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RESOURCE MANAGEMENT LAW ASSOCIATION CONFERENCE

NEW ZEALAND AT THE EDGE

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The conference theme 'New Zealand at the Edge' prompts a number of reflections.

Geographically New Zealand is indeed a peripheral economy – it has been called the last bus stop on the planet. In respect of trade we are a long way from the big markets of the world. We are not Ireland, on the doorstep of a wealthy market of 300 million people. This is a natural disadvantage.

In respect of investment we are out of sight and out of mind. Those making investment decisions in the major capital markets look at New Zealand for a few minutes each month, if we're lucky. They only have time to size up the big picture. Right now their general assessment is pretty simple: "Old fashioned left-wing government. Outdated policies. Odd electoral system. Falling currency. Bad returns. Sell." Many local investors made that decision some time ago.

The 12-hour flight from Los Angeles or Tokyo and the 24-hour trip from Heathrow are not fun. Most New Yorkers think the world ends at Long Island. New Zealand is a boutique item in international tourism. Our tourism numbers are tiny compared with other small countries like the Czech Republic and Ireland. We are competing with countries like France, Italy and Spain with their vast historical and cultural assets and their natural attractions.

The United States is the world's number one country of choice for immigration. Other new world countries like Canada and Australia rank well ahead of New Zealand. More countries are opening their borders to highly skilled immigrants as labour markets tighten. It will take years to recover from political opportunism over immigration from Asia.

Peripheral economies are up against it in a rapidly integrating world. The gravitational pull of major markets, investment centres, exciting career and business opportunities and cultural attractions is huge. These forces are at work locally – consider the position of Gisborne or Invercargill compared with Auckland. Internationally the place that should be top of mind for New Zealanders as a cautionary tale is Tasmania. It is depopulating, it struggles for any sort of industry, it is a welfare colony and it is kept afloat by subsidies from mainland Australia. South

Australia, another small peripheral economy, is also struggling.

It is often said that New Zealand is becoming a branch office economy. Many of our businesses are now integrated with their Australian or international parents, and some large corporates have moved their head offices offshore. But the same things are happening in Australia. Its largest listed company, News Corporation, is effectively a foreign company – it could delist in Australia. American or other non-Australian chief executives are heading up several of Australia's major firms. A recent *Australian Financial Review* article reported a major investor speculating that in five years' time "Sydney will be to the world what Adelaide is to the rest of Australia: a fantastic place to live but in the scheme of things largely irrelevant".

Elsewhere the story is much the same. Canada is a society that has regarded itself as kinder and fairer than the United States, and has favoured more redistribution, regulation and welfare. Today its per capita income is about a third less than that of the United States, two thirds of its public companies are listed on American stock exchanges, and increasing numbers of the country's best and brightest are seeking their future in America. All countries are subject to the forces of globalisation today. Globalisation is like the dawn: you have to live with it.

Some factors are working against this gravitational pull. The costs of transport and communications are continuing to fall. The internet is changing the way the world does business and New Zealand has been a fast adopter of internet technology. There are time zone advantages. As wages and other costs rise in high-income countries, firms are outsourcing and scouring the world for alternative production sites. Opportunities will not disappear entirely if we continue as we are, but does New Zealand want to become a call-centre economy based on low wages?

Overall, New Zealand is obviously better off, not worse off, by virtue of the fact that the world economy is performing better than at any time since the 1950s and '60s. It is obviously better for us that China gets rich than stays poor. For many individual New Zealanders, exciting new opportunities have opened up: we are all telling each other stories of the jobs our kids have in London or California. But on balance the new trends make it more challenging for New Zealand to maintain or improve its relative position. New Zealand's long-run slide was arrested in the early 1990s but the country is now going backwards again rapidly.

The lesson a country that is geographically at the edge must take from all this is that it must offset its natural disadvantages by advantages that it can create for itself. A small, remote country can be successful, provided it is open, competitive and uses its wits. It has to aspire to

be better than other high income countries in respect of the quality of its human resources, its business management skills and its public policies if it is to enjoy comparable living standards. It cannot just be the same in these respects; it must stand out. Nor is this a one-off challenge: change is continuous.

