Blueprint for resource management reform

A better planning and resource management system 2025

Te Kāwanatanga o Aotearoa
New Zealand Government

Acknowledgements

The Group would like to thank the RM Reform Phase 3 team at the Ministry for the Environment for their secretarial assistance.

This document may be cited as: Report from the Expert Advisory Group on Resource Management Reform. *Blueprint for resource management reform: A better planning and resource management system* 2025

This report was published in March 2025 on behalf of the Expert Advisory Group on Resource Management Reform by the Ministry for the Environment.

ISBN: 978-1-991140-71-5

Cover image: Tauranga Overview

This document is available on the Ministry for the Environment's website: environment.govt.nz

Report from the Expert Advisory Group on Resource Management Reform

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A better planning and resource management system 2025

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1. Executive summary

1. Our Expert Advisory Group (EAG) was established in September 2024 and given the significant task of preparing a blueprint to replace the Resource Management Act 1991 (RMA), based on objectives and principles set by Cabinet.

2. All the members of our EAG are users of and participants in various aspects of planning and resource management. We are all frustrated by the deficiencies of the current system. We think the laws that manage resource use and conflict should seek to assist New Zealanders to provide for themselves, enable development and enable us to care for our unique natural environment.

3. It goes without saying that many of the criticisms that have been levelled at the RMA (it is slow, it is expensive, it has been so heavily amended that in places it makes little sense) are often justified. However, perhaps the most egregious failing of our current system is our inability to understand the effectiveness of our interventions on both the built and natural environment, and also how we should adapt our management for the future based on the learnings from our past.

4. Our proposals for reform closely follow the direction set by Cabinet. They develop it into a blueprint that addresses what we see as the main failings of the current arrangements, and they deliver a system that is fit for our unique geography, resources, and capabilities. Our solutions to planning and resource management issues must be clear, proportionate and, where possible, elegant.

5. Our main recommendations for replacing the RMA are:

    a. Develop new legislation in *two separate Acts:*

        i. A Planning Act focused on regulating the use, development and enjoyment of land.

        ii. A Natural Environment Act (NEA) focused on the use, protection and enhancement of the natural environment.

    b. The new Acts will have a smaller *regulatory scope* and not address matters adequately covered in other legislation. The effects regulated will be based on the economic concept of externalities. Matters such as financial effects and effects on trade competition will be excluded.

    c. Both Acts will be based on the *enjoyment of property rights* and require justification reports if departing from approaches to regulation standardised at the national level. Compensation may happen for regulatory takings in some circumstances.

    d. Each Act will contain national goals setting out the main objectives of the regulatory framework that provide a basis for monitoring its implementation. The Planning Act will include goals for infrastructure provision and well-functioning urban and rural areas. The NEA will include goals for protecting important natural values.

e. Each Act will require one mandatory national policy direction (NPD) that is succinct and resolves conflicts between environmental protection and development and, where that is not possible, provides direction on how conflicts can be reconciled through subsequent processes.

f. Regional policy statements (RPSs) will be eliminated and partially replaced by *spatial plans made under the Planning Act.* Spatial plans include the coastal marine area (CMA) and will have weight in the regulatory planning process.

g. Spatial plans will enable development and focus on mapping major constraints, identifying existing and future infrastructure (including future infrastructure corridors), future urban areas, and growth and development opportunities.

h. Each Act will require a single regulatory plan per region. The regional council will prepare a natural environment plan under the NEA. District councils will each prepare a chapter of a combined district plan.

i. The Planning Act will require the Minister for the Environment to create nationally standardised zones (NSZs) that councils select and apply in the combined district plan, with a 'stickier' exceptions pathway if bespoke requirements are needed to meet specific community needs or preferences. NSZs will include a zone with substantial flexibility in land use on Māori land.

j. The NEA will require environmental limits to protect the life-supporting capacity of the natural environment. It will also require environmental controls to protect significant natural values, such as outstanding natural features and landscapes (ONFLs) and significant natural areas (SNAs) – applying similarly to NSZ provisions – with nationally set default pathways to select from and a 'stickier' process if bespoke solutions are required to meet local variations.

k. To support a faster transition, the regulatory plans made under each Act will initially be notified and considered by an independent hearings panel (IHP) together in each region, but determined by each individual council.

l. The form and structure of spatial and regulatory plans will be highly standardised, enabling them to be collated and accessed as *one national e-plan for New Zealand.*

m. A common platform for presenting information spatially – combined with a focus on collecting better environmental reporting data in a form that can be aggregated nationally – will enable significantly better monitoring of system performance and, from there, adaptive management.

n. Consenting activity classes under both Acts will be rationalised and simplified by:

    i. Making greater use of permitted activities.

    ii. Removing controlled activities.

    iii. Having a greater focus on the use of restricted discretionary activities.

    iv. Removing the non-complying activity category.

    v. Retaining prohibited activities, but with a narrower scope and direction on how they can be used.

o. Reverse sensitivity concerns will be addressed in the Planning Act by specifying that:

    i. Those that 'come to the nuisance' should not be able to complain about it.

    ii. Reasonable expansion of existing activity will be permitted where the site is 'zoned or owned'.

p. The NEA will require councils to charge for using natural resources to recover costs of operating the system and, in the case of overallocated resources, to enable them to be managed back to within environmental limits over time.

q. Where a resource approaches overallocation, or an environmental limit will soon be breached, the relevant community must agree a timeframe and approach for making improvements, and must settle on an alternative allocation method to 'first-in-first-served'.

r. A new *Planning Tribunal* will be established to offer quick, low-cost conciliation and administrative review of council functions (eg, notification, requests for further information), and determination of the meaning of consent conditions.

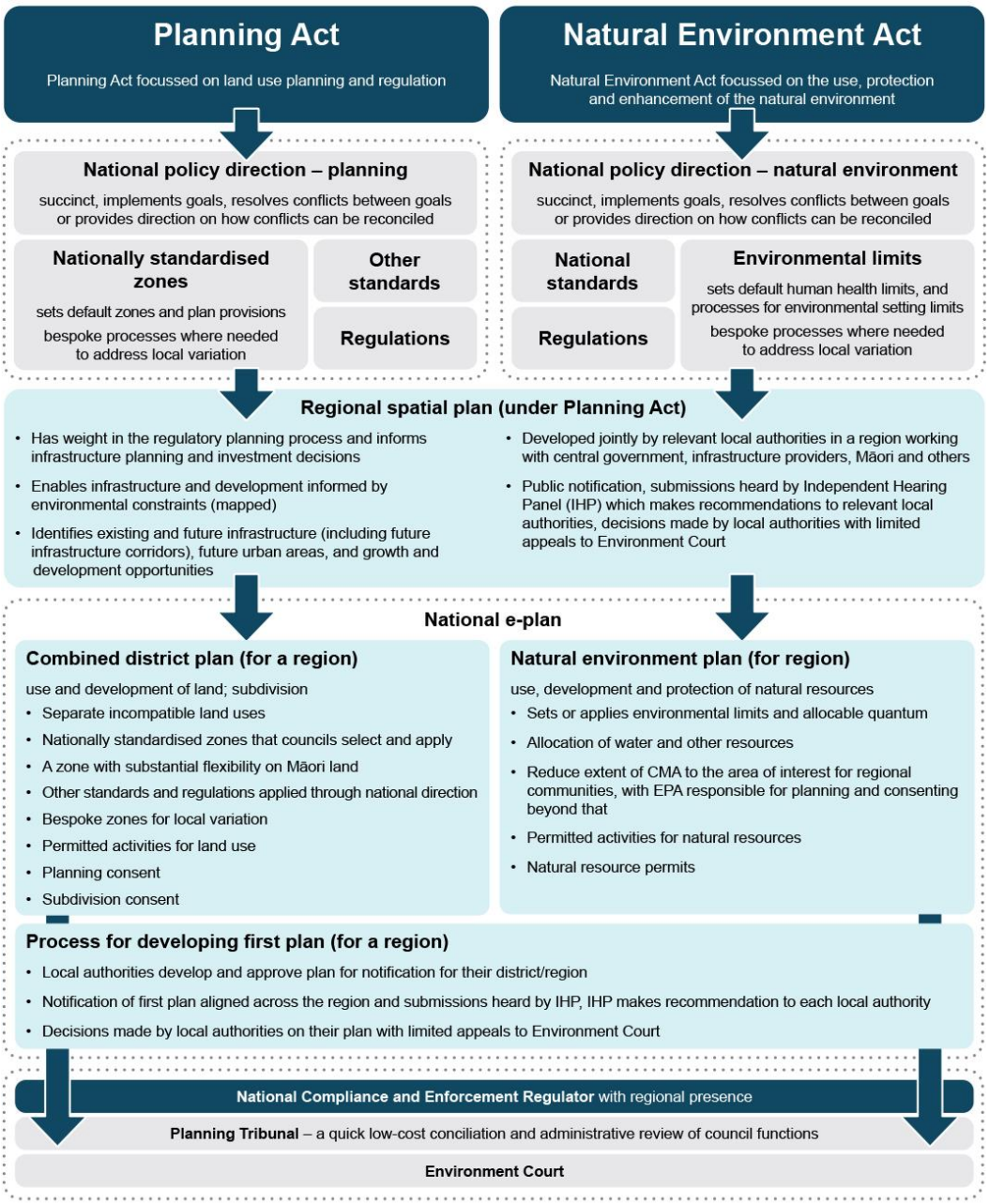
s. A new *national compliance and enforcement regulator* with a regional presence will be established to build a centre of excellence that will strengthen compliance performance and provide confidence that the system can *shift its focus away from ex ante consenting.*

