there is a growing body of academic work on environmental governance approaches which can help inform the design of a new EPA for New Zealand. Malcolm Sparrow, a Professor at the Harvard John F. Kennedy School of Government and former British detective chief inspector, has written about 'regulatory craftsmanship' based on the USA experience. Sparrow identifies three core elements of an emerging new approach to regulatory practice:<sup>10</sup>

- A *clear focus on results* – where indicators of success are measurable reductions achieved within specific, well-defined problem areas.
- The adoption of a *problem-solving approach* – involving a 'systematic identification of important hazards, risks or patterns of non-compliance' and the 'development of an organizational capacity for designing and implementing effective, creative, tailor-made solutions for each identified problem'.
- An investment in *collaborative partnerships* – to produce a 'sense of shared purpose through collaborative agenda setting and prioritization, more effective interventions resulting from the active engagement of multiple parties, and optimal leveraging of scarce agency resources'.

Robert Durant, Professor of Public Administration at American University, has written about the shift from the first generation of environmental regulation which was bureaucratic, prescriptive, fragmented and adversarial to the second generation of environmental governance approaches which seeks to build a results-based sense of common purpose.

Durant identifies the first-generation approach as being particularly inappropriate for environmental problems caused by small, diverse and numerous nonpoint sources of pollutants. These problems require regulators to re-connect with stakeholders through 'deliberative democracy' where stakeholders are meaningfully involved in agency decision-making from an early stage. Durant also talks about the need to create 'risk-based, stakeholder-sensitive, and geographically focused' environmental regulatory regimes which may necessitate the devolution of environmental management responsibilities.<sup>11</sup>

Oran Young, Professor of Institutional and International Governance at the University of California, considered the design of environmental management institutions in his 2002 book *The Institutional Dimensions of Environmental Change*. Oran aptly observed that 'one size does not fit all when it comes to the creation of effective environmental regimes'.<sup>12</sup> He adopts a diagnostic approach where the important features arising from environmental changes are identified along with institutional design

implications of each feature. He stresses the importance of early warning devices and a rapid response capability, of the need for linkages and coordination, the importance of flexibility, social learning and capacity building and the need for systems of monitoring and implementation review.<sup>13</sup>

So contemporary approaches to environmental governance emphasise the need to adopt collaborative governance approaches, to focus on key problems, to apply a flexible and adaptive approach to developing solutions, and to regularly measure results.

### *Application to New Zealand*

It is not possible to simply take an overseas model or approach and apply it to New Zealand. This country has a unique environmental management framework and a particular set of environmental challenges. Our key environmental problems are not related to industrial pollution, as in many other developed countries, but are the result of the cumulative effects of agricultural activity and urban development. In addition, our environmental legislation provides specific recognition for Treaty principles, kaitiakitanga and Māori values which are absent in overseas examples.

A New Zealand model needs to be designed to reflect our cultural context and to both address the current weaknesses in our environmental management system and the pressing environmental problems which the country faces.

There are, however, elements from the models described above which may be particularly relevant to the potential functions of a New Zealand EPA and which merit further scrutiny. These include the environmental assessment of major projects by the Western Australia EPA, the management of resource use and emissions throughout the supply chain undertaken by the Victorian EPA, the management of diffuse sources of water pollution by the Scottish EPA, and the activities of the Agency for Spatial and Environment Planning in Denmark.

The next section describes some of the key features of New Zealand's current environmental governance system within which a new EPA would be located.





## 3 Environmental governance in New Zealand

### *Current governance model*

The 1980s saw a major shake-up of New Zealand's environmental institutions. The resulting structure established three new agencies at the central government level – the small Wellington-based MFE, the much larger regionally structured Department of Conservation (DOC) and a watchdog agency in the form of the Parliamentary Commissioner for the Environment (PCE).

A new layer of 13 democratically elected regional councils based on water catchments was established in 1989. At the same time numerous small territorial authorities were amalgamated into 69 much larger city and district councils. Gisborne District became a unitary authority, undertaking both regional council and territorial authority functions. In 1992, the Nelson Marlborough Regional Council was disestablished, and the three district councils also became unitary authorities.

In 1991, the RMA brought together the management of air, water and soil into an integrated regime. Central government was largely tasked with policy setting through the development of national policy statements and national environmental standards. Implementation was to be undertaken by the new regional councils and territorial authorities. In broad terms air, land and water pollution were to be managed by regional councils and land use planning was to be undertaken by territorial authorities. This split of functions between the two levels of local government has, however, made it difficult to achieve integration on the ground.

Under the RMA, implementation at the sub-national level required the preparation of a whole raft of plans at the regional and district levels, before rules with regulatory force came into play. This meant that councils were tasked with both regional and local-level policy setting, as well as implementation, within the very broad framework of the RMA. In the interregnum, while RMA plans were being prepared, planning documents which had been operational under the repealed legislation were carried over as transitional plans.

Councils were tasked with enforcing the provisions of the RMA in their functional areas. This included regional councils taking enforcement action against territorial authorities when the management of local infrastructure resulted in environmental limits being transgressed. Only in 2005 was a clear hierarchy established between regional and district planning documents, with district plans being required to 'give effect' to regional policy statements.

The main 'check and balance' on council performance was provided by the specialist Environment Court and broad rights of public participation, which enabled parties to appeal council decisions to the Court, which re-assessed the merits of each case. These rights are proposed to be significantly scaled back under the Resource Management (Simplifying and Streamlining) Amendment Bill. The Minister of Conservation was given a special oversight role for the coast. The Department of Conservation was given the statutory role, under the Conservation Act 1987, of advocating for the conservation of natural and historic resources, including through participating in RMA processes.

The RMA is still considered by many to be a world-leading piece of legislation. The elements which stand out as representing international best practice are the integration of land use planning and environmental management, 'one-stop shop' consent processing, broad public participation provisions, the specialist Environment Court which considers matters on their merits, and the catchment-to-the-sea management provided by regional councils whose boundaries are based on water catchments and extend out to the edge of the territorial sea (12 nautical miles from land).

The RMA's emphasis on the assessment of effects of proposed activities as the prime environmental management tool has, however, become dated. Well-suited to the mitigation of the environmental effects of individual proposals, it is less appropriate for the more complex and multi-faceted environmental problems of the 21<sup>st</sup> century.

The legal framework within which councils operate was significantly changed by the Local Government Act 2002. This legislation enshrined sustainable development as one of its key purposes, and sought to ensure that councils were more accountable to their communities. It also gave councils broad powers of general competence to promote the social, economic, environmental and cultural well-being of their communities. Rather than 'autonomous and discreet deliverers of services', councils were to become 'responsive, collaborative facilitators of community outcomes'.<sup>14</sup> This reflected a move towards a more collaborative governance approach at regional and local levels.

The management of hazardous substances and new organisms was originally included within the ambit of the RMA, but the relevant part of the Act was never brought into force. Separate legislation was drafted, in the form of the Hazardous Substances and New Organisms Act 1996, which only fully came into force in 2001. This legislation established a special purpose body – ERMA – which had the prime role of assessing and controlling hazardous substances and new organisms.

ERMA is an autonomous Crown entity, and although not under the direct control of the Minister for the Environment, it must 'have regard to' government policy when directed by the Minister.<sup>15</sup> The Authority is serviced by a small agency called ERMA New Zealand. It is advised on Māori perspectives by a 7-member statutory committee – Ngā Kaihautū Tikanga Taiao – and also receives input from a 3-member non-statutory Ethics Advisory Panel.

More recently, the Waste Management Act 2008 established a product stewardship scheme and waste levy system. A seven-member statutory Waste Advisory Board has been established to provide the Minister for the Environment with advice on waste minimisation.

Key elements of the current environmental governance structure are summarised in Figure 2. The following section describes some of the environmental issues which this governance system is currently grappling with.

### *Current environmental issues*

The quality of New Zealand's environment is relatively good compared with many other developed countries, but during the past twenty years some significant environmental problems have become evident, and the environment is deteriorating in some key areas.

Although regional councils have effectively addressed point-source discharges, diffuse sources of pollutants have proved more problematic. Water quality in lowland streams and lakes has continued to deteriorate in many areas, as a result of run-off from paved surfaces in urban areas, and from intensive agricultural activities.<sup>16</sup> Intensive cropping and agriculture has also resulted in a decline in soil health.<sup>17</sup>

Biodiversity conservation continues to be a challenge and the OECD reported a net loss of nearly 175 square kilometers of indigenous habitat between 1996 and 2002, mainly as a result of conversion to exotic forestry or pasture. The large majority of the 926 species in New Zealand listed as threatened or near-threatened continue to decline.<sup>18</sup>

Impacts on the marine area are not well understood but are likely to be significant. Fishing vessels trawl on average 55,000 square kilometers of the seabed each year,<sup>19</sup> and research has indicated that trawling can have significant negative effects on benthic habitats.<sup>20</sup> Fishing bycatch is a serious threat to New-Zealand breeding albatrosses, Hector's and Maui's dolphins, and some penguins, petrels, shearwaters and shags.<sup>21</sup>

Land-sourced sediment continues to choke biologically important estuarine areas, particularly in the northern harbours of the North Island.<sup>22</sup> For example, sedimentation is one of the most pervasive problems affecting the Hauraki Gulf<sup>23</sup> and it also appears to be a problem for the Kaipara Harbour, which scientists have recently identified as the remaining nursery area for virtually the entire stock of snapper on the west coast of the North Island.<sup>24</sup>

In many areas under strong development pressure, there has been poor management of urban and rural-residential sprawl, which is cumulatively having major negative impacts on coastal, lake, high country and heritage landscapes.<sup>25</sup> The quality of our landscapes is inexorably being downgraded, with impacts both on quality of life and on the attractiveness of New Zealand as a tourist destination.