For a few years in the 1990s New Zealand stood out internationally, and started to close some of the gaps. It had a long way to go in terms of its education system and business skills, and still does. But its public policies attracted international attention and investment, the outflow of people turned around, and economic growth reached 7 percent in 1993/94.

Contrary to views that prevail to this day, few of New Zealand's policy reforms were radical or 'at the edge'. In most cases we followed worldwide moves in areas like privatisation, deregulation and tax reform. Where New Zealand was genuinely innovative, for example by establishing an independent central bank committed to price stability and in reforming public sector financial management, many other countries have since followed suit. But for a brief period New Zealand did have a generally sound economic framework, and reaped the rewards. Even for the 1990s as a whole, our average annual growth rate was 3 percent compared with 2 percent in the European Union.

From 1993 on, however, New Zealand lost direction and lost ground. More than anyone else, Jim Bolger and Bill Birch were responsible for the drift. Bolger dismissed those of us who argued that the momentum of change must be maintained as being "too ambitious". He had little understanding of the economic forces at work around the world: he used to ask why New Zealand's policies had to be better than those of other countries. He did not understand that the rest of the world would not stand still while New Zealand went out to lunch. Some in the National Party have still not understood the damage done by two terms of dithering and backsliding. Only recently Bill English was saying that the economy was so strong that not even Labour and the Alliance could mess it up. One hopes he has been reading recent economic indicators.

Today many of the present coalition government's policies could genuinely be called leading edge, but unfortunately they are leading in the wrong direction. They are outdated and out of step with those of successful countries. The policies that gave New Zealand competitive advantages are being thrown away: with the introduction of the Employment Relations Act, firms are now being advised that even Australia has a better employment relations regime. Instead of striving for the

best possible commercial law in areas like the Commerce Act and takeovers, we are harmonising our regimes with those of countries like Australia. We are compounding our natural disadvantages with self-inflicted ones.

As I see it, New Zealand is not so much at the edge as heading back towards the economic brink. It is falling rapidly down the rankings of international competitiveness. Michael Cullen and Jim Anderton think the low dollar gives New Zealand a competitive advantage; they don't appear to have noticed that the country with the strongest currency today, the United States, leads the competitiveness rankings. The loss of investment interest, outflow of talented people, falling currency and deteriorating growth outlook are bad enough. But all this is happening in a benign world environment – even Australia is growing at a rate of close to 5 percent. A frightening scenario for New Zealand would materialise with, say, a world sharemarket crash or another Asian crisis. In economic life these things happen at regular intervals.

Among the policy mistakes New Zealand has made in recent years are mistakes with many of its environmental policies. In the 1980s we learned some lessons. Those of us who urged governments to move away from command and control approaches and rely more on prices and markets were well aware that such moves would produce both economic and environmental benefits. Some of New Zealand's major environmental improvements came from things like abandoning Think Big projects, scrapping fertiliser subsidies, abolishing land clearance grants and putting exotic forestry on a commercial basis. Often environmentalists were nowhere to be seen on these issues.

On many major environmental issues today environmentalists are still invisible or on the wrong side of the arguments. For over 10 years the Business Roundtable has been pointing out that producer board structures in the dairy industry are encouraging over-production which is both economically wasteful and environmentally damaging. Only in the past couple of years has one environmental organisation woken up to the problem. For nearly the same length of time we have been advocating commercial approaches, including proper economic pricing, to the operation of roading and the water and sewerage industry. These are the only fundamental solutions to the disgrace that is Auckland's traffic congestion and the decaying infrastructure, waste and polluting discharges in many water and sewerage systems. Yet these solutions look further away than ever under the present government, and environmental groups keep promoting alternatives like public transport which can go nowhere near solving the problems.

We seem to have great difficulty grasping two points that should be basic to environmental thinking.

The first is that economic growth and high environmental quality are not opposites: they typically go hand in hand. On both counts Switzerland far outdistances Somalia. Rich countries adopt cleaner technologies, build better infrastructure and can afford the trade-offs between development and the environment where they occur. Because richer is cleaner, environmentalists should be pro-growth, but typically they are not.

