



Copyright Statement

The digital copy of this thesis is protected by the Copyright Act 1994 (New Zealand). This thesis may be consulted by you, provided you comply with the provisions of the Act and the following conditions of use:

- Any use you make of these documents or images must be for research or private study purposes only, and you may not make them available to any other person.
- Authors control the copyright of their thesis. You will recognise the author's right to be identified as the author of this thesis, and due acknowledgement will be made to the author where appropriate.
- You will obtain the author's permission before publishing any material from their thesis.

To request permissions please use the Feedback form on our webpage.
<http://researchspace.auckland.ac.nz/feedback>

General copyright and disclaimer

In addition to the above conditions, authors give their consent for the digital copy of their work to be used subject to the conditions specified on the Library [Thesis Consent Form](#)

**BUILDING INSTITUTIONS FOR SUSTAINABILITY: A NEW
ZEALAND CASE STUDY**

Stephen Peter McKenzie

A dissertation submitted in fulfilment of the requirements for the degree of Doctor of
Philosophy in Geography, The University of Auckland.

6 July 2005

THE UNIVERSITY OF AUCKLAND

THESIS CONSENT FORM

This thesis may be consulted for the purpose of research or private study provided that due acknowledgement is made where appropriate and that the author's permission is obtained before any material from the thesis is published.

I agree that the University of Auckland Library may make a copy of this thesis for supply to the collection of another prescribed library on request from that Library; and I agree that this thesis may be photocopied for supply to any person in accordance with the provisions of Section 56 of the Copyright Act 1994.

Signed: 

Date: *6 JULY 2005*

ABSTRACT

One of the most important challenges facing Western capitalist societies at the beginning of the 21st century is how to achieve sustainable economic, social and environmental futures. The successful translation of the principles underpinning sustainability into concrete outcomes is dependent on the institutional context within which political contests over alternative futures take place. It is as important to build an institutional fabric that preserves sustainability options for future generations as preserving the environment itself.

The importance of aligning juridical-political institutions with the principles of sustainability has become embedded in international political agreements, global action plans such as Agenda 21 and national and international policy discourses. Yet little attention has been paid to investigating the impact of juridical-political institutions on the achievement of sustainable futures let alone implementing these recommendations.

Between 1984 and 1991 New Zealand actively reconfigured its juridical-political environmental institutional fabric. The reform process was driven by a desire to create a new market based long wave of economic growth and to actively incorporate the principles underpinning sustainability into the juridical-political institutional fabric. The reforms involved the restructuring of the national state's environmental bureaucracy, the reorganisation of regional and local government and a comprehensive review of environmental and planning legislation that resulted in the enactment of the Resource Management Act 1991 (RMA).

This dissertation aims to test common assumptions about the importance of juridical-political change for sustainability. It investigates the extent to which juridical-political institutions help to secure sustainable outcomes drawing on a geographically inspired, theoretically informed investigation into recent attempts to manage the water quality of New Zealand's largest lake, Lake Taupo. The dissertation argues that juridical-political institutions for sustainability have a regulatory role and a governance role. In the former instance, they attempt to redefine the relationship between economy, society and environment in a manner that supports continued capitalist accumulation. In the latter instance, they establish the rules within which particular contests over environmental futures are fought. The precise outcome of contests over the environment depends on the complex interaction of institutions, material factors, actors, strategies and discourses. Juridical-political institutional change may help to steer society towards sustainability. It does not, however, guarantee sustainable outcomes. While it is important to build juridical-political institutions that incorporate the principles underpinning sustainability the process of achieving sustainability requires also requires reflexive political action and value change through society.

Key words: juridical-political institutions, sustainability, regulation, governance, water resource management, New Zealand, Resource Management Act 1991.

*To my dearest mother and father and to my grandmother Ruth who always wanted to
see what I would do when I grew up*

ACKNOWLEDGMENTS

The completion of this dissertation marks the end of a fifteen year journey which started in 1990 when I began my undergraduate studies in law and commerce. It has been a remarkably enjoyable time that has taken me from The University of Auckland to The University of Otago and back again, from Accounting and Law to Planning and Geography, and from study to legal practice and back again. I don't regret one moment.