t. The extent of the CMA managed under the replacement legislation should be reduced to the area of interest to regional communities, with the Environmental Protection Authority (EPA) responsible for planning and consenting beyond that.

u. The new Acts will each include a section on how the Treaty of Waitangi should be reflected in the exercise of their respective functions.

2. Blueprint of the new resource management system

Figure 1: Blueprint of the new resource management system



Objectives and principles for resource management reform

6. The Cabinet paper initiating work to develop legislation to replace the RMA set objectives and legislative design principles to guide the development of proposals for

reform.[1] We set these out in full below, given they were a significant touchstone for our work.

Table 1: Objectives for resource management reform

RM reform objectives
Unlocking development capacity for housing and business growth.
Enabling delivery of high-quality infrastructure for the future, including doubling renewable energy.
Enabling primary sector growth and development (including aquaculture, forestry, pastoral, and horticultural activities, and mining).
Safeguarding the environment and human health.
Adapting to the effects of climate change and reducing risks from natural hazards.
Improving regulatory quality in the resource management system.
Upholding Treaty of Waitangi settlements and other related arrangements.

Table 2: Legislative design principles

Legislative design principles
Narrow the scope of the resource management system and the effects it controls, with the enjoyment of property rights as the guiding principle.
Establish two Acts with clear and distinct purposes – one to manage environment effects arising from activities, and another to enable urban development and infrastructure.
Strengthen and clarify the role of environmental limits and how they are to be developed.
Provide for greater use of national standards to reduce the need for resource consents and simplify council plans, such that standard-complying activity cannot be subjected to a consent requirement.
Shift the system focus from ex ante consenting to strengthen ex post compliance monitoring and enforcement.
Use spatial planning and a simplified designation process to lower the cost of future infrastructure.
Realise efficiencies by requiring councils to jointly prepare one regulatory plan for their region.
Provide for rapid, low-cost resolution of disputes between neighbours and between property owners and councils, with a Planning Tribunal (or equivalent) providing an accountability mechanism.
Uphold Treaty of Waitangi settlements and the Crown's obligations.
Provide faster, cheaper and less litigious processes within shorter, less complex and more accessible legislation.

7. The Cabinet paper also set several other parameters for the development of proposals. We were asked to ensure our advice:

    a. Takes a targeted and staged approach that prioritises proposals with the greatest impact, retains the existing architecture of the RMA where it is working well, and makes use of the extensive policy work on RMA reform already undertaken over the last decade.

[1] The Cabinet paper *Replacing the Resource Management Act 1991* is available at: https://environment.govt.nz/assets/publications/Cabinet-papers-briefings-and-minutes/MfE-Proactive-Release-Replacing-the-RMA.pdf

b. Builds on the Government's Phase 2 work programme.

c. Minimises uncertainty and economic disruption.

d. Enables a rapid transition to the new system.

8. We have charted a course for reform in line with these expectations.

Role of the Resource Management Reform Expert Advisory Group

9. Our Expert Advisory Group (EAG) was established in September 2024. The group was chaired by Janette Campbell. Other members were Rukumoana Schaafhausen, Kevin Counsell, Gillian Crowcroft, Christine Jones, Mark Chrisp, and Paul Melville. Information on the group members is included in the appendix.

10. Our primary role was to prepare a workable blueprint to replace the RMA, based on the objectives and principles set out above. We were given three months to complete our task.

11. Our terms of reference gave us scope to consider matters beyond the legislative design principles to complete the blueprint – if those matters remained consistent with Cabinet's intended direction. We were asked to recommend appropriate alternatives if we considered aspects of the direction set by Cabinet to be unworkable. We were also asked to consider reform proposals developed by other groups over the last 10 years where relevant and aligned with the legislative design principles.

12. Our EAG was not asked to conduct its own consultation or engagement, although we met with a range of experts on a case-by-case basis to inform aspects of our advice. Rather, the Ministry for the Environment (MfE) was asked to undertake a targeted engagement programme alongside our work, so that ministers could be informed of a range of perspectives when they receive and consider our report.

13. Given the short time available for what is a very substantial task, we have had to limit our advice to what we consider to be the most significant aspects of the proposed replacement legislation. We have also been unable to discuss some issues in sufficient depth to reach consensus. For that reason, some recommendations are made by majority. Although Paul Melville was a member of the EAG, he is recorded as having his own view.

14. Further detailed policy work will be needed to fully develop our proposals and address outstanding issues and areas of detail.

Problem definition

15. The RMA is the principal statute for managing New Zealand's built and natural environments, including the CMA out to the 12-nautical-mile limit. It sets the framework for central and local government to sustainably manage natural and physical resources.

16. The RMA has been the subject of constant reform for more than two decades. There is now a broad consensus that replacement legislation is needed. No person or group that

we met with thought reform was not needed. However, we thought it important that our task of developing replacement legislation be informed by a clear understanding of where the RMA, and subsequent efforts to reform it, have gone wrong.

17. The Cabinet paper initiating our work describes the failings the Government sees in the RMA. In summary, these are:

    a. Poor outcomes for development, including persistent shortages of developable land.

    b. Poor outcomes for the natural environment, including a failure to adequately manage cumulative environmental effects.

    c. Some ineptly designed regulatory interventions – from national direction to plans and consents – and, overall, an excessively complex system.

    d. Slow, litigious and costly processes.

    e. Deficient implementation, including compliance and enforcement and system monitoring – and, given this, a need to consider changes in the approach, institutional arrangements, and building capability in both central and local government.

18. These statements accord with our experience in the system as practitioners. They also align with the problems identified in previous reform processes, and in fact with the problems that the RMA itself was intended to address at its outset.