The second point is that governments, as owners and regulators, are far greater threats to the environment than private property owners and markets. The evidence is everywhere – from New Zealand's earlier experience, the environmental disasters in the former Soviet Union and Eastern bloc, and the devastating forest fires in the United States this year. It should not be a difficult conceptual leap to realise that central planning for nature will produce the same results that it did for economies – degradation, waste and decline. Yet the Department of Conservation (DoC) remains wedded to a command and control philosophy; it totally rejected the arguments of Peter Hartley and the Tasman Institute in their book *Conservation Strategies for New Zealand* in favour of greater reliance on decentralised approaches and market mechanisms. The same can be said for the Ministry for the Environment (MfE): its approach to biodiversity is pure command and control. The government is taking us back to a National Energy Efficiency and Conservation Strategy. By shutting down Timberlands it has aborted a world-leading project in sustainable development. When will we ever learn?

The country also desperately needs some balance and objectivity in public discussion of environmental problems. Denise Church's introduction to the 1997 report *The State of New Zealand's Environment* reads like the famous primal scream *The Limits to Growth* published by the Club of Rome in 1972. Thirty years of doomsaying literature has told us that a population bomb is about to go off and that we are running out of food, minerals, forests, water, energy and just about everything we depend on for survival. Today most of these predictions look plain silly. Even Patrick Moore, once Greenpeace head, now says that most of the major environmental battles are won in the developed world and that many environmental movements are looking for funding by drumming up imaginary problems. But none of these realities intrudes into the advocacy of MfE and other agencies.

In the case of New Zealand, like many other countries, population aging and decline are likely

scenarios, yet many district and regional plans are predicated on the need to deal with massive growth. The prices of resources are cheaper than they were 30 years ago, meaning resources are less scarce. Even today, the real price of oil is less than a third of its 1979 peak and only some 50 percent higher than during most of the last decade. Biodiversity is now a fashionable issue, but how often is it pointed out that in the developed world, including New Zealand, species extinction peaked in the 1930s and has been declining ever since? Why do so many plans seek to protect versatile soils when the use of land for pastoral farming plateaued at 21 million hectares and is now down to 16 million hectares – which means that soil erosion is retreating and the country is reforesting? Are children in our schools taught that recreational fishing is improving, that the waters of the Hauraki Gulf get cleaner every year, that the vehicle fleet is now more than 25 percent more fuel efficient – thanks in part to tariff removal, which the Greens oppose, and hence the more affordable prices of new vehicles – and that the air in most parts of the country has been getting cleaner?

Anyone who goes around the country with their eyes open can see the improvements. Remember the countryside of the fifties – untidy farms and pasture from one horizon to another. Now parts of the country are starting to look like Tuscany. The major garden centres sold 5 million native trees last year to private landowners. Perhaps environmental bureaucrats don't get out of Wellington; certainly none of this is highlighted in MfE publications.

No one would deny that New Zealand has environmental problems, but our priorities seem seriously misplaced. I have mentioned the years of dithering over roading and the water and sewerage industry; the same could be said about smog in Christchurch. We seem to be incapable of getting serious about predators and the loss of native species. DoC spent $3 million fighting private development proposals through the courts last year and yet it says it doesn't have the funds to kill possums. Planeloads of bureaucrats fly off to conferences on global warming – an issue on which New Zealand will have only the most marginal influence, and which may turn out to be as much of a non-event as global cooling. We get worked up about toxic waste dump problems which are trivial compared with those overseas – Mapua is not Love Canal or Bittenfeld.

The environmental bureaucracy seems oblivious to the costs that the Resource Management Act 1991 (RMA) is imposing on the economy. Phil Hughes, principal environmental investigator for the Parliamentary Commissioner for the Environment, recently wrote:

> There is outspoken concern in some business and farming sectors, particularly focused on the costs of compliance. The evidence that these are real and substantial costs has yet to be presented.

Does this man live on another planet? If DoC spent $3 million fighting private applications, who paid to counter their arguments? And it is not just the business sector that complains. Most complaints come from small landowner families who simply cannot afford to begin the process required for a discretionary or non-complying activity. I am told Maori landowners are increasingly concerned that high compliance costs are encouraging rural Maori to simply ignore the process altogether. The wider economic costs of the RMA are undoubtedly much greater than the costs of complying with it. The minister of transport has admitted that major roading projects are held up by at least 6 years. The Environment Court has a backlog of 3000 cases. The total impact of these costs and delays must be enormous.