I have written enough during the last fifteen years so I will keep this as short as I can. Firstly, I would like to acknowledge my supervisors Richard Le Heron and Willie Smith. Thank you for your time and input. It has been a pleasure to work with both of you over the last three years. Your supervision and guidance has been brilliant. I don't think I could have asked for two better supervisors.

Secondly, I would like to thank Environment Waikato for providing financial and logistical support for the research. Without this, I wouldn't have been able to tell the story of Protecting Lake Taupo.

Thirdly, I would like to thank all those people who agreed to give up their time to talk to me about Protecting Lake Taupo or who have contributed in some other way to this dissertation. Your assistance certainly enabled me to develop a deeper understanding of the evolution of the initiative. Special thanks must go to Tony Petch for help with the case study research and for reviewing the final draft of the dissertation, Ken Palmer for reviewing the law, Bill Vant for reviewing the science, John Hanlen for preparing the map of the Lake Taupo catchment, Jacky Hovens for providing data for the catchment map and tracking down the land use maps, my late cousin Murray Johns for inspiration and guidance and my father Peter for reading through and correcting errors in various drafts of the dissertation.

Fourthly, to my parents Peter and Priscilla, my brother Paul, sister Sian and brother-in-law Raymond, thank you for your support. To my dearest Catherine, thank you for making the final few months of the process more fun than I could have imagined. To my best friend John, thanks for being around and being so much fun to hang out with. To Kelly, thanks for the support and opportunities. To my good friends (in no particular order) Marvin, Erena and Chris, Jessie and James, Clare, Tania, Tom, Filip, John and Mandy and Shino thanks for all the good times that we have spent together.

Finally, just as I was starting the process of writing this dissertation I stumbled across some wise words from an anonymous Chinese philosopher: "These days the world's events are strange: they say this and they say that. There is no point arguing. I am better off dozing." After so many years of study, countless exams and innumerable essays, research papers and dissertations, I agree.

TABLE OF CONTENTS

List of Abbreviations	ix
List of Figures	x
List of Tables	xi
List of Appendices	xii
CD-ROM Index	xiii
1 INTRODUCTION	1
Institutions for Sustainability	1
Building Institutions for Sustainability in New Zealand	5
The Dissertation	9
Pathways for Change	11
2 REGULATION, GOVERNANCE AND POLITICS: A THEORETICAL FRAMEWORK FOR ANALYSIS	12
Introduction	12
Regulation	13
The Regulation Approach	13
Regulation, Society and the Environment	14
Regulation as a Process	15
Governance and Governmentality	16
Conceptualising Government and Governance	16
Governance and Regulation	18
The Politics of Regulation and Governance	19
The Politics of Representation	19
The Politics of the State	22
Neo-Gramscian State Theory	22
Politics and Discourse	25
The Politics of Argument	25
Conclusion	28
3 BUILDING INSTITUTIONS FOR SUSTAINABILITY? NEW ZEALAND'S ENVIRONMENTAL REFORMS	30
Introduction	30
The Crisis of Fordism and the Reorganisation of the State	31
New Zealand and Neoliberalism: Searching for a New Spatial-Institutional Fix?	32
Economic Crisis and Reform	32
The Environmental Administration Reforms	34
The Local Government Reforms	36
The Resource Management Law Reform	39
Features of the Resource Management Act 1991	42
Sustainable Management	42
Integrated Management	48
Integrated Management and the RMA	50
Functional Integration	50
Normative, Strategic and Operational Integration	50
Restrictions on the Use of Land and Water	52