The allocation of the use of publicly-owned resources such as fresh water and marine space continues to be problematic. The 'first-in first-served' approach to water allocation, and lack of a resource rent, has prevented the efficient allocation of water.<sup>26</sup> Reforms to the aquaculture regime in 2004, designed to provide a more strategic process for the allocation of marine space, have become bogged down and no areas for aquaculture have been created under the new regime.

So why has our current environment governance regime been unable to get on top of these issues?

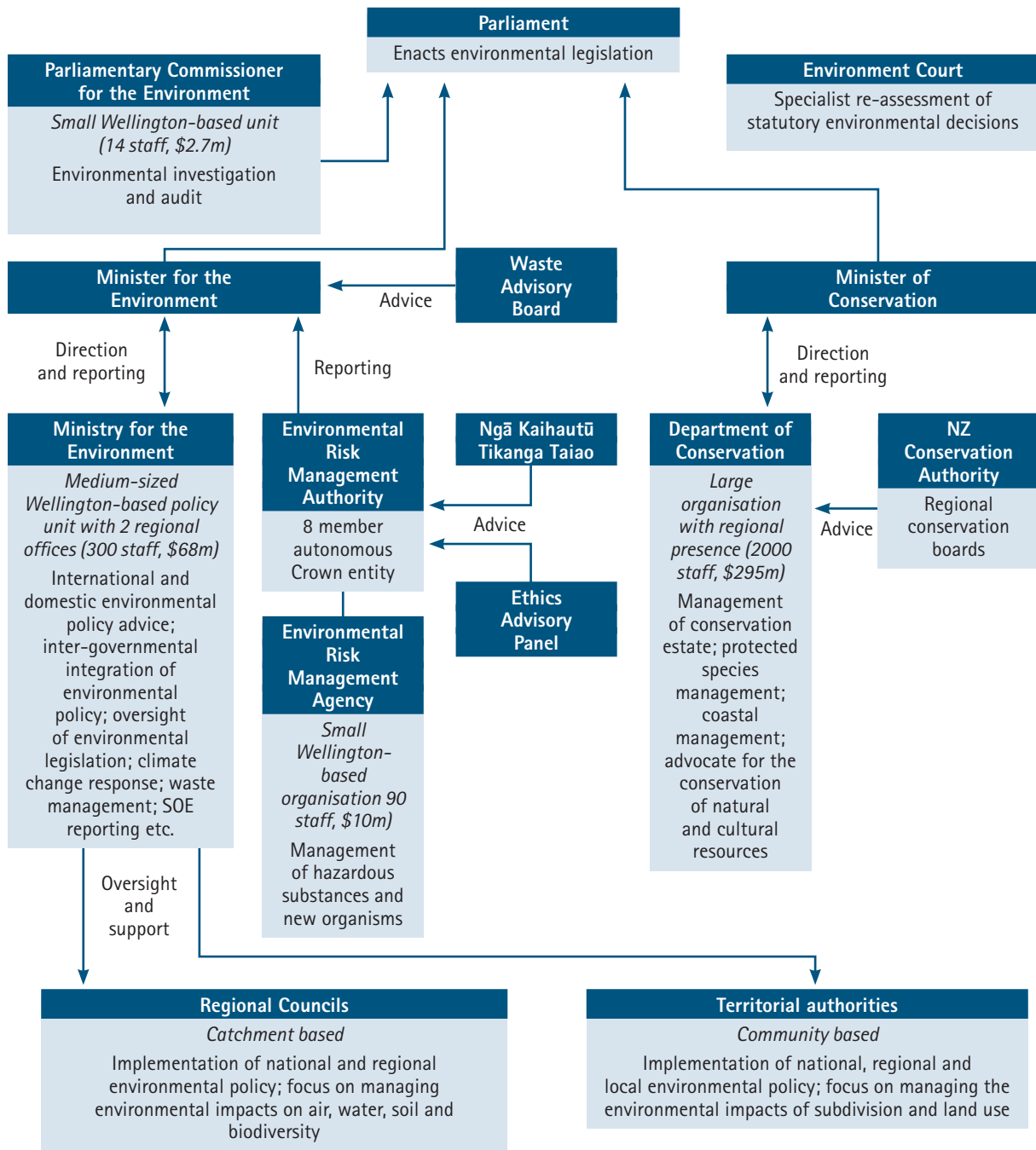


Figure 2: Current environmental governance structure<sup>1</sup>

<sup>1</sup> Excluding fisheries, biosecurity, maritime transport, EEZ mining and energy efficiency regimes

## *Weaknesses in environmental governance*

An in-depth analysis of the weaknesses of the current environmental governance system is outside the scope of this paper. However, there are two problem areas which have been well documented – weaknesses in the environmental planning framework under the RMA and fragmented governance in the coastal and marine area.

### **Environmental planning framework**

The lack of strong national policy guidance is frequently identified as a significant problem in the implementation of the RMA.<sup>27</sup> The OECD observed in its 2007 environmental performance review of New Zealand that there was a need to 'strengthen national policy guidance, in the form of policy statements and national environmental standards, in the interest of promoting a level national playing field and improving regulatory efficiency.'<sup>28</sup> Strong national policy and standards can serve to, not only improve environmental outcomes, but to simplify processes and reduce costs at the regional and district level.

Until recently, there was only one national policy statement under the RMA, the New Zealand Coastal Policy Statement (NZCPS). This document provides a high-level policy framework and has been effective in guiding regional council management of the coastal marine area, particularly in changing the practice of directly discharging sewage into the sea. However, it has only been partially effective in influencing district plans which control land subdivision and development.<sup>29</sup> The recently prepared 2008 proposed NZCPS is an improvement in some areas, but it is still inadequate when it comes to managing the impacts of coastal development at a territorial authority level.<sup>30</sup>

There is as yet no national policy statement on freshwater management despite the significance of the issue. The draft document recently produced by the Ministry for the Environment has been heavily criticised as failing to provide a clear policy response. National Party policy, released shortly before the 2008 election, indicated an intention to put the draft on hold and to endeavour to come up with a better approach through a collaborative governance process.<sup>31</sup>

Many of the first generation of plans prepared under the RMA are of poor quality and have taken an inordinate amount of time to become operative. A study of RMA plans in the late 1990s, undertaken by a group of researchers based at the University of Waikato, gave two-thirds of the regional policy statements and district plans analysed less than a fifty per cent grade for plan quality.<sup>32</sup> RMA plans have often been based on poor information. Many have also been badly implemented. Plans typically have weak rules and few measurable objectives.

Ongoing problems with plan quality were highlighted in a 2006 Environment Court decision which considered the rural and coastal subdivision provisions in a proposed variation to the Whangarei District Plan. The Court noted that fourteen years after the RMA had come into force, the district still did not have operative plan provisions for its rural areas. And the variation being promoted by the council was, in the Court's view, still not up to the job. The Court noted that the approach taken by the council did not meet the purpose of the Act 'by a considerable margin', the section 32 studies were 'totally inadequate', and the solutions offered by the proposed variation to the plan were 'broadbrush, even crude'.<sup>33</sup>

Jan Crawford, who was part of the University of Waikato study team, identified a number of reasons for the poor quality of plans at the EDS 2007 *Beyond the RMA* conference. These included the ambitious nature of the RMA; the lack of capacity in councils; the lack of funding for non-regulatory methods, research and monitoring; and weak leadership and uneven commitment on behalf of elected councillors.<sup>34</sup>

The University of Waikato research project sought to identify what factors had the most impact on plan quality. The analysis indicated that the following actions could assist in strengthening plans<sup>35</sup>:

- A clearer articulation of national policy and how it should be integrated into RMA planning documents
- The provision of useful information by central government organisations – particularly on matters of importance identified in Part 2 of the RMA
- Increased council staff capability – which could be achieved through providing financial support for smaller councils, or increasing the size of councils through further amalgamations, so that they can afford to employ more staff on their plan-making teams

With a few notable exceptions, councils have struggled to effectively harness scientific knowledge to inform environmental planning and decision-making. A review undertaken by the Ministry of Research, Science and Technology in 2004 found that only three regional councils (out of the 16 regional councils and unitary authorities) were well engaged with the science system. Science capacities were found to vary significantly between individual councils with, for example, the Auckland Regional Council employing 21 scientists and the West Coast Regional Council employing only one.<sup>36</sup>

Councils have also fared poorly in managing the cumulative effects of activities. Although regional councils have largely addressed point-source discharges of pollutants, they have struggled to manage the cumulative impacts of diffuse discharges, particularly those emanating from urban areas and intensive agriculture. In addition, territorial authorities have often failed to manage the cumulative impacts of land subdivision and development on natural character and landscape values.<sup>37</sup> This problem is not helped by the orientation of RMA plans, which are typically effects-based rather than strategic, and mitigation-orientated rather than goal-orientated, reflecting the focus of the RMA.