19. The history of RMA reform reveals both the enduring nature of the problems identified in reform efforts and the persistent failure to fix them:

    a. Among the problems that the RMA was intended to address, when it was enacted in 1991 with its one-stop shop approach, were "unnecessarily complicated and costly consenting processes" and "overly prescriptive regulation" in some aspects of resource management. Clearly, these problems were not resolved through the design and implementation of the RMA.[2]

    b. A long series of amendments to the RMA – it has been amended more than 20 times since 1991 – have attempted to simplify and streamline processes by tinkering with the RMA, but have instead resulted in legislation and an overall system that is now far more complex than at its outset in the 1990s.

    c. System actors are deeply distrustful of each other, leading to functional duplication, avoidable repetition, and a pervasive culture of risk aversion that permeates decision-making at all levels.

    d. Inquiries into the performance of the RMA under successive governments – including the Urban and Infrastructure Technical Advisory Groups (2010-2012), work by the Productivity Commission (2017), and the Randerson Review (2019) – identified excessive complexity, uncertainty and cost across the resource

[2] See Explanatory Note of the Resource Management Bill available at: www.nzlii.org/nz/legis/hist_bill/rmb19892241210.pdf

management system.[3] Many of the recommendations of these reviews remain unimplemented, further illustrating the difficulty in achieving enduring reform.

e. The legislation to replace the RMA developed under the previous Government – although well-intentioned in many respects, and containing some useful ideas on which we draw in this report – was itself criticised for being excessively complex.

20. We take a number of lessons from this history. We need a disciplined focus on a system design that achieves simplification rather than further complexity. We need to ensure the solutions we develop are within our collective capacity to implement well. And we need to build a system that can achieve broad and enduring consensus across society, so as to put an end to the "flip-flopping" of RMA reform that has meant long-identified solutions to issues have not been implemented.

Our approach to reform

21. We understand the Cabinet paper as pointing to a system that is both clearer and more constrained in the objectives it seeks to deliver – and that provides mechanisms for achieving those objectives which are simpler, more efficient and developed with greater attention to the rights of landowners to use and develop their land.

22. To achieve this, we are approaching reform by:

a. Ensuring decisions appropriately take account of and uphold property rights.

b. Focusing the system on achieving identified policy goals within environmental limits.

c. Decluttering the system by reducing the number of instruments (national directions, plans, etc) and the layers of objectives and policies within the system.

d. Clarifying policy by seeking to reconcile conflicts at the highest practicable level and ensuring matters addressed higher in the framework are not duplicated in lower-level documents and processes.

e. Using greater standardisation to channel most of the activity in the current system – reflected in the approximately 40,000 resource consents issued every year – into 'default' solutions set once at the national level, with 'safety valves' available to allow genuinely novel issues and bespoke solutions to be given adequate consideration on a case-by-case basis.

f. Reducing repetition and the number of process options that make the legislation overly complicated and difficult to understand for daily practitioners, and impenetrable to ordinary users.

g. Making processes clearer, swifter, more cost-effective and more accessible.

h. Ensuring that our reform upholds existing Treaty settlement arrangements and does not preclude a range of outcomes for future settlements.

[3] For example, see *New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel,* 2019, p.18.

i. Using existing terminology and associated established case law where appropriate to reduce the risk of interpretation litigation.

j. Overall, taking a proportionate and pragmatic approach that we have the collective capacity to implement and that ensures our reach does not exceed our grasp.

3. Two new Acts to replace the RMA

23. A legislative design principle set by Cabinet was to "establish two Acts with clear and distinct purposes – one to manage environmental effects arising from activities, and another to enable urban development and infrastructure".

24. The underpinning rationale for this principle is that more clearly distinguishing between legislative objectives and functions for land-use planning and natural resource management will better enable both functions to operate efficiently and effectively. The EAG has proceeded on the basis that there would be a high bar to displace this Cabinet directive.

25. Through our discussions, we have tested the principle of splitting the RMA into two Acts and found it to be feasible, with the new approach enabling more tailored approaches to managing externalities than the existing regime. Given the interconnected nature of planning and environmental management issues, although each Act will have its own purpose, they will have similar architecture and will need to 'speak to' each other in several places. Some processes are likely to be repeated.

How the current system works

26. The RMA establishes a broad regulatory system encompassing natural and physical resources: land, water, air, soil, minerals, energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

27. When it was developed, the RMA replaced 78 statutes and regulations, among them the Town and Country Planning Act 1977, the Water and Soil Conservation Act 1967, and the Clean Air Act 1972. In doing so, it aimed to simplify the regulatory system by setting a consistent set of resource management objectives, removing arbitrary differences in the management of land, air and water, and emphasising the need for "integrated management" – an aligned and efficient set of policy interventions.

28. The RMA puts in place a decision-making framework with the overall objective of sustainable management, decision-making principles, a hierarchy of planning documents, and a three-tiered management system at the national, regional and district levels.

29. The RMA combines a number of distinct functions, which are largely reflected in the current roles of regional and local authorities:

    a. Land-use planning – enabling development capacity for housing and business land; regulation of subdivision; managing the effects of land use on other landowners and infrastructure networks; regulation of noise, dust and other nuisances; protection of historic heritage; and managing risks of natural hazards.

    b. Natural environmental management – managing the effects of land use on the natural environment; regulation of discharges to air, water and soil; protection of

biodiversity and landscapes; and the protection of the natural character of the coastal environment, wetlands, lakes and rivers and their margins.

c. Natural resource allocation – this includes permissions to take freshwater, occupy coastal marine space, discharge to the environment (the assimilative capacity of the environment), navigation rights on the surface of rivers and lakes; and the taking of sand and other materials from rivers and the CMA.

Issues identified

30. The issue of whether matters associated with land-use planning and natural resource management should remain within the same legislative framework has been debated for many years – and was considered by previous independent inquiries into the performance of the RMA, including the Urban Technical Advisory Group in 2012, the Productivity Commission in 2017 and the Randerson Review in 2019.[4]

31. The debate has largely been driven by poor environmental outcomes and an inadequacy of planning for urban development and infrastructure under the RMA. It is closely connected to the criticisms that urban development and infrastructure are not adequately recognised within the purpose and principles of the RMA – and that decision-making under the RMA is too focused on regulating the adverse effects of activities, with insufficient attention paid to the benefits of development and change.

32. Many have pointed to the fact that despite 30 years of "sustainable management" under the RMA, there has been deterioration in aspects of the natural environment, including freshwater quality and indigenous biodiversity. Environment Aotearoa 2022, the latest synthesis report produced by Statistics New Zealand and the Ministry for the Environment, illustrates how land-use change, and intensification have put pressure on ecosystems and native species, and increased pollution in our waterways.[5]

Options considered

33. We have considered a number of different ways that resource management legislation could be structured:

a. Retaining the integrated approach of the RMA (or the previous Government's Natural and Built Environment Act 2023 [NBA]).

b. Developing separate legislation for spatial planning – building on the Spatial Planning Act 2023 (SPA) developed under the previous Government.

c. A more significant "split" of the RMA along the functional lines of land-use planning and natural resource management.

[4] Report of the Minister for the Environment's Urban Technical Advisory Group (2010), New Zealand Productivity Commission (2017) Better urban planning: Final report, New Directions for Resource Management: Report of the Resource Management Review Panel (2020).

[5] Ministry for the Environment and Stats NZ (2022). New Zealand's Environmental Reporting Series: Environment Aotearoa 2022. Retrieved from environment.govt.nz.

Recommendations

34. While retaining one piece of legislation would also enable the other Cabinet directions to be met, our view is that new resource management legislation can be structured separately along the lines of land-use planning and natural resource management, as described above.