My view is that far from producing a world-leading statute, the review process in the 1980s that led to the RMA was hopelessly flawed. The consultation documents lacked a rigorous public policy framework – a problem that persists with MfE documents today. The focus on environmental effects was correct, but the scheme of intervention that was adopted retained many of the features of the Town and Country Planning Act 1977, and these have been reinforced by council and court decisions. Not once in its 382 pages are private property rights mentioned. One of the more promising features, section 32, has been largely ineffectual: councils have ignored it, the Environment Court has limited its scope, and the recent MfE guide is a grossly inadequate discussion of cost-benefit analysis – it fails even to make it clear that a cost-benefit analysis is about benefits to people. Attempts in recent years to remedy problems with the RMA have largely failed, and the government seems likely to further water down the latest proposed amendments.

We need to start over. Under the RMA we are fast progressing from a NIMBY (Not In My Back Yard) syndrome to a BANANA regime (Build Absolutely Nothing Anywhere Near Anybody). A proper review of the RMA would start by recognising the central importance of secure private property rights for both economic and environmental management, and the case for compensation if these rights are infringed. In respect of the legal framework, the starting point should be: 'What's

wrong with the common law?' For centuries the law of property, contract and tort governed development, and great cities were built on this basis. The burden of proof under such a regime falls on the plaintiff, not the developer. That such a regime is perfectly feasible today is demonstrated by the case of Houston which has no planning law to speak of. It is likely that the common law would be found wanting in dealing with two problems: the problem of hold-out, which may justify something like the Public Works Act, and the problem of transactions costs where large numbers of parties are involved. Neither of these problems, however, would point to the need for an edifice as cumbersome and costly as the RMA.

My theme has been that a country like New Zealand that is on the geographical edge has natural disadvantages in an integrating world. If, in addition, it shoots itself in the foot with bad policies it puts itself at serious risk. The smallness and remoteness of New Zealand mattered less when it was producing a limited range of products for the British market, and when enterprising people had less obvious choices about where to live, work and invest. In today's much more open and integrated world it is a serious handicap, and one that is gravely compounded by a government that is so unconcerned with dynamism and reform, so preoccupied with old-style distributional issues, and so wedded to centralised and bureaucratic approaches.

Commenting on the country's current directions shortly after the Russian submarine accident, some wag in Wellington put up posters saying "Terrible Tragedy in the South Seas: Three Million Trapped Alive". This overlooks the possibility of escape, however. In my view, a better symbol of what could be in store for New Zealand is Tasmania, as I suggested earlier. Official projections suggest its population could halve by 2050. Tasmania has been bedeviled by green politics and bad policies for 30 years (not to mention an electoral system like MMP). A common currency with the rest of Australia hasn't prevented its decline. If Tasmanian trends take hold in New Zealand, Jeanette Fitzsimons won't have to worry about problems of population, economic growth and pressure on resources.

Clearly few New Zealanders would welcome such an outlook. Some of Helen Clark's gaps might be closed, but only because the most enterprising and talented people continue to leave our shores. Those left behind would be the old, the unskilled and the immobile – people you would think a centre-left government would be

particularly concerned about – with no foreign treasury to support the dependent population. If New Zealand is to avoid becoming an economic museum and theme park like Tasmania, it cannot afford average economic policies, still less the impoverishing ones being put in place. Only exceptional policies will offset the natural disadvantages and give the country a chance to claw its way back up the economic ladder.

New Zealand could be exciting, dynamic, clean and prosperous given political will and public support – as the progress we made in the early 1990s showed. We do not need to be a society mired in envy and mediocrity. The biggest disadvantage we have is the ideas in people's heads. It would not be hard to create a more favourable climate for investment and job creation in New Zealand than in Australia. But the task is impossible if political and community leaders do not explain to the public why we should aim to do better.

Some of us have been making these arguments ever since Jim Bolger gave up on such aspirations at the end of his first term as prime minister, but no one has been listening. Is anyone listening now?