The OECD 2007 environmental performance review found 'overall, a serious lack of national aggregated data and trends data' making it 'difficult to use the existing indicators to gauge the state of New Zealand's environment and prioritise actions to improve or conserve it'.<sup>38</sup> The OECD also commented on the high variability in the type, form and quality of the environmental information gathered at regional and local levels making national aggregation 'impossible' in most cases.<sup>39</sup> Monitoring has received little priority in many councils, and the lack of an effective national framework, has meant that the small amount of monitoring which is undertaken is often not comparable between districts and regions.

But there are notable exceptions to all these problems, and centres of excellence and innovation have developed, particularly in the larger regional and district councils which have been able to employ a critical mass of highly technically skilled staff. Recent examples of innovative approaches include the Auckland Regional Council's marine ecology monitoring programme and Environment Waikato's cap-and-trade system for the Lake Taupo catchment. There has also been networking between councils to share expertise on common environmental management issues, such as occurred with mangrove management.

#### Some key problems with environmental planning

Weak national policy guidance

Poor quality plans

Poor utilisation of science

Failure to manage cumulative effects

Variable and inconsistent monitoring

## Coastal and marine governance

Although the RMA provided an integrated legislative framework for the management of land, air and freshwater, such an outcome has yet to be achieved for the marine area and this remains unfinished business.

Under the RMA, regional councils manage the environmental effects of activities within the coastal marine area, in conjunction with the Minister of Conservation. The Minister prepares a NZCPS and approves regional coastal plans before they become operative. The Minister also currently approves resource consent applications for restricted coastal activities, although this role is proposed to be removed by the Resource Management (Simplifying and Streamlining) Amendment Bill. But many other marine environmental management functions are outside the purview of the RMA.

Fishing, which probably has a greater impact on New Zealand's marine environment than any other human activity, is managed by the Minister of Fisheries under the Fisheries Act 1996. The development of environmental standards to address the environmental impacts of fishing has been slow, with no environmental protection standards yet in place and only one (for seabirds) under development.

The Minister of Conservation, supported by DOC, has primary responsibility for marine protection under the Marine Reserves Act 1971, the Marine Mammals Protection Act 1978 and the Wildlife Act 1952. The Department's programme to establish marine reserves has had some success, but has been hampered by outdated legislation, poor stakeholder relationships, and a lack of a strategic approach to the identification of candidate areas<sup>40</sup>. The Department of Conservation recently disbanded its marine unit.

Governance for marine protected areas is highly fragmented between nine pieces of legislation and 10 different management bodies.<sup>41</sup> The Department of Conservation and the Ministry of Fisheries are jointly implementing a programme to prepare regional marine protection plans for coastal areas<sup>42</sup>. The programme was initiated in 2005, but progress in developing plans has been very slow.<sup>43</sup> Once developed, the plans have no statutory force, and their implementation is uncertain.

Mining activity on areas of the continental shelf outside the territorial sea is managed by the Minister of Energy under the Continental Shelf Act 1964 and Crown Minerals Act 1991. Neither of these Acts have environmental provisions. Prior to the

2008 election, cabinet agreed to the drafting of an Environmental Effects (Exclusive Economic Zone) Bill which would apply an environmental management regime to this area. The legislation looks likely to proceed under the new government, with the Minister for the Environment indicating that it should be introduced into Parliament later this year.<sup>44</sup>

The proposed legislation is to create the position of EEZ Commissioner located within the Ministry for the Environment. The Commissioner is to make recommendations on applications for EEZ consents and will monitor and enforce the legislation, amongst other things. A statutory Māori advisory panel is also to be created. The Minister for the Environment is to be the decision-maker for consents, subject to appeal to the Environment Court.

Governance of the marine area remains highly fragmented. To help resolve these problems, an initiative to prepare an oceans policy was commenced in 2000, but was put on hold in 2003. At that time, there was discussion about the possibility of establishing a new Oceans Agency to prepare and administer new legislation (an Oceans Act) and a National Oceans Plan. There were also proposals to establish Māori advisory groups to inform the development of oceans policy tools and to hold regular hui to connect with the 'flax roots' level.<sup>45</sup>

The controversy over ownership of the foreshore and seabed has impeded governance reforms and policy development in the marine area. The current review of the Foreshore and Seabed Act 2004 will hopefully help to resolve this issue. The Minister for the Environment, Hon Dr Nick Smith, recently announced that oceans management was an environmental priority of the current government.<sup>46</sup>

#### Some key problems with coastal and marine governance

Fragmented legislative and governance framework

Slow development of standards to manage the environmental effects of fishing activity

Outdated and fragmented legal framework for marine protected areas

No environmental legislation applying to mining and other activities in the EEZ and continental shelf beyond

So how might an EPA help to address some of the weaknesses in New Zealand's environmental administration? A proposed model to achieve this is described in the next section.



## 4 Overview of proposed EPA model

### *Potential role of an EPA*

Although EPAs around the world have developed in different ways, the core concept behind the EPA model is that it entails the establishment of a national (or state-level) organisation which is highly technically skilled in environmental science and management and which, in most cases, operates at arm's-length from government.

Within this broad ambit, there are numerous possibilities for how an EPA might be configured in New Zealand. Three options are identified below to help structure the debate, but there are many other permutations which would be possible.

### **Option 1: Minimalist EPA**

The EPA would be a small specialist Wellington-based agency which focuses on processing major consents including matters of national importance called in under the RMA, consents under the proposed EEZ legislation and consents for hazardous substances and new organisms. The EPA would not have a decision-making or enforcement role. Consents would be determined by boards of inquiry appointed by the Minister. Councils would undertake enforcement of the conditions of consent. Other functions would be retained by existing management authorities. This would be most similar to the Western Australian model.

This option would be relatively cheap and straight forward to set up, as it would involve little change to the current institutional structure. The new consenting functions could be incorporated into ERMA which could be renamed an EPA. Like ERMA the new EPA could become an autonomous crown entity, which is not under the direct control of the Minister, but which must have regard to government policy.<sup>47</sup> The non-consenting functions of ERMA could be relocated to MFE.

Such an approach could result in more streamlined processes and better informed decisions for large and difficult proposals. But it would do little to address the underlying weaknesses in the current environmental system, as described above. In that respect, adopting a minimalist approach would represent a lost opportunity to significantly strengthen New Zealand's environmental governance system.

### **Option 2: Focused science-based EPA**

The EPA would still be a small organisation, but it would have several regional offices. It would be strongly focused on strengthening the existing environmental management system. This would be through ensuring the more rigorous application of science to policy making, the development of clear environmental standards and guidance documents, capacity building of council staff and significantly beefed up monitoring and audit systems. The EPA would still be an autonomous agency, at arm's length from Ministerial direction. Policy making responsibilities would remain with the Ministry for the Environment and councils.

This would be a more expensive model than Option 1, but it could go some way to address the key weaknesses in the current environmental management system identified above without necessitating major structural reform. It also utilises some of the key strengths of the EPA model, creating a critical mass of scientific and technical expertise, providing a focus on problem solving and being independent from political control.

A key issue is where the technical expertise to staff such an EPA would come from. Much of New Zealand's current environmental management expertise resides in regional councils. The establishment of a new EPA while still retaining the regional level of government, could serve to disperse the available expertise rather than to concentrate it, and to de-skill regional councils rather than to increase their capacity. The EPA may need to look at expanding the available expertise within the country through international recruitment and national mentoring and training programmes.

As part of this option, a review of regional councils and unitary authorities could be undertaken, to examine more closely what the role, functions and constitutional position of this level of government should be.

### Option 3: EPA as national environmental manager

Under this option, the EPA would be a large national environmental management organisation with a strong regional presence, similar to that of DOC. It would take over the environmental management roles of regional councils and many of the national policy and implementation roles of MFE.

The regional councils would be dis-established with the EPA taking over their offices and many of their staff members. The Ministry for the Environment would become a small, solely Wellington-based entity which focused on the development of high level environmental policy, international negotiations, inter-government departmental issues and servicing the Minister for the Environment.

Under this model, national policy could be much more consistently and directly implemented at a regional level without the need to negotiate with another layer of democratically-elected government. On the down side, it would mean that the level of decision making would become further removed from affected communities. Depending on how the EPA was structured and managed, it could reduce the diversity of approaches and problem solving efforts currently undertaken by the 16 different regional councils and unitary authorities. But on the other hand it would likely result in greater consistency.

Under such a model, the EPA would be tasked with both developing and implementing environmental policy. It would therefore need to be more directly under the control of the Minister, probably as a crown agent similar to the status of the Maritime Safety Authority.