35. Planning needs a more positive focus. It should enable development and create well-functioning urban and rural areas, including by separating incompatible land uses. It should do so in ways that are consistent with environmental limits and coordinated with infrastructure provision. Natural resource management needs a clearer aspiration to work to enhance degraded resources and protect what matters, including through setting environmental limits and identifying and protecting important natural values and places.

36. It is clear that the RMA now requires a significant reset. The Government should take this opportunity to introduce how separate legislation will allow greater clarity between planning and natural resource management. Legislation has an important role in signalling the need for different thinking and implementation approaches. Our view is that we need a decisive shift from current practice, both in respect of planning and natural resource management.

37. Legislative structure is typically a second-order question, as the "form" of legislation logically follows the "functions" that need to be provided for. Our view is that the planning and natural resource management functions have become overly moribund and complex, and require disentangling to enable better, more proportionate regulatory responses to the issues confronting us as a nation. The current legislation drives those tasked with implementing it to stop rather than enable development and to retain the existing natural environment rather than improve it. There needs to be a fundamental change in perspective towards finding solutions that work for both people and the environment.

38. Splitting the RMA and separating decision-making approaches will bring much-needed clarity. We address detailed aspects of system design and transition later in this report.

39. The core elements of our proposed Planning Act and NEA are set out in the table below. Further explanation of each element follows.

Table 3: Core elements of the Planning Act and the Natural Environment Act

Core elements	Planning Act	Natural Environment Act
Purpose	To establish a framework for planning and regulating the use, development and enjoyment of land.	To establish a framework for the use, protection and enhancement of the natural environment.
Goals	National goals set for property rights, separation of incompatible land uses, well-functioning urban and rural areas, development capacity, infrastructure, natural hazards and the effects of climate change, public access, and Māori cultural matters.	National goals set for the life-supporting capacity of the environment, human health, biodiversity, natural character, ONFLs, and Māori cultural matters.
Scope of effects managed	Managing the noise, vibration, shading from structures, odour, glare, and light-	Managing the effects of activities on the air, water and soil components of the natural environment, and impacts on

	spill effects and natural hazard risks of land use on people and property.	indigenous biodiversity, landscapes and the relationship of Māori and their culture with natural resources.
Decision-making framework and principles	A hierarchy of decision-making – from national to local. Objectives, policies, rules and other methods. Decision-making principles. Procedural principles.	A hierarchy of decision-making – from national to regional. Objectives, policies, rules and other methods. Decision-making principles. Procedural principles.
Recognising property rights (see discussion in later part of report)	A more permissive and standardised system based on the presumption that land use is enabled unless it produces externalities that materially impact neighbours.	A more permissive and standardised system based on the presumption that permission is needed to use common-pool resources.
Treaty of Waitangi and Māori participation mechanisms (see discussion in later part of report)	An operative Treaty clause, supplemented by a 'descriptive' provision that lists relevant aspects of the statute enacted in light of Treaty obligations.	An operative Treaty clause, supplemented by a 'descriptive' provision that lists relevant aspects of the statute enacted in light of Treaty obligations.
Central government functions (see discussion in later part of report)	NPD National standards NSZs National compliance and enforcement Monitoring	NPD National standards Environmental limits National compliance and enforcement Monitoring
Planning and consenting functions (see discussion in later part of report)	A regional spatial plan (that also addresses matters under the NEA). Combined district plan, consisting of chapters owned by each territorial authority (inputs into one combined e-plan across the two Acts). Planning consent, subdivision consent. Monitoring of effects within scope of the Act.	A regional spatial plan (under the Planning Act but addressing matters relevant to both Acts). Natural environment plan, developed by the regional council. Natural resource permits. Environmental monitoring.
Dispute resolution (see discussion in later part of report)	Planning Tribunal (operates under both Acts). Environment Court (operates under both Acts).	Planning Tribunal (operates under both Acts). Environment Court (operates under both Acts).

Setting the purpose of legislation

40. The purpose of legislation sets out its overall policy objective. According to the Legislative Design Advisory Committee, purpose clauses are used for a number of reasons, including communicating the intent of legislation, signalling a change in direction for administration, providing a concrete administrative basis for decision-making, and guiding interpretation.

41. Purpose clauses also come with risks, because they affect the nature of powers and duties under the legislation. Care is needed to avoid vague and aspirational statements, and purpose clauses should not do the 'heavy lifting' in a regime in of themselves. Rather, they need to reflect, and be implemented through, substantive provisions.

42. Purpose clauses come in a range of different types: from those that merely describe the legal effect or mechanisms of the Act to those that set out the broader policy rationale, context or objectives that the Act will achieve.

43. Given the significant and unproductive debate over the meaning of the RMA's "sustainable management" purpose for many years, we prefer a descriptive approach.

44. Our blueprint for two Acts is to put in place frameworks within which further detailed policy and regulation is developed at the national and regional levels. The Acts' purposes should make this clear. They should also succinctly describe the range of issues that need to be dealt with in each system and the mechanisms available for doing so.

Planning Act

Purpose of the Planning Act

45. The central tenet of land-use law is the need to protect a person's use and enjoyment of their land. To do so, it must allow people to use their own land in their own best interest. At the same time, it must prevent unreasonable incursions from the use of land by other landowners, therefore setting the broadly agreed parameters within which land use is acceptable. We suggest a purpose statement that reflects this 'raison d'être' for the planning system.

46. Our proposed purpose statement for the Planning Act is "to establish a framework for planning and regulating the use, development and enjoyment of land".

47. This reflects both the focus of planning on protecting people's ability to use their land, as well as setting the parameters within which society agrees that land use should be constrained.

Goals of the Planning Act

48. Land-use planning requires further development of detailed policy at the national and local level on a broad range of matters, including urban development, infrastructure and natural hazard management. We propose legislating a set of national goals to set direction for this policy development.

49. We considered the criticism of the previous Government's proposal for an outcomes-based resource management system, including the argument made by the Parliamentary Commissioner for the Environment (PCE) that it is not appropriate for planning to set outcomes in relation to development. Our majority view is that, if the Government wishes to see sufficient provision for future development capacity or infrastructure, these goals need to be made clear to all parties. The empowering legislation is the best place to do this.

50. Given the Government's focus on a "back to basics" resource management system, our proposed goals are limited to what we see as essential functions of planning. Those

exercising functions and powers under the Act will be directed to seek to achieve goals managing risks from natural hazards and climate change, creating well-functioning urban and rural areas, enabling urban development capacity and infrastructure, separating incompatible land uses, providing public access, and recognising Māori cultural matters. These matters are not new – they have been drawn from the direction given by Cabinet, the RMA and national direction under that Act. We see the goals as reflecting the core role of land-use planning in addressing market failure.

Table 4: Proposed Planning Act goals

Proposed Planning Act goals
Enable the enjoyment of property rights.
Land use does not unreasonably infringe on the rights of neighbouring property owners to enjoy their own land, including by separating incompatible land uses.
Keep communities safe from intolerable risks and effects of natural hazards and climate change.
Create well-functioning urban and rural areas.
Make available at least sufficient land to be developed for residential and business purposes ahead of expected demand.
Plan and provide for infrastructure ahead of expected demand.
Maintain and enhance public access to and along the Coastal Marine Area (CMA), lakes, and rivers.
Recognise and provide for the relationship of Māori and their culture and traditions (including kaitiakitanga) with their ancestral lands, water, sites, waahi tapu, and other taonga and protected customary rights.

Decision-making principles under the Planning Act

51. We propose that the Planning Act includes a set of substantive principles to guide decision-making and embed what, in our view, amounts to good planning practice. This includes the need to recognise the benefits of development and land use. We think the absence of such principles in the RMA is a key contributor to risk aversion in discretionary decision-making situations. While the Courts have tried to fill the gap, they can only adjudicate the cases brought to them. The majority of the EAG consider that a more comprehensive guide to steer good decision-making can be provided in the statute. These principles therefore seek to embed what, in our view, amounts to good practice in decision-making about the natural environment.