	Planning Instruments	53
	National Policy Statements	53
	New Zealand Coastal Policy Statement	53
	Regional Policy Statements	54
	Regional Plans	54
	District Plans	54
	Other Planning Instruments	55
	Policy Statement and Plan Preparation Procedures	55
	Conclusion	57
4	TAUPO	58
	Introduction	58
	The Taupo Area	59
	Lake Taupo	59
	Taupo Catchment	60
	Settlement	61
	Agricultural Development	64
	Taupo District Economy	65
	Governing the Taupo Area	67
	Environment Waikato and the Waikato Region	67
	RMA Planning Instruments	67
	Taupo District Council and the Taupo District	70
	RMA Planning Instruments	70
	Governance Initiatives for Taupo	71
	Water Clarity Science	73
	Water Clarity and Lake Taupo	74
	Plant Growth, Nitrogen and Water Clarity	75
	Lake Taupo Nutrient Loads	76
	Research Methodology	78
	Document Review	78
	Published Documents	78
	Speeches and Press Releases	79
	Internal Documents and Memoranda	79
	Interviews	80
	Peer Review	81
5	PROTECTING LAKE TAUPO: EVOLUTION OF A SUSTAINABLE DEVELOPMENT INITIATIVE	83
	Introduction	83
	The Origins of the Problem	85
	Land Development and Water Quality	85
	Emerging Concerns about Water Quality	87
	Building a Case for Action	88
	The Impetus for Protecting Lake Taupo	88
	Public Launch of Protecting Lake Taupo	91
	Policy Development	93
	Environment Waikato and Taupo Lake Care	93
	Enrolling Central Government Support	95
	The Politics of Sustainable Development	95
	Sustainable Development and Protecting Lake Taupo	97

Protecting Lake Taupo: A Long Term Strategic Partnership	99
Financing a Strategy	101
Central Government Funding	101
Regional and Local Government Funding	101
Freezing Nitrogen Inputs: Varying the Proposed Regional Plan	103
Where to from Here?	104
Conclusion	105
6 PROTECTING LAKE TAUPO: ACTORS AND GOVERNING STRATEGIES	106
Introduction	106
The State and the Politics of Sustainability	106
Building a Regional State Project	107
Enrolling Stakeholders' Support	108
Building a National State Project	111
Sustainable Development for New Zealand and Protecting Lake Taupo	115
Changing Dynamics at the National Level	119
Changing Dynamics at the Local Level	121
Tuwharetoa and Iwi Politics	123
Iwi Projects	123
Environment Waikato, Tuwharetoa and Taupo Lake Care	124
Tuwharetoa and Central Government	128
Implications for Understanding Indigenous Rights	130
Conclusion	130
7 PROTECTING LAKE TAUPO: INSTITUTIONS AND DISCOURSES	132
Introduction	132
Is Lake Taupo's Water Quality Really Under Threat? The Science of Protecting Lake Taupo	133
Constructing a Crisis	133
Identifying the Good Guys and the Bad Guys	134
Contesting the Science	136
The Interface Between Politics and Science	137
Setting the 20% Nitrogen Reduction Target	137
Understanding the Power of Science	139
That's Not Fair! Equity and Protecting Lake Taupo	140
The Importance of Equitable Policy	140
Why Pick on Farming?	141
Developing Equitable Policy	144
Dealing with Urban Sewage	146
Setting the Nitrogen Cap	148
Understanding the Power of Equity	151
Who Pays? Contributing to the Costs of Protecting Lake Taupo	152
Calls for Compensation	153
Retiring Government Owned Pastoral Land	156
Sharing the Costs of Nitrogen Reduction	159
Understanding Cost Sharing Arrangements	163
Conclusion	166

8	CONCLUSION: JURIDICAL-POLITICAL INSTITUTIONS AND SUSTAINABILITY	167
	Introduction	167
	Juridical-Political Institutions, Regulation and Sustainability	168
	Reconfiguring Social Relationships with the Environment	168
	Reregulation, Sustainability and the Environment	171
	Juridical-Political Institutions, Governance and Sustainability	173
	Governing the Environment	173
	Translating Governmentalities into Outcomes	177
	Reconceptualising Juridical-Political Institutions for Sustainability	178
	Institutional Design for Sustainability	179
	The Practice of Sustainability	180
	Usefulness of the Theoretical Framework	181
	Final Thoughts on Juridical-Political Institutions and Sustainability	182
	APPENDICES	183
	REFERENCES	221
	Legislation	253
	Cases	254