This model would require major institutional change, with the dis-establishment of regional councils and significant restructuring of MFE. It would be expensive and disruptive to implement, although overall environmental management costs in the longer term may be reduced. It is likely to require a major shift in funding for environmental management from regional property owners to national tax payers.

The design of an EPA for New Zealand, proposed in the next section, is largely a combination of options 1 and 2 described above. This proposal seeks to work within the current framework for the EPA provided by government, as well as enabling the new EPA to be up and running quickly. It seeks to provide significant benefits for the environment through strengthening the current management system, as well as increasing certainty and reducing the complexity of RMA processes. It also provides the opportunity to assess the future role of regional councils in a considered manner.

### *Proposed functions of the EPA*

It is proposed that the two key roles for the EPA should be strengthening environmental planning and decision-making and integrating coastal and marine management. The EPA could also serve to rationalise other government agency environmental management functions, although this is of lesser importance. The following sections contain a more detailed description of these potential roles.

#### **Strengthening environmental planning and decision-making**

A key role of the EPA should be to strengthen and simplify New Zealand's environmental planning system, so as to achieve better environmental outcomes, greater certainty as to what activities can occur where, and more efficient processes.

A major thrust of the EPA's work should be to support the development of a strong national and regional framework of policies and standards to guide plan preparation and resource consent decision-making. Such a framework would reduce the scope of issues which could be contested during the preparation of regional and district plans, enabling simpler plans and faster processes to prepare them. It would also result in greater consistency of planning approaches and rules throughout the country, which should help reduce consenting costs for national businesses. It should also result in better environmental outcomes.

At a national level, the EPA would provide technical support to the Ministry for the Environment to assist with the drafting of proposed national policy statements. The EPA would also provide specialist technical advice to the boards of inquiry considering proposed policy documents. This approach would enable the Ministry to retain the national policy making role, under the direction of the Minister, but would help ensure that the policy statements are based on robust science and technical information.

Such national policy statements could provide greater direction on how the matters of national importance identified in the RMA should be addressed including management of the coast, outstanding natural landscapes, biodiversity and historic heritage, as well as the provision of public access and implementation of kaitiakitanga. They could also address other key environmental issues not explicitly identified in section 6 of the RMA such as freshwater management.



The existing powers under section 55(2A) of the RMA could be used to directly insert provisions into regional and district planning documents, where appropriate, to minimise the need for numerous plan changes to give effect to the new national policy statements and to speed up policy implementation. The Ministry would need to develop a mechanism to help avoid and manage potential conflicts between different national policy statements, an important issue raised by the TAG.<sup>48</sup>

The EPA would be directly charged with the development of national environmental standards, for approval by the relevant Minister. Under the RMA, environmental standards have a wide ambit and can apply to land use, subdivision, activities within the coastal marine area, the use of water and the discharge of contaminants. Standards may prohibit activities and restrict the making of a rule or the granting of a resource consent. Unlike national policy statements, standards have direct regulatory force, with the RMA providing that a rule or resource consent may not be more lenient than a national environmental standard (section 43B(3)). Standards can therefore provide a very direct and effective mechanism for implementing national policy and ensuring better environmental outcomes.

At a regional level, the EPA would approve proposed regional policy statements, prepared by regional councils, prior to public notification. Such an approval process would focus on ensuring that the documents provide for the matters set out in Part 2 of the RMA and that they give effect to national policy statements. It could also serve to ensure that the documents are based on the best available environmental information, that they contain measurable environmental objectives for the region, and that they describe a robust regional monitoring framework consistent with the national monitoring framework described below.

In order to improve the management of cumulative effects, the EPA could encourage councils to include in their policy statements quantitative limits for allowable cumulative environmental impacts on defined resources or landscape units. This approach was recommended by the TAG,<sup>49</sup> and could be particularly applicable to lowland fresh water bodies in urban and agricultural catchments and sensitive estuarine areas.

In addition, to promote the better management of the cumulative effects of urban development on the environment, including on important landscapes, the EPA could require regional councils to include a spatial plan as part of their regional policy statement. Such a framework could identify an urban footprint where current and future urban growth would be permitted, areas where rural-residential could be located, and landscape protection and rural production areas where urban development would be tightly controlled or prohibited. This would help to ensure that there was an adequate supply of land for housing while avoiding unplanned urban sprawl. The spatial plan could also identify the landward boundaries of the coastal environment and coastal hazard areas.

The importance of regional spatial plans was emphasised by the Royal Commission on Auckland Governance, which expressed the view that such a 'plan is the starting point for the protection of Auckland's environment and its heritage and the development of good urban design'.<sup>50</sup> There are useful examples of such plans in New South Wales and Queensland.<sup>51</sup>

The EPA should also be tasked with simplifying and achieving greater standardisation of regional and district plans, through developing a toolbox of regional and district plan templates and provisions. This would serve to action the TAG's suggestion that consideration be given to 'the use of regulations to bring about greater consistency in terminology and standards, and more guidance on the structure, format, and expression of plans'.<sup>52</sup>

As suggested by the Royal Commission on Auckland Governance, such a toolbox could include a standard palette of zones and a standard set of objectives, policies, methods and rules for each zone.<sup>53</sup> The zones could then be applied by councils to appropriate areas according to regional and local circumstances. The standard provisions could be given legal effect through national environmental standards and could be progressively phased in as each plan is reviewed, to minimise the transition costs, but to gradually achieve greater simplicity and consistency nationwide.

Another key area which the EPA should address is the development and implementation of a national environmental monitoring framework, building on the work already undertaken by MFE. This is to ensure greater rigour and consistency in council environmental monitoring, and to help enable a national overview of environmental performance to be regularly undertaken. Such a monitoring framework should also result in a continual improvement of the information base which is available to support the development of quality plans and better decision-making.

An issue that will require some thought is which agency should be responsible for national state of the environment (SOE) reporting. Currently this function is undertaken by MFE. As already indicated, National Party policy is to transfer this function to the PCE, and to prepare a new Environmental Reporting Act requiring an independent five-yearly State of the Environment report.

The PCE currently has a budget of under \$3 million and is supported by a small staff of 14 people. The Commissioner's key functions are to be an independent watchdog over New Zealand's environmental governance system and to investigate the environmental management performance of statutory bodies.<sup>54</sup>

The Commissioner's resources would need to be significantly increased in order to undertake national SOE reporting. Such a task would require a different set of skills than those currently housed within the PCE, and it could divert attention away from the

Commissioner's audit functions. It would, however, help ensure that the SOE report was not influenced by political sensibilities and that it provided a 'warts and all' assessment of environmental performance.

There are also strong arguments for transferring the national SOE reporting function to the EPA. The EPA seems likely to inherit the task of developing and implementing a national environmental monitoring framework from MFE. It will have relationships with regional and local councils from which much of the information to prepare the report will need to be sourced. Perhaps more importantly, the process of preparing the SOE report will enable the EPA to evaluate its own performance and to identify emerging environmental problems. While freshwater and coastal marine issues are important now, there will be others in future. The EPA needs to spot these coming and be policy pro-active.

The government also proposes to give the EPA the role of processing RMA proposals of national significance. The EPA would provide advice to the Minister on applications to call-in matters and process applications which the Minister calls-in. Under current RMA provisions, these applications are to be decided by a board of inquiry appointed by the Minister for the Environment. With the establishment of an EPA, it would be more appropriate for the EPA to appoint boards of inquiry to ensure that the appointment process is both seen to be fair and politically neutral and is in fact so. Under the model proposed in this paper, where called-in proposals are located within the coastal environment, the Coastal Commission (see below) would assume the role of the board of inquiry.

The EPA could provide technical support to councils when required. This could include helping smaller councils to source environmental information applicable to their areas and to interpret and apply it to their particular planning context. The EPA could provide advice on appropriate methods which could be used to manage key issues. It could also promote best practice approaches to consent processing.

The EPA could administer a new Quality Planning Fund to support and incentivise councils to develop higher quality plans, particularly less well-resourced councils which are struggling to respond to growing environmental pressures or new issues. The EPA could provide guidance information and training on regional and district planning and decision making including managing the Quality Planning website and the Making Good Decisions Programme. The EPA could also provide kaitiakitanga and mā tauranga Māori advice and information to councils.

The TAG has identified the need to provide an independent mechanism for the appointment of commissioners to council hearings panels<sup>55</sup> and this could be a function performed by the EPA. The EPA could have the ability to prosecute the Crown, a function proposed in the National Party's environmental policy.

The EPA could also have general oversight over the implementation of the RMA. This should include a much stronger auditing function of the performance of councils.

EPA environmental planning functions	Agency currently undertaking function
Provide technical support for the preparation of national policy statements	MFE
Prepare draft national environmental standards	MFE
Approve proposed regional policy statements prior to public notification	New function
Develop a toolbox of standardised regional and district plan templates and provisions	Within MFE's current role of supporting RMA implementation
Develop and implement a national environmental monitoring framework	MFE
Process RMA proposals of national significance	MFE
Provide technical support to councils	MFE
Administer a Quality Planning Fund	Within MFE's function of administering environmental funds
Provide environmental planning guidance and training	MFE
Appoint commissioners to council hearings panels	Councils
Prosecute the Crown for breaches of the RMA	New function
Audit council performance in implementing the RMA	MFE and PCE

Figure 3: Summary of proposed environmental planning functions of the EPA

## Integrating coastal and marine management

A second important role proposed for the EPA is to ensure effective and integrated environmental management of the coastal environment, exclusive economic zone and continental shelf beyond. It could achieve this, primarily, by ensuring that a robust and consistent framework of policies and rules is in place to effectively manage the impacts of activities on the coastal and marine environment.

Under the RMA, the EPA could provide technical support for the preparation of the proposed NZCPS. The NZCPS should include a spatial component which identifies areas of the coast of national importance because of their high landscape, natural character, biodiversity and/or heritage values and which should be protected from development. It should also spatially identify marine areas suitable for specific purposes such as aquaculture and marine protection, thereby resolving some of the key allocation issues at a national level.

The EPA would be tasked with directly preparing national environmental standards for coastal issues, including for example, standards for identifying and protecting natural character and managing coastal hazards.

To ensure that the provisions of the NZCPS are effectively implemented in regional and district plans, the EPA could approve proposed regional coastal plans, and proposed provisions of regional and district plans which apply within the coastal environment, prior to notification. Such a pre-notification approval would focus on ensuring that proposals comply with Part 2 of the RMA, the NZCPS and any relevant NESs. It would also ensure the technical robustness of the proposed plan provisions. Such a process should be more cost-effective than the current approach where DOC endeavours to fix up plans through the submission and appeal process.

In relation to the EEZ and continental shelf beyond, the EPA could prepare draft environmental regulations for the exclusive economic zone under the proposed Environmental Effects (Exclusive Economic Zone) Act for approval by the Minister for the Environment. These regulations are intended to establish environmental standards for the EEZ and govern what activities require an EEZ consent. The EPA could also support the other proposed functions of the EEZ Commissioner under that legislation including monitoring and enforcing compliance with the EEZ regulations.

To help better address the environmental effects of fishing activity, the EPA could prepare draft environmental fisheries standards for approval by the Minister of Fisheries. These could address the impacts of fishing activity on benthic habitats, on protected species such as marine mammals and seabirds, and on the healthy functioning of marine ecosystems. The EPA could also prepare standards to guide the establishment of marine protected areas.

The EPA could more generally provide guidance information and training on coastal and marine management. This could include the preparation of a Design Guide for Coastal Development, similar to that prepared by the New South Wales Coastal Council and updating the guidance manual on coastal hazards and climate change from time to time.

EPA coastal and marine functions	Agency currently undertaking function
Provide technical support for the preparation of the NZCPS	DOC
Prepare draft national environmental standards for coastal issues	MFE
Approve proposed regional coastal plans and proposed provisions of regional and district plans applying to the coastal environment prior to public notification	New function
Prepare draft EEZ regulations	Proposed to be MFE
Enforce and monitor compliance with EEZ regulations	Proposed to be MFE
Support the functions of the EEZ Commissioner	Proposed to be MFE
Prepare draft environmental standards for fisheries	MFish
Prepare draft standards for marine protected areas	DoC and MFish
Provide coastal and marine management guidance and training	DOC and MFE

Figure 4: Summary of proposed coastal and marine functions of EPA

## Rationalisation of other government agency environmental functions

Another potential role for the EPA is to take on environmental management functions currently being undertaken by other national agencies, to enable a better rationalization of tasks, particularly those which are technically complex. The government has indicated that the functions of ERMA will be incorporated into the new EPA. It has also indicated that the Ministry for the

Environment will become more strongly focused on providing policy advice and this may necessitate some of its implementation functions being discontinued or being taken over by the new EPA.

When considering what other tasks the EPA might take on, it will be important to ensure that the EPA itself remains an effective and tightly focused body, and that it is not swamped with numerous administrative tasks thereby becoming a Ministry for the Environment under another name.

As already indicated, the current governance structure for hazardous substances and new organisms includes a board of 8 members (ERMA) supported by an Agency of around 90 staff. The outputs of ERMA, as recorded in its 2008 annual report, are shown in Appendix 1. They mainly encompass decision making on applications for new organisms and hazardous substances, but include other compliance, monitoring and awareness raising functions. Much of the enforcement work is undertaken by other agencies including the Ministry of Agriculture and Forestry.

Most of the functions of the Agency could be undertaken by the new EPA, with the exception of parts of 'public information and awareness' and 'government policy, legislation and international', which might be more appropriately undertaken by MFE. Many of the agency staff members could be absorbed into the EPA. The board of ERMA could be retained as a standing specialist board of inquiry attached to the EPA and could continue to decide applications under the Hazardous Substances and New Organisms Act 1996.

The Ministry for the Environment undertakes a very wide range of functions related to many aspects of the environment. Focus areas include sustainable business and households, waste management, contaminated sites, air quality, freshwater management, oceans policy, aquaculture, biodiversity, urban issues, the RMA, hazardous substances and new organisms, international environmental agreements, environmental awareness, ministerial support, energy efficiency and climate change. A full list of the outputs of the Ministry, as reported in its 2008 Annual Report, is shown in Appendix 2.

Some of these functions seem likely to be rationalised during the current reorganisation of MFE. Many of the functions involve elements of implementation and could potentially be undertaken by the EPA including overseeing the management of waste, contaminated land, air quality, urban design and freshwater. The EPA could also potentially take on functions related to sustainable business and environmental awareness. However, this would result in the EPA becoming a much larger, multi-functional body than currently envisaged.

As a priority, the Ministry should be tasked with overseeing the process of developing national environmental goals which are urgently required to provide a stronger focus for New Zealand's environmental management system. The development of such goals, and measurable interim targets in key areas, could be assisted by the work of multi-stakeholder bodies operating on a collaborative governance model. Such an approach is currently being attempted by the Sustainable Land Use Forum established at the Environmental Defence Society's *Conflict in Paradise* conference held in June 2008. These goals could help to focus and drive the work of the EPA.

The Ministry could also monitor and report on the performance of the EPA.

### *The New Zealand Coastal Commission*

To achieve the step-change which is required in coastal management, the establishment of a New Zealand Coastal Commission is proposed. This would be an independent national body charged with protecting the coast in the long term and would be attached to the EPA.

This is a model which has worked effectively to protect the Californian coast since the 1970s. A similar, but weaker version of the model, was also applied to the New South Wales coast for many years. A more detailed description of these models is contained in Appendix 3.

The Coastal Commission could be an expert advisory body and standing board of inquiry with particular expertise in coastal and marine management. Its members would need to be people of high standing in the community who have relevant expertise, possibly including a retired High Court Judge.

The Commission could be established as an independent Crown entity through amendments to the Environment Act 1987. Appointment of members to the Coastal Commission could be made in a similar manner to that proposed for the EPA board, although the final appointment would be by the Governor General. Provision would need to be made for strong Māori representation on the Commission. The Commission could report to Parliament through the Minister for the Environment. It would not have staff itself, but could be serviced by the EPA coastal and marine unit.

The Commission could have a number of statutory roles. It could act as a board of inquiry for coastal matters under the RMA. This would include hearing submissions and making recommendations on proposed New Zealand Coastal Policy Statements. The Commission could also determine resource consents and requests for plan changes within the coastal environment which are called-in as matters of national significance.

Within the Exclusive Economic Zone, the Coastal Commission could perform the role of the EEZ Commissioner and consider applications for EEZ consent. The Commission could also recommend to the Minister for the Environment the adoption of environmental regulations within the EEZ.

In terms of fisheries management, the Ministry of Fisheries is proposing to develop environmental standards but such standards do not currently have any statutory weight under the Fisheries Act 1996. That legislation should be amended to give the standards statutory force and to provide for an accessible and transparent process for their preparation. This could include a public submission process, with the standards being approved by the Coastal Commission acting as a board of inquiry in the first instance, and with that decision appealable to the Environment Court.

Legislative change should be considered to formalise a process for the preparation of marine protection plans and to enable the plans to have legal impact. This could be achieved through making provision for the plans in the Conservation Act and through consequential amendments to the RMA, the Fisheries Act and the Marine Reserves Act. The Commission could conduct a formal hearing into the plans once prepared and recommend to the Minister of Conservation their adoption under an amended Conservation Act.

The Commission could also act as a general advisor to government on coastal and marine issues.



## 5 Structure of the EPA

There are a number of matters which will need to be considered in designing the structure of the EPA, which are described below.

### *Governance*

The EPA could be established under the Environment Act 1986. It should have a small professional, skills-based board of between five and ten members. Board members could be appointed through a process where the Crown Company Monitoring Advisory Unit (CCMAU) publicly advertises for applicants and identifies a short list of suitable candidates who meet criteria approved by the Minister for the Environment. The Minister could then make the actual appointments from amongst the people on the short list. Such a process would help to ensure the independence of the EPA board while still providing the Minister with some say over who is appointed.

The EPA could report annually to Parliament through the Minister for the Environment.

### *Level of independence*

A key issue to be determined is what kind of legal entity the EPA should be. There are currently three main categories of crown entities:<sup>56</sup>

- *Crown agents* – which must give effect to government policy when directed by the responsible Minister. They include the Energy Efficiency and Conservation Authority, the Maritime Safety Authority of New Zealand and the New Zealand Walking Access Commission
- *Autonomous crown entities* – which must have regard to government policy when directed by the responsible Minister. They include the Environmental Risk Management Authority and the New Zealand Historic Places Trust (Pouhere Taonga)
- *Independent crown entities* – which are generally independent of government policy. They include the Health and Disability Commissioner and the Human Rights Commissioner.

Given the role of the EPA, in implementing government policy, the most appropriate category may be autonomous crown entity which would require the EPA to have regard to government policy, but which would prevent the Minister directly intervening in the authority's activities.

### *Māori engagement*

Provision would need to be made for effective Māori engagement in the work of the EPA and the Coastal Commission through Māori and kaitiaki representation and technical support structures and processes. This could include ensuring that there is appropriate Māori representation on the governing board of the EPA and on the Coastal Commission. It could involve the establishment of a statutory Māori advisory board or commission. It could also include ensuring that there is a critical mass of expertise within the EPA on mātauranga, kaitiaki and kaupapa Māori processes. Processes to ensure appropriate Māori appointments will need careful design.

Active engagement of iwi, hapū and rūnanga in co-management arrangements would continue to take place at the central, regional and local government levels.

### *Funding*

The agency would be primarily funded through a Parliamentary budgetary appropriation, but could also receive fees from applicants. It will need to be adequately funded if it is to succeed.

## Work programme

The EPA could be structured around several work areas, as shown in Figure 6. These could include major projects, environmental planning, coastal and marine, and environmental information. Functions could be progressively transferred to the authority.

## Physical location

To emphasise the independence of the EPA from political influence, and to be closer to the areas under environmental pressure, it would be good to locate the head office of the new agency outside Wellington. It would need to be located in a sufficiently attractive location to enable the EPA to recruit high calibre people. The processing of major projects should be centralised in the EPA's head office to ensure consistency.

The EPA would need to have some regional presence to effectively undertake its environmental planning and coastal marine functions, as these will require a working relationship to be developed with councils, and also an understanding of regional and local issues. The EPA is likely to require a small number of regional offices (say two or three), and it could potentially take over MFE's Auckland and Christchurch offices.

## Staff

The EPA would be staffed mainly with people with scientific, technical and policy skills as well as with people skilled in project management and business systems. These could be drawn from a range of sources including the Ministry for the Environment, the Department of Conservation, the Ministry of Fisheries, Te Puni Kokiri, Crown Research Institutes, iwi, consultancy firms, regional and local councils and returning ex-patriates.

Opportunity to work in a new professionally-based organisation is likely to attract a high calibre of candidates. Salary rates will need to reflect the high level of skills which the EPA will require. The recruitment process will need to be carefully managed to ensure that it does not siphon off scarce skills from councils.

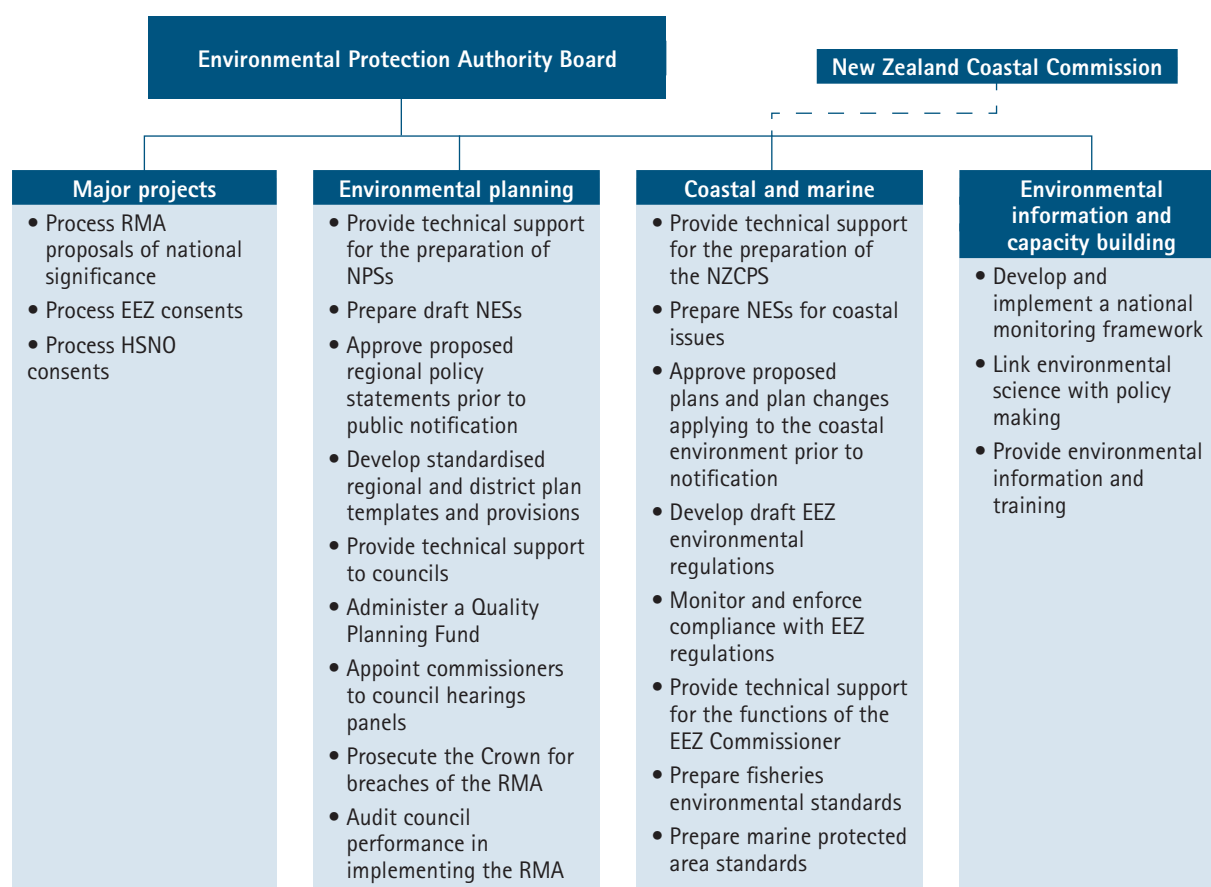


Figure 6: Proposed functions of a New Zealand EPA

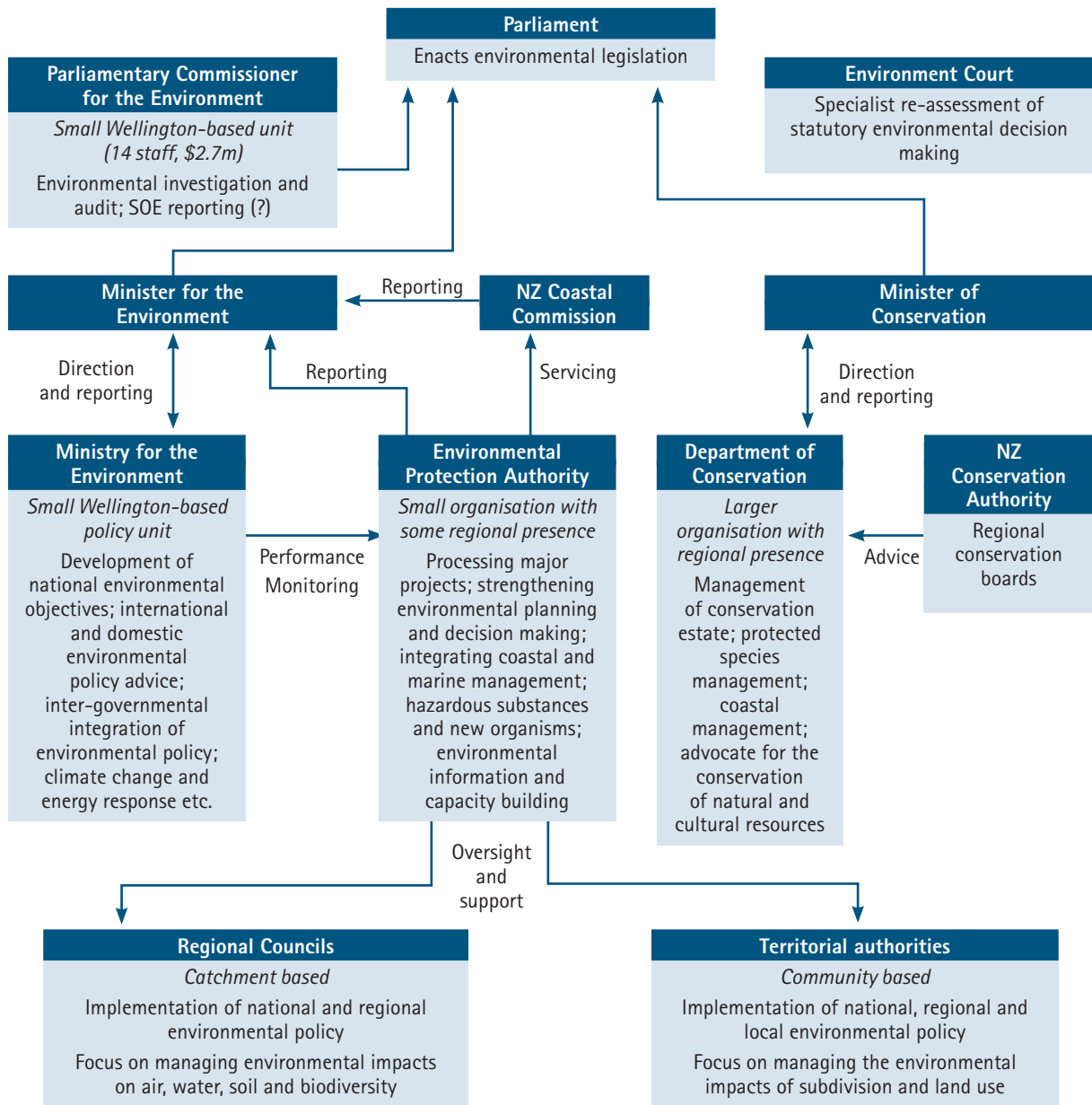


Figure 7: Proposed environmental governance structure





## 6 Conclusion

New Zealand's environmental governance system was largely put in place during the late 1980s and early 1990s. Although it has served the country reasonably well over the past 20 years, there are signs that the current system is no longer up to the job. Environmental quality is deteriorating in key areas.

The new National-led government has come into power with an ambitious programme of environmental reform. One of the key elements of this reform package is the establishment of an EPA. Such agencies have operated in many other jurisdictions since the 1970s. Traditionally a pollution control agency operating at arm's-length from government, the EPA model has evolved to encompass anything from a small unit processing major consents to a fully-fledged, multi-functional environmental agency.

So, what model might be the most suitable for the New Zealand situation? This paper has focused on answering this key question by identifying some of the key weaknesses in New Zealand's environmental management system and practical ways in which an EPA could help address them. This has led to the conclusion that a New Zealand EPA should have a critical mass of strong science and technical skills which it deploys to achieve two key objectives – strengthening environmental planning and decision-making under the RMA and better integrating coastal and marine management.

Much of the EPA's work should involve supporting the development of a strong national and regional framework of policies and standards, and implementing a more rigorous system of monitoring and performance auditing. Under the model proposed, the EPA would be an honest broker operating independently of Ministerial direction. The role of developing policy would remain with government ministries and councils, and would be guided by a set of national environmental objectives developed within a collaborative governance framework.

The paper also concludes that it is time for New Zealand to establish a Coastal Commission, to provide better protection for the coast, a sensitive and highly valued area which will come under increasing pressure as our population grows and sea levels rise.

The establishment of an EPA provides a major opportunity to improve New Zealand's environmental performance. The Environmental Defence Society urges the government to carefully consider the recommendations in this paper.

## Appendix 1: Functions of ERMA

Outputs for year ended 30 June 2008	Expenditure (year ended 30 June 2008)	Possible new home for functions
New organisms decision-making and compliance	\$2.1m	EPA
Hazardous substances decision-making	\$3.9m	EPA
Hazardous substances compliance	\$1.1m	EPA
Public information and awareness	\$2.1m	EPA
Government policy, legislation and international	\$0.9m	MFE

Source: ERMA, 2008

## Appendix 2: Functions of MFE

Outputs for the year ended 30 June 2008	Expenditure (year ended 30 June 2008)
<p><b>Vote Environment – Output Class: Environmental policy advice</b></p> <p><i>Sustainable business</i></p> <ul style="list-style-type: none"> <li>• Lead and coordinate the Government's recently released sustainability initiatives across core government departments</li> <li>• Work with different businesses to develop innovative opportunities to deliver sustainable business practice through market development</li> <li>• Develop innovative opportunities to deliver sustainable business practice through a sector-based approach</li> <li>• Work with business sectors to develop innovative opportunities to build capacity for delivery of sustainable business practice</li> <li>• Input into the development of a long-term sustainable development framework for the Auckland region</li> <li>• Input into the monitoring of the Auckland regional growth strategy</li> <li>• Raise awareness of what households can do to cut greenhouse gas emissions to improve energy efficiency, and reduce waste and water use</li> <li>• Implement actions to achieve Govt3 sustainability objectives</li> <li>• Monitor the uptake of the household sustainable living programme</li> </ul> <p><i>Waste</i></p> <ul style="list-style-type: none"> <li>• Monitor the New Zealand waste strategy</li> <li>• Work with the waste sector to implement waste minimisation and management</li> </ul> <p><i>Land</i></p> <ul style="list-style-type: none"> <li>• Develop a policy to provide national leadership on minimising and managing waste</li> <li>• Work with the waste sector to implement outcomes from the Waste Minimisation (Solids) Bill process such as waste minimisation funding through levies and product stewardship legislation development</li> <li>• Develop a policy framework for managing contaminated land</li> <li>• Begin the clean up of Tui Mine</li> <li>• Control wilding pines at Mid Dome, northern Southland</li> <li>• Develop a robust approach to river control and flood risk management in New Zealand that clearly identifies central and local government interests, assigns role and responsibilities and is appropriate for and adaptable to local and regional circumstances. Develop a RMA policy framework to manage flood risk.</li> <li>• Implement the Stockholm Convention National Plan</li> </ul> <p><i>Air</i></p> <ul style="list-style-type: none"> <li>• Assist local government with the implementation of the national environmental standards for air quality</li> <li>• Monitor national environmental standards for air quality</li> </ul> <p><i>Water</i></p> <ul style="list-style-type: none"> <li>• Develop and implement a mandatory water efficiency labelling scheme</li> <li>• Coordinate the implementation of the new management regime in the Fjordland (Te Moana o Atawhenua) Marine Area by project managing the implementation</li> <li>• Implement a national environmental standard for human drinking-water sources</li> <li>• Contribute to a programme for water quality improvements in the Rotorua lakes</li> <li>• Participate as a partner for water quality improvements in Lake Taupo</li> <li>• Implement the sustainable water programme of action</li> <li>• Monitor and evaluate the dairying and clean streams accords</li> </ul> <p><i>Oceans</i></p> <ul style="list-style-type: none"> <li>• Develop the environmental legislation framework to cover significant gaps in oceans management and policy</li> </ul> <p><i>Aquaculture</i></p> <ul style="list-style-type: none"> <li>• Implement the aquaculture implementation plan</li> </ul> <p><i>Biodiversity</i></p> <ul style="list-style-type: none"> <li>• Jointly administer (with the Department of Conservation) the biodiversity condition and advice funds</li> </ul>	\$33.4m

<p><i>Urban and infrastructure</i></p> <ul style="list-style-type: none"> <li>• Implement the urban design protocol</li> <li>• Develop the potential for creating national policy statements or national environmental standards around network infrastructure</li> </ul> <p><i>Resource Management Act</i></p> <ul style="list-style-type: none"> <li>• Assist Ministers with their statutory functions under environmental laws and ministerial responsibilities</li> <li>• Contribute to the implementation of the RMA amendments relating to the Foreshore and Seabed Act</li> <li>• Work with local government and iwi to engage effectively in the management, use and development of natural resources, through support for relationship building at the governance level, and training and support for practitioners working on RMA implementation and sustainable development</li> <li>• Provide advice on the use of natural resources in the settlement of historical Treaty of Waitangi grievances</li> <li>• Run the Chief Executives' environment forum</li> <li>• Monitor the quality of local government's performance of its RMA functions</li> <li>• Monitor and improve the quality of RMA processes and decisions</li> </ul> <p><i>Hazardous substances and new organisms</i></p> <ul style="list-style-type: none"> <li>• Monitor hazardous substances compliance and enforcement strategy and raise awareness of issues</li> <li>• Work with the Ministry of Economic Development and the Ministry of Agriculture and Forestry to develop a management plan to reduce the use of methyl bromide in New Zealand</li> </ul> <p><i>International</i></p> <ul style="list-style-type: none"> <li>• Promote New Zealand's environmental and sustainable development interests internationally</li> <li>• Monitor developments with Cartagena Protocol and lead the development of New Zealand's domestic policy and implementation to ensure compliance with Protocol</li> </ul> <p><i>Environmental awareness</i></p> <ul style="list-style-type: none"> <li>• Monitor and evaluate the state of New Zealand's environment</li> <li>• Run environmental awareness raising events</li> <li>• Evaluate environmental awareness raising events</li> <li>• Monitor the performance of the Environmental Risk Management Authority against outputs the Minister for the Environment has agreed to purchase (as defined in the Output Agreement) and advise the Minister on Appointments to the Authority</li> <li>• Monitor the performance of the Energy Efficiency and Conservation Authority against outputs the Minister for the Environment has agreed to purchase (as defined in the Output Plan) for delivery of grants to low income householders for upgrading or installing clean heaters, in areas of poor air quality</li> </ul> <p><i>Bioethics Council</i></p> <ul style="list-style-type: none"> <li>• Advise the Minister for the Environment on appointments to the Bioethics Council</li> <li>• Promote relevant science and research</li> </ul> <p><i>Ministerial support</i></p> <ul style="list-style-type: none"> <li>• Provide support to the Ministers</li> </ul>	
<p><b>Vote Environment – Output class: Administration of Sustainable Management Fund</b></p> <ul style="list-style-type: none"> <li>• Administer the Sustainable Management Fund</li> </ul>	\$1.1m
<p><b>Vote Environment – Output class: Environmental Assistance to the Pacific Islands</b></p> <ul style="list-style-type: none"> <li>• Work with the waste sector on an Overseas Development Assisted Programme to assist in the removal of unwanted scrap metal from the Cook Islands</li> </ul>	\$0.93m
<p><b>Vote Environment – Output class: Bioethics Council</b></p> <ul style="list-style-type: none"> <li>• Provide administrative support to the Bioethics Council's work plan, research capabilities and analysis</li> <li>• Lead the whole of government approach by coordinating government agencies to contribute to the Council's effectiveness</li> <li>• Collaborate with similar international groups to procure relevant research information to assist the Council</li> <li>• Raise awareness of the Bioethics Council's work</li> </ul>	\$1.3m
<p><b>Vote Environment – Output class: World Environment Day</b></p> <ul style="list-style-type: none"> <li>• Coordinate New Zealand's hosting of World Environment Day 2008 through facilitating the organization of events nationwide which raise the awareness of environmental issues relating to climate change</li> </ul>	\$3.2m
<p><b>Vote Environment – Output class: Resource Management Act Call-ins</b></p> <ul style="list-style-type: none"> <li>• Assist Ministers with their statutory functions under environmental laws and Ministerial responsibilities</li> </ul>	\$1.5m
<p><b>Vote: Climate Change and Energy Efficiency – Output class: Policy Advice – Energy Efficiency and Conservation</b></p> <ul style="list-style-type: none"> <li>• Advise the Minister on issues relating to energy efficiency and conservation and renewables, including support to EECA in delivering its work programme and to assist with finalisation of the New Zealand energy efficiency and conservation strategy and the New Zealand energy strategy</li> <li>• Implement parts of the EnergyWise homes package, agreed in Budget 2007, for which the Ministry has responsibility</li> <li>• Monitor the performance of the Energy Efficiency and Conservation Authority against outputs the Minister of Energy has agreed to purchase (as defined in the Output Plan) and advise the Minister on appointments to the Authority</li> </ul>	\$0.52m
<p><b>Vote Climate Change and Energy Efficiency – Output class: Climate Change – Policy Advice and Implementation</b></p> <ul style="list-style-type: none"> <li>• Finalise climate change policy for New Zealand</li> <li>• Implement policy on climate change adaptation in partnership with priority stakeholders</li> <li>• Implement initiatives to reduce greenhouse gas emissions</li> <li>• Monitor New Zealand's greenhouse gas emissions and New Zealand's progress towards the United Nations Framework Convention on Climate Change and the Kyoto Protocol targets</li> </ul>	\$14.1m
<p><b>Vote Climate Change and Energy Efficiency – Output class: Carbon Monitoring Programme</b></p> <ul style="list-style-type: none"> <li>• Develop the carbon accounting system to meet the requirements of the Kyoto protocol</li> </ul>	\$7.0m

Source: Ministry for the Environment, 2008

## Appendix 3: Examples of specialist coastal agencies in other jurisdictions

### *California Coastal Commission*

During the 1970s many Californians became increasingly concerned about the destruction of natural coastline. A public 'Save Our Coast' campaign was initiated and quickly gained momentum. But attempts to strengthen coastal management by passing new law through the state legislature failed as too few politicians were prepared to stand up to the strong development lobby.

Undeterred, the campaigners turned to the public-initiative process provided for under the Californian constitution. The proposal put to the Californian voters in 1972 involved the establishment of a Californian Coastal Commission, with the power to make decisions on the use of land within the coastal zone. This was intended to take decision making out of the hands of local councils and to create a regime in which clear priority was placed on the protection of the natural resources and beauty of the coastal zone, as well as on providing public access to the coastline. The proposal was approved by a majority of voters, and in 1976, the Commission was made permanent by the California Coastal Act.

The Commission has jurisdiction over some 600,000 hectares of coastal land, which extends from a few hundred metres to up to five miles inland. It also oversees the management of the shoreline of nine offshore islands and of the marine area extending up to three miles offshore.

In order to ensure that the Commission did not become the puppet of any particular political party, its appointment procedure was designed so that the Governor, the Senate Rules Committee and the Speaker of the Assembly would each appoint four of its members. Six are locally elected officials and six are appointed from the public at large. Three ex officio (non-voting) members represent state government agencies, serving to link the work of the Commission with other state government initiatives. The Commission has some 140 staff and an annual budget of around US\$10 million (NZ\$18 million).

The prime role of the Commission is to oversee local council decision making along the coast. This is largely achieved through the certification of Local Coastal Programs which are prepared by local councils with the assistance of the Commission. These are similar to district plans in New Zealand, but only apply to coastal areas. They include a land-use plan which establishes the location, type and density of development which can occur and contain measures to implement the plan, such as zoning ordinances.

The Local Coastal Programs must comply with the goals and policies of the Coastal Act, which include the protection of the scenic beauty of coastal landscapes and seascapes, the protection and restoration of sensitive habitats, and the protection and expansion of public access and recreational opportunities. Once it is certified by the Commission, the ability to approve coastal development permits is delegated to the local authority concerned.

The Commission also retains appeal authority over some significant local council decisions and directly makes decisions over development applications within the coastal marine area and on public trust land.

### *NSW Coastal Council*

The New South Wales coastline has experienced very strong development pressures over the past 30 years. In 1979 the state government passed the Coastal Protection Act 1979 which established the New South Wales Coastal Council and created a protective coastal zone.

The aim of the Coastal Council was to protect and enhance the New South Wales coastal zone by advising the government on coastal planning and management. The Council was an independent body and reported directly to Parliament. It was to have a difficult time politically, however. First established in 1979, it was disbanded in 1986 on the basis that the Labor Government of the day did not want 'coordination' of coastal planning and management by an advisory body. But it was 'reincarnated' in 1989 by the new Coalition Government and remained in place until 2004 when it was again disbanded.

The key focus of the Council in later years was to assist with the implementation and audit of the State Government's 1997 Coastal Policy. The Council also conducted reviews and stimulated the initiation of the multi-faceted Coastal Protection Package, described below, which was launched in 2001.

The coastal zone which was first established under the 1979 legislation (and amended in 2002) is still operational. It stretches one kilometre inland from the high water mark, originally outside established urban areas, and three nautical miles seaward, which is

the limit of state government jurisdiction over the marine area. In 2005 the zone was extended to include the greater metropolitan region of Sydney (from Newcastle in the North to Shellharbour in the South).

A local council which has responsibility for land within the designated coastal zone is required to create a Coastal Zone Management Plan to be approved by the Minister for Climate Change and Environment. This plan must address the protection and preservation of beach environments and beach amenity, identify emergency actions during periods of beach erosion and ensure continuing and undiminished public access to beaches, headlands and waterways. The council must also consider the State Coastal Policy in formulating and implementing its Local Environmental Plan (similar to a New Zealand district plan).

In 2001, the New South Wales government launched an A\$11.7 million 'Coastal Protection Package' to strengthen coastal management, partly in response to the Coastal Council's advocacy. The package introduced new provisions for management of the Coastal Zone and launched the Comprehensive Coastal Assessment project. The 'State Environment Planning Policy 71 – Coastal Protection', which came into force in November 2002 and applies to all land within the coastal zone, strengthened the 1997 Coastal Policy. Matters such as existing and potential public access to the foreshore, potential detrimental effects that the development may have on the amenity value of the area, and measures to conserve fish and animals and their habitats were noted in Policy 71 as well as the Coastal Policy.

Policy 71 also requires the preparation of a master plan for any subdivision in a sensitive coastal location, for a subdivision of more than twenty-five lots, and for the subdivision of rural residential land into more than five lots. The draft master plan must be publicly notified and then approved by the Minister. The plan must include, among other things, a demonstration of how the proposed development will be integrated into the landscape, and how the biodiversity of the site will be preserved. The Minister can approve or reject the plan, or approve it subject to certain conditions.

A key part of the Coastal Protection Package is the Comprehensive Coastal Assessment, described by the Department of Planning as the first ever detailed assessment of the New South Wales coastline. Regional assessments are coordinated by the state government and aim to collect information on coastal values and to develop decision-making tools and methods which can be applied to coastal management. So far the assessment process has been used on a number of coastal regional strategies and on a pilot project in the Tweed area.

The coastal assessment has pulled together the information gathered through the assessment process into a toolkit which has been provided to coastal-planning authorities and stakeholders. It contains detailed information on the environmental, social and economic values of the New South Wales coast which should help planning authorities to take informed decisions when developing long-term planning strategies and local environmental plans. Coastal design guidelines were also developed by the Coastal Council in 2002 to assist local councils and developers.

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Paul Vogel, Chairman, Western Australian Environmental Protection Authority

David Wood, Pro Vice-Chancellor, Curtin University of Technology



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