52. The principles also include matters that emphasise the shift in practice that we consider is needed vis-a-vis decision-making under the RMA. This includes using appropriate and proportionate levels of evidence and information and providing direction on resolving conflicts between objectives and policies within each planning instrument.

Table 5: Decision-making principles

Planning Act decision-making principles
Recognise the capacity for positive benefits of development to enhance people's wellbeing and balance these against costs.
Provide for essential human needs within environmental limits.
Have information sufficient and necessary to understand the implications of the decision, weighing the cost and feasibility of obtaining information with the scale and significance of the decision.

Planning Act decision-making principles
Avoid repetition by only including a provision in a planning instrument if it is necessary to further particularise a goal because of: i. A nationally significant matter ii. The circumstances of a region or district iii. The way a community wishes to achieve that goal.
Give preference to achieving compatibility between goals rather than achieving one at the expense of another.
Recognise that not all goals in the Planning Act are required to be achieved in all places or at all times.
In any planning instrument made under this Act, provide guidance to users as to how to resolve conflicts between the objectives and policies contained in that instrument.
Consider whether adverse effects that cannot be avoided should be minimised, remedied, offset or compensated for.

Decision-making framework under the Planning Act

53. The main mechanisms available for decision-making under the Planning Act will be:

    a. National decision-making: A single, succinct, mandatory NPD, national standards, NSZs, regulations, compliance and enforcement, and monitoring and evaluation.

    b. Regional and local decision-making: One regional spatial plan, a combined district plan (with chapters determined by relevant councils), consenting, and monitoring and evaluation.

54. There will be a hierarchy within the decision-making framework so that local decisions must implement those at higher levels.

55. At the national level, a single, succinct NPD will be mandated and required under the Planning Act. It will expand on how the legislated goals are to be achieved and include matters currently addressed in national direction on urban development and infrastructure. National standards will be used to set land-use zones.

56. Regional spatial plans will identify future urban areas, infrastructure corridors and strategic sites, and priority areas for public investment, informed by environmental constraints mapping. A combined district plan will be required to implement the regional spatial plan, select from the national menu of standardised zones, and apply them according to local context.

57. Consent categories will be reduced and permitted activities should be more widely used, including allowing conditions on permitted activities that require payment of fees and provision of notice to the council to better enable monitoring.

58. Consents would be determined on the basis of the regulatory plan (reflecting the NPD and applying national standards).

59. The Planning Act would include the procedural principles below that emphasise the intended enabling approach under the Act, proportionality, time and cost-effective process, and ensuring succinct written materials.

Table 6: Procedural principles

Planning Act decision-making principles
Act in an enabling manner in accordance with the goals and principles.
Act proportionately to the scale and significance of the issues.
Be succinct in all written materials and use plain language so that documents are accessible to the public.
Act in a timely, cost-effective manner.

Natural Environment Act

Purpose of the Natural Environment Act

60. We propose the following purpose: "The purpose of this Act is to establish a framework for the use, protection and enhancement of the natural environment". While intentionally descriptive rather than operative, it reflects that all three of these functions are essential for effectively managing the natural environment and will enable synergies to be sought between them.

61. Our proposed purpose does not seek to set principles or 'bottom lines' that need to be adhered to. We do not think conflicts between environmental protection and development can be adequately resolved through a simple statement of purpose. We see this as the role of more detailed subsequent provisions, including in relation to environmental limits. It took over 20 years for the *King Salmon* judgment of the Supreme Court to determine that the purpose of the RMA was not intended as an operative provision. We should make this approach clear at the outset of a future system.

62. We recommend that natural environment be defined to mean:

    a. Land, water, air, soil, minerals, energy, plants (but not pest species) and animals (but not humans, domesticated animals, or pest species) and their habitats

    b. Ecosystems and their constituent parts.

Goals of the Natural Environment Act

63. As is the case for land-use planning, managing the natural environment encompasses a broad range of matters for which specific policy approaches must be developed. We therefore consider it useful for the NEA to include a set of national goals to provide framing for further policy development and to address a specific problem (market failure), consistent with principles of good regulation. The national goals should also provide a basis for measuring and evaluating the performance of the regulatory system.

64. The recommended NEA goals cover key aspects of the natural environment that need attention. Given the Government's focus on a "back to basics" resource management system, our proposed goals are limited to what we see as essential functions of natural resource management. Some of these are derived from key matters in sections 5 and 6 of the RMA. We have been mindful, as instructed by the Cabinet paper, not to make change for its own sake. Case law has developed over the life of the RMA that can help us, rather than changing to newly minted concepts with their attendant uncertainty.

Other concepts are new and reflect the importance of human health and the need to signal a step change in relation to indigenous biodiversity.

65. We considered the framework for protection of places of national importance under the Natural and Built Environment Act 2023 (NBA) (see section 437). We do not find the proposed "zero effects" approach proposed by section 437 of the NBA to serve either development or protection ends. Applicants for activities are confronted by a reductionist approach that seeks to drive effects to zero. On the other hand, given the severely degraded state of so many of New Zealand's indigenous habitats, achieving "no effects" is insufficient.

66. We heard about the positive shift in attitudes in the Waikato that Te Ture Whaimana (the Vision and Strategy for the Waikato River)[6] has generated and we aspire to the same sort of shift across the country. We consider that development and environmental improvement can and must work hand in hand. As will be explained below, we think individual landowners and developers can make their own choices about how this should happen. Our proposed statute seeks to signal that such choices should be supported by a range of tools.

Table 7: Natural Environment Act goals

Proposed Natural Environment Act goals
Safeguard the life-supporting capacity of air, water, soil, and ecosystems.
Protect human health from harm caused by the discharge of contaminants.
Indigenous biodiversity net gain.
Protect high value natural character of the coastal environment, wetlands, and lakes and rivers and their margins from inappropriate development.
Protect the values and characteristics of Outstanding Natural Features and Landscapes (ONFLs) from inappropriate development.
Recognise and provide for the relationship of Māori and their culture and traditions (including kaitiakitanga) with their ancestral lands, water, sites, waahi tapu, and other taonga and protected customary rights.

Decision-making principles under the NEA

67. As under the Planning Act, we propose that the NEA includes a set of substantive principles to guide decision-making.

68. The principles encompass matters that are well-accepted internationally. These include the need to consider cumulative environmental impacts, the principle that those making pollution should bear the costs of managing it, and the imperative to consider the needs of future generations.

69. The principles also cover matters that emphasise the change in practice we think is needed 'vis-à-vis' decision-making under the RMA. This includes a focus on achieving positive outcomes for the natural environment, using appropriate levels of evidence and information, avoiding repetition of policy, and providing direction on resolving conflicts between objectives and policies within each instrument.

[6] Provided for in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010.

70. The final principle sets an effects management approach that includes environmental offsetting and compensation. Our view is that offsetting will be needed as a tool to enable use of the environment while also delivering positive outcomes for the natural environment, and in particular a net gain in indigenous biodiversity.

Table 8: Decision-making principles

Natural Environment Act decision-making principles
Seek to achieve positive outcomes for the natural environment.
Ensure appropriate management of cumulative effects.
Provide for essential human needs within environmental limits.
Have information sufficient and necessary to understand the implications of the decision, weighing the cost and feasibility of obtaining information with the scale and significance of the decision.
Avoid repetition by only including a provision in a planning instrument if it is necessary to further particularise a goal because of: i. A nationally significant matter. ii. The circumstances of a region or district. iii. The way a community wishes to achieve that goal.
Give preference to achieving compatibility between goals rather than achieving one at the expense of another.
Recognise that not all goals in the NEA are required to be achieved in all places or at all times.
In any planning instrument made under this Act, provide guidance to users as to how to resolve conflicts between the objectives and policies contained in that instrument.
Recognise that those who produce negative externalities (including pollution) should bear the costs of remediating or mitigating them.
Recognise the reasonably foreseeable needs of future generations when granting permits to use resources.
Consider whether adverse effects that cannot be avoided should be minimised, remedied, offset or compensated for.

Decision-making framework under the NEA

71. The main mechanisms for decision-making under the NEA will be:

    a. National decision-making: A single, succinct and mandatory NPD, national standards, environmental limits, consenting, compliance and enforcement, monitoring and evaluation.

    b. Regional decision-making: One regional spatial plan (provided for under the Planning Act), one natural environment plan per region, and also consenting, monitoring and evaluation.

72. To ensure an efficient system is developed and to reduce uncertainty in regulatory decision-making, the legislative scheme should be designed as a descending hierarchy – lower-order documents implement those at a higher level.

73. Plan content will be much more standardised than the RMA, enabling plan information to be displayed and accessed as layers hosted on a national e-plan system.

74. Following the approach of the RMA, policy would be formulated as objectives and policies, with rules and other methods implementing those policy directions. However, a greater focus on establishing default settings nationally – through national standards and environmental limits – will reduce unnecessary variation in the system and provide a far easier path for local government to choose. While local variation will still be possible, designing the system around default pathways will provide greater investment certainty, and improve the timeliness of decision-making.

75. At the national level, a single, succinct NPD will be mandated and required to expand on how the legislated goals are to be achieved. National standards will be used to provide a consistent approach to the regulation of activities and would be for the purpose of implementing the NPD. Environmental limits will be set and used to determine the boundaries of acceptable use of natural resources.

76. At the regional level, regional spatial plans (provided for under the Planning Act) will identify both areas for protection (constraints) and development (opportunities) and play a role in resolving conflicts. Regulatory plans will implement the regional spatial plan, set environmental limits using prescribed methods, select from a national menu of standardised planning provisions, and apply them according to local context.

77. Consent categories will be fewer, and standard conditions will be developed to enable more use of permitted activities. Permitted activities will be able to include conditions requiring payment of a fee and provision of notice to the relevant council that an activity is commencing. This would enable monitoring and management of all resource use within the allocation cap or quantum to ensure that environmental limits are not breached.

78. Consents will be determined on the basis of the natural environment plan (reflecting the NPD and including application of national standards) and regionally specified limits and bespoke rules where appropriate.

79. The NEA will include the procedural principles below that emphasise being enabling, acting proportionately and cost-effectively, and ensuring succinct written materials. We see these principles as key to overcoming the negativity and risk aversion that are problematic characteristics of the present system.

Table 9: Natural Environment Act procedural principles

Natural Environment Act procedural principles
Act in an enabling manner in accordance with the goals and principles.
Act proportionately to the scale and significance of the issues.
Be succinct in all written materials and use plain language so that documents are accessible to the public.
Act in a timely, cost-effective manner.

4. Recognising property rights and narrowing the scope of the regulatory system

80. A legislative design principle set by Cabinet was to "narrow the scope of the resource management system and the effects it controls, with the enjoyment of property rights as the guiding principle".

81. Many aspects of the detailed design of our proposed regulatory system can usefully be viewed through the lens of property rights. We group these issues along the following lines:

    a. A narrowed approach to effects management.

    b. New checks and balances to protect property rights.

    c. Narrowing the scope of the system.

A narrowed approach to effects management

Basing the effects managed by the system on the economic concept of "externalities"

82. The RMA defines an effect very broadly to include "any positive or adverse effect". In our view, this has led to misuse of the system by councils and participants. It allows consideration of almost any effect arising from development and leads to costs and delays as this range of effects is addressed.

83. Our recommended approach to effects management in a future system is based on the economic concept of "externalities". An externality is a cost or benefit resulting from one party's activities that falls on an uninvolved third party. This means that effects that are borne solely by the party undertaking the activity will not be controlled by the new system. This includes, for example, matters associated with interior building layout or exterior aspects of buildings that have no impact on neighbouring properties (such as the size and configuration of apartments, the provision of balconies, and the configuration of outdoor open spaces for a private dwelling).

84. Under the NEA, the effects managed by the system will include the impact of activities on the natural environment, such as air pollution, water pollution, and impacts on indigenous biodiversity and landscapes. Under the Planning Act, the effects managed will include typical aspects of 'neighbourhood friction': noise, vibration, shading from structures, odour, glare, and light spill as well as natural hazard risk.

85. In developing an effects management approach, the new legislation should explicitly exclude financial effects. The RMA prevents impacts on trade competition from being considered. This should be retained and strengthened to include both direct and indirect impacts on trade competition, and a broad consideration of the nature of trade competitors. We also recommend that it be clear in the future system that trade competitors cannot object to a proposal on the basis that it would have 'retail

distribution effects' on the amenity of existing businesses, nor oppose a development on one piece of land so that a developer could only locate on the submitter's own land.

86. The effects management approach will also exclude consideration of broader economic effects, such as whether a commercial development would be financially viable or whether there would be sufficient demand for a particular type of development. However, this does not preclude consideration being given to the broad location and scale of different types of development in spatial plans.

87. We have discussed the National Policy Statement for Highly Productive Land 2022. We consider that the open drafting of this instrument has led to substantial regulatory overreach and the unwarranted imposition of controls on large areas of land. That said, our majority view is that protection of our truly elite soils remains a legitimate function of the planning system. This narrower regulation could be done under the Planning Act to support the goals of well-functioning urban and rural areas, but in a more targeted way than the current National Policy Statement.

88. Finally, our view is that subjective matters in relation to the quality of the built environment, such as the architectural style or colour of a neighbour's house, will be excluded.

Raising the threshold for the materiality of effects managed

89. In addition to the focus on externalities, we recommend raising the threshold for the materiality of effects management. Both Acts will include starting presumptions that a land use is enabled, unless there are minor or more than minor effects on either the ability of others to use their own land (in the Planning Act) or on the natural environment (NEA). The NEA would retain the RMA's approach that permission is required to use natural resources other than land.

90. These presumptions will provide important framing for the scope of regulatory interventions. We have reviewed the case law under the RMA in relation to thresholds for the materiality of effects: what constitutes 'de minimis', less than minor, minor, more than minor, significant, unacceptable and so on. We also considered the approach of tort law to materiality and examined the New Zealand Institute of Landscape Architects' approach of a seven-point scale for landscape and visual effects assessments.

91. The RMA currently only discounts effects that are 'de minimis' and requires less than minor effects to be considered, including for the purpose of deciding who to involve in consenting processes. This has resulted in risk-averse behaviour by councils and people involved in processes when there are no real effects on them or their property.

92. We recommend that the legislation states that less than minor effects are not regulated except where it is necessary to manage significant cumulative effects. This will reduce the scope of effects being regulated and enable more activities to take place as of right.

A clearer and more standardised system

93. Better recognising property rights requires a more certain regulatory environment so people can know as far as possible what they can and can't do with their land. In our view, this is best achieved through more standardisation at the national level and more direction in the Acts to constrain the use of regulatory powers.

94. We note that many of the examples of unjustified regulation under the RMA relate to detailed land-use controls in urban areas. In addition to the changes proposed to the effects management approach above, standardising how activities are managed offers the ability to make more activities permitted within the framework provided by the Acts, reduce unnecessary regulation, and enable greater consistency across the country.

95. We propose:

    a. Development of national standards, including nationally standardised land-use zones (while providing for flexibility and local variation where appropriate).

    b. Reducing the breadth and number of objectives and policies in plans, defining how they should be used, and avoiding their repetition across planning instruments.

    c. Reducing the number of consent activities categories and prescribing how they are to be used.

96. National standards and standardised zones will channel most of the administrative activity in the current system – reflected in the approximately 40,000 resource consents issued every year – into 'default' solutions set once at the national level, with 'safety valves' available to allow genuinely novel issues to be given adequate consideration on a case-by-case basis.

97. There is also a need to declutter the policy framework. Applications for resource consent under the RMA must consider relevant provisions of national direction, RPSs and plans. Significant applications engage a very large number of objectives and policies at multiple layers of the system, requiring applicants to 'thread the needle' to find a practicable pathway to enable a consent to be granted. We propose to clarify the policy framework by:

    a. Reducing the number of goals included in the new legislation.

    b. Reducing the number of national direction and planning instruments.

    c. Prohibiting the repetition of policy across the planning framework (see earlier discussion of decision-making principles).

98. The role of objectives and policies in planning instruments will be defined to ensure consistency in how they are used. Objectives will state what is to be achieved in relation to the purpose of the Act or a goal. A policy will state a direction or decision-making approach. There would not be room for other provisions of uncertain import – such as "fundamental concepts".

99. We also propose that resource-consent activity classes are amended, and that primary legislation directs how they are used to reflect and enable the new approach. We propose that:

    a. Permitted activities allow activities to proceed 'as of right', in accordance with national standards or rules in regulatory plans. Permitted activity standards will be empowered to require payment of charges and notice to the relevant council on the commencement of an activity. This will enable monitoring of these activities and effective performance of compliance and enforcement functions. Third-party

certification conditions or those requiring the provision of third-party approvals will also be enabled.[7]

b. Restricted discretionary activities are used when an assessment of certain matters specified in a regulatory plan is needed. The presumption for these activities is that they would be either non-notified or notified to a limited range of specified parties.

c. Discretionary activities are used when a full assessment of an activity and its effects is required. The presumption for these activities is that they would be publicly notified.

d. Prohibited activities are used (rarely) where the adverse effects of the activity on the environment or the risk to life is unacceptable.

e. National standards would be used to set minimum performance standards as permitted activity rules and to standardise the consent conditions that are imposed under restricted discretionary and discretionary consents.

Changes to reverse sensitivity

100. Existing activities need certainty that they can continue to operate and expand, within reasonable constraints. Under the RMA, businesses and infrastructure providers need to participate in planning and consenting processes to protect the ongoing viability of their operations from 'reverse sensitivity' effects – the possibility that newcomers to an area may object to the ongoing operation or expansion of their activities.

101. The new Planning Act should avoid the need for these processes by embedding a clear protection for lawfully established existing use rights, including the potential for the reasonable expansion of existing activities over time where the site is 'zoned or owned' – provided they adopt best-practice ways of mitigating their effects. That is, those that come to the nuisance should not be able to complain about it.

New checks and balances to protect property rights

102. In our view, better recognising property rights also requires strengthening checks and balances on the use of regulatory powers. We propose to do this through a requirement for regulatory justification reports, and compensation for regulatory takings in some circumstances.

Regulatory justification reports

103. Both Acts will require regulatory justification reports that outline the rationale for regulation that deviates from national standardisation. These reports will serve to sharpen the basis of bespoke regulation and avoid promulgation of unjustified regulation. We discuss these documents further in the section of this report on regional and district planning.

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[7] We note that we later recommend calling authorisations under the Environment Act "permissions" so it may be sensible to rename permitted activities to prevent confusion.

Protection against regulatory takings

104. A taking can be broadly defined as an act by which a government assumes or assigns control over a property right held by a private party. Traditionally, government regulation in New Zealand has typically not been treated as a taking, as almost any regulation is likely to have at least some adverse impact on property rights. Government compensation for takings is normally required only in respect of physical takings, such as the acquisition of land.

105. Despite this general position, the direct impact of land-use and environmental regulation on what property owners can and can't do with their land makes the potential for use of these powers to unjustifiably constrain property rights particularly acute.

106. We considered New Zealand's previous takings and betterment regime under the Town and Country Planning Act 1926, as well as the position in the United States of America (USA), which famously has a constitutional protection against takings under the Fifth Amendment. We found that, in the USA, land-use controls are generally not compensable, provided they remain within acceptable limits. Determining the bounds of these acceptable limits has been and continues to be litigated.

107. Under the RMA, section 85 states that an interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for. However, provisions can be challenged on the basis that they would make land "incapable of reasonable use" and place "an unfair and unreasonable burden" on a person who has an interest in the land. If these tests are met, the remedies available to the local authority are to modify, delete or replace the provision – or, with the agreement of the person with the interest in the land, to purchase that land under the Public Works Act 1981 (PWA).

108. We considered both takings and betterment. Our view in relation to betterment is that it could be considered in the context of benefits derived from delivery of specific infrastructure, such as a rapid transit route, through tools such as value-capture charging. We understand that the Government is already considering this approach, as well as how to make the approach to compensation for construction effects fairer. We support both of those matters being examined.

109. In terms of takings, we are mindful that the 1926 regime was not useful, and aware that any regime must be equitable, affordable, and not unduly discourage councils from appropriately limiting activities when necessary to achieve the goals of the Acts. We do not want to create an assumption that every regulation under the Planning Act or NEA, no matter how material, must be paid for, nor should it be a takings 'industry' for lawyers.

110. That said, we can see that the absence of any cost faced by councils in imposing regulation on landowners has led to regulatory overreach, and we can see that uncompensated takings can give rise to equity concerns and harm investment incentives, undermining the enjoyment of property rights. Accordingly, we consider some 'movement of the dial' is needed. Our view is that the current approach in section 85 of the RMA is too stringent for some matters, including overlays for landscape, biodiversity and heritage protection. We note that we propose to remove heritage protection from the new planning system in any case but, as we state below, we are of

the view that compensation for takings could still be considered in the regulatory system for heritage.

111. In terms of overlays[8] under the Planning Act and the NEA, we recommend:

a. Application of zones (rural or urban) would not give rise to claims for compensation for either takings or betterment.

b. There would be a presumption that a restriction on land use for overlays, identified by a national methodology, would not trigger a claim for compensation for takings. However, affected landowners could apply to the Environment Court to displace that presumption with reference to the scale of effect on them, and questions of equity, including matters such as whether the purchase of the land predated the restriction.

c. Where a council elects to create more onerous obligations in relation to overlays than national standards prescribe, a question as to whether a taking existed (that warrants compensation) would automatically be raised. The Environment Court would consider the same matters of scale and equity, with a presumption of a taking which would be assessed against a standard lower than that contained in section 85 of the RMA. We suggest rather than rendering land incapable of reasonable use (as in section 85), a standard would be where there is a significant impairment to the value of land, with 'significance' a matter of judgement dependent on the context and facts of the case.

d. At the time of writing, the Ministry for Regulation was consulting on a proposed Regulatory Standards Bill that included a provision for compensation for regulatory takings. Any takings provisions in the new planning system would need to carefully consider the interface with the provision in this Bill, should it become law.

Narrowing the scope of the system

112. In addition to changes to the proposed effects management approach, we have reconsidered the scope (matters covered) by the resource management system in two ways:

a. Reducing duplication with other regulatory systems.

b. Reducing the geographic scope of the system.

Reducing duplication with other regulatory systems

113. The Government asked us to remove duplication of management under the RMA and other regulatory frameworks. Legislative duplication can arise where the same (or similar) policy objectives are advanced through separate legislative instruments – this risks inefficiency. However, care is needed in how legislative duplication is considered. It may be appropriate for the new resource management legislation to complement policy

[8] These include ONFLs, SNAs, sites and areas of significance to Māori (SASMs), and other overlays contained in district plans such as viewshafts.

frameworks in other legislation. Duplication can occur in multiple ways throughout the resource management system.

114. We consider that this issue can be addressed by applying the following approach:

    a. **Duplication with other Acts:** Omitting matters from the NEA or the Planning Act that are appropriately dealt with by other legislative regimes. Where a matter is partly dealt with under other legislation, consider whether:

        i. It is appropriate to amend that legislation. If so, are there implications for those undertaking the functions?

        ii. The matter is more efficiently dealt with under planning or environmental management legislation, given its inter-relationship with other planning or environmental management matters.

    b. **Duplication in subordinate regulation:** Matters regulated must be within the scope of the Planning Act or NEA:

        i. Require that plans cannot duplicate/replicate matters that are already managed under other legislation (or secondary legislation).

        ii. Include a route for challenging out-of-scope plan provisions in the Environment Court.

    c. **In consent/permit conditions:** Stipulate that consent conditions can only be imposed on matters within the scope of the Planning Act or NEA (as appropriate):

        i. Prevent consent/permit conditions from including matters addressed through authorisations, permits or provisions under other legislation or secondary legislation (eg, cannot impose a condition for a Building Act or WorkSafe matter).

        ii. Provide the right to object or seek a declaration from the Planning Tribunal for ultra vires or unreasonable conditions.

115. We did not undertake a full review of all 160 legislative interfaces with the RMA. We recommend that this is done as part of further work on reform, based on the approach set out above. However, we have considered the RMA's overlap with legislative frameworks for historic heritage, notable trees and archaeological sites, greenhouse gas emissions, hazardous substances, and infrastructure. We have also considered the ability of submissions made by infrastructure providers to oppose development.

Historic heritage, notable trees and archaeological sites

116. The Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA) provides a framework for the identification and protection of the heritage of New Zealand. It provides for heritage covenants, prohibits the modification or destruction of an archaeological site unless an authority is obtained, and provides for the New Zealand Heritage List/Rārangi Kōrero and the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu as a means for recognising heritage values.

117. The RMA works alongside the HNZPTA and provides a framework for the identification of heritage places, assessment of their heritage values, and application of regulatory controls. For the purposes of policy and plan preparation, the RMA requires local authorities to have regard to any relevant entry established under the HNZPTA. Furthermore, local authorities are required to have particular regard to any recommendations from Heritage New Zealand concerning the conservation and protection of a historic area or waahi tapu area.

118. We recommend historic heritage, notable trees and archaeological sites are removed from the future planning legislation and wholly dealt with under the HNZPTA and by Heritage NZ. While there is significant overlap between heritage protection and other land-use matters, we think there are benefits to more clearly demarcated policy frameworks. Heritage matters have become confused with special character protection under the RMA, and this has created significant barriers to enabling urban development. There would need to be a transitional period where protection remained under the future planning system while legislative amendments are made. The Planning Act and the NEA will continue to allow for the recognition of Māori cultural matters, as discussed above.

119. We anticipate that, like our recommendations in relation to the RMA, central government should draw on the expertise of heritage experts to develop methodologies for Heritage New Zealand to apply in identifying heritage items or landscapes, notable trees and archaeological sites. Controls on those items would need to be specifically developed in many cases. Where a landowner did not agree to those controls, there could be a right to examine the merits of compensation, in accordance with our general recommendation earlier as to takings.

Greenhouse gas emissions

120. The Climate Change Response Act 2002 provides a policy framework specifically dedicated to reducing greenhouse gas emissions. This includes a framework for reducing emissions – with a 2050 emissions reduction target and five-yearly emissions reduction budgets that act as interim targets for reaching that goal. It also includes New Zealand's main policy instrument for reducing emissions nationally; the Emissions Trading Scheme (ETS).

121. We acknowledge the significant overlaps between greenhouse gas emissions reduction and land use, including infrastructure planning, urban planning and rural land use. We also acknowledge the view of the Climate Commission and other climate policy experts that complimentary polices are needed to support emissions pricing in addressing climate change.

122. In our view, the future land-use planning system could complement emissions pricing by providing policy direction on land-use matters relevant to reducing greenhouse gas emissions, such as increasing the use of renewable energy and developing an urban form consistent with reducing emissions.

Hazardous substances

123. The Hazardous Substances and New Organisms (HSNO) Act 1996 and a number of other Acts and industry standards control hazardous substances. The RMA was amended in

2017 to explicitly remove any control of the effects of the storage, use, disposal or transportation of hazardous substances from a territorial authority's functions.

124. Most contemporary district plans now only address hazardous substances where reverse sensitivity effects may arise or where the location of a facility involving hazardous substances may have residual adverse effects on human health and the natural environment. These matters are not addressed under other Acts and standards and remain valid matters for the planning and resource management system.

125. To avoid further 'scope creep', we recommend the new legislation is clear that national direction and regulatory plans cannot regulate matters relating to hazardous substances that are already regulated under other legislation and standards.

Infrastructure

126. The effects of development on infrastructure capacity is often raised as an issue by infrastructure providers. In our view, this is a misuse of the RMA, and the funding of upgrades or new infrastructure to accommodate growth and development is best managed outside of the RMA.

127. However, we are aware that funding infrastructure remains problematic and that there can be significant impacts if infrastructure is not upgraded or provided. For example, wastewater overflows from over-capacity networks can have significant adverse effects on human health and the natural environment. Until adequate funding mechanisms are provided to ensure the infrastructure capacity is ahead of growth, councils should retain the ability to take these effects into account.

Landscape and amenity

128. Beyond the regulation required to appropriately protect identified outstanding landscapes and natural features, and areas of high natural character value, we do not see a role for regulation of landscape or visual amenity effects.

Reducing the geographic scope of the future system

129. The current geographic scope of the RMA includes the territorial sea which extends from mean high-water springs out to 12 nautical miles.

130. While we agree there is a need to ensure close connections between the management of land and the coast, we consider this should not extend as far as 12 nautical miles.

131. Our view is that management efficiencies could be achieved if the geographic scope of future planning and natural resource management legislation were narrowed, and the management regime under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 were broadened. This would shift the administrative burden for management of this part of the territorial sea from regional councils to the EPA funded by central government.

132. The extent of the CMA managed under the replacement legislation should be reduced to the area of interest to regional communities (in the order of three nautical miles), with the EPA responsible for planning and consenting beyond that. This will have impacts on rights and arrangements under the Marine and Coastal Area (Takutai Moana) Act 2011

and Ngā Rohe Moana o Nga Hapu o Ngāti Porou Act 2019. We recommend officials provide advice on this to ensure that no gaps are created.

Table 10: Scope comparison between the RMA and the new system proposals

	RMA	New system
Property rights	• Consents required for simple activities. • Broad ability to regulate all aspects of land and resource use.	• Presumption that land can be used unless it produces externalities. • Expanding permitted activities. • More protection from regulatory takings. • Justification reports for local rules. • Address reverse sensitivity.
Effects	• Broad definition of effects. • Regulation of and consideration of less than minor effects.	• Narrow definition of effects for land use. • Raise materiality threshold of effects. • Consideration of material impacts on third parties or natural resources. • Embed permitted baseline.
Scope	• Overlap and duplication across legislation. • Duplication within RM system.	• Cannot regulate matters adequately covered elsewhere. • Narrower goals. • Cannot repeat higher order content. • Proportionality principle.
Standardisation	• Long and complex national direction. • Inconsistencies across national direction instruments. • Minimal system standardisation.	• Simplified national direction. • Cohesive NPD. • Standardised planning provisions and performance standards. • NSZ and