List of Abbreviations

CA	The Court of Appeal of New Zealand
CCMAU	Crown Company Monitoring and Advisory Unit
CRI	Crown Research Institute
DoC	Department of Conservation
DSIR	Department of Scientific and Industrial Research
EEC	European Economic Community (now the European Union)
EW	Environment Waikato
FoRST	Foundation for Research, Science and Technology
FTE	Fulltime equivalent
GDP	Gross Domestic Product
HC	The High Court of New Zealand
ICM	Integrated catchment management
IRM	Integrated resource management
KWNS	Keynesian welfare national state
LGA	Local Government Act (1974 (repealed) or 2002)
MAF	Ministry of Agriculture and Forestry
MfE	Ministry for the Environment
MWD	Ministry of Works and Development
NCC	Nature Conservation Council
NIWA	National Institute of Water and Atmospheric Research
NZCPS	New Zealand Coastal Policy Statement
NZLR	New Zealand Law Reports
NZRMA	New Zealand Resource Management Appeals
OECD	Organisation for Economic Co-operation and Development
PCE	Parliamentary Commissioner for the Environment
QUANGO	Quasi-autonomous non-governmental organisation
RA	Regulation Approach
RMA	Resource Management Act 1991
SOE	State Owned Enterprise
SWPR	Schumpeterian workfare postnational regime
TCPA	Town and Country Planning Act 1977 (repealed)
TDC	Taupo District Council
TLC	Taupo Lake Care
TMTB	Tuwharetoa Maori Trust Board
TPK	Te Puni Kokiri (Ministry of Maori Affairs)
UAGC	Uniform annual general charge
VAST	Vibrant and Sustainable Taupo
WCED	World Commission on Environment and Development
WSCA	Water and Soil Conservation Act 1967 (repealed)

List of Figures

4.1	Lake Taupo Catchment	62
4.2	Land Cover, Lake Taupo Catchment 1840 and 1996	63
7.1	Criteria for Good Policy	145

List of Tables

4.1	Lake Taupo Water Quality Indicators	60
4.2	Taupo District GDP and Employment by Sector 1998	65
4.3	Environment Waikato Revenue and Expenditure 1999-2005	68
4.4	Taupo District Council Revenue and Expenditure 1999-2005	71
4.4	Nitrogen Loads to Lake Taupo 2004	77
5.1	Protecting Lake Taupo – Milestones	84
5.2	Protecting Lake Taupo - Constructing a Case for Action	90
5.3	Protecting Lake Taupo - A Partnership for Innovation	100
5.4	Protecting Lake Taupo Project Costs	102

List of Appendices

1	Resource Management Act 1991 Part II Purpose and Principles	183
2	Resource Management Act 1991 Functions of Regional and District Councils	185
3	Resource Management Act 1991 Part III Duties and Restrictions	188
4	Waikato Regional Policy Statement: Policies for the Management of Surface Water Quality	192
5	Proposed Waikato Regional Plan: Provisions for the Management of Non-Point Source Discharges	200
6	Sustainable Development in Policy and Decision Making	218

CD-ROM Index

Environment Waikato

Waikato Regional Policy Statement: Water, March 1996.
Waikato Regional Plan: Water Module, Non-Point Source Discharges, January 2005.
Policy Options for Nutrient Management in the Lake Taupo Catchment, September 1999.
Issues and Options for Managing Water Quality in Lake Taupo, October 2000.
Protecting Lake Taupo: A Partnership Approach, November 2003.
Protecting Lake Taupo: A Long Term Strategic Partnership, November 2003.
Protecting Lake Taupo: Our Decision Making Process, March 2004.
Protecting Lake Taupo and its catchment, Extract from the LTCCP, July 2004.
Protecting Lake Taupo Revenue and Financing Policy, July 2004.
New Policy for Lake Taupo Catchment: Draft Variation to the WRP, September 2004.
Draft Variation to the Proposed Waikato Regional Plan, September 2004.
Draft Variation: Analysis of Alternatives, Costs and Benefits, September 2004.

New Zealand Government

Sustainable Development for New Zealand Programme of Action, January 2003.
The Water Programme of Action, November 2003.

Taupo District Council

Proposed Variation to the Taupo District Plan Consultation Document, July 2004.
Proposed Variation to the Taupo District Plan, October 2004.
Commentary on the Proposed Variation to the Taupo District Plan, October 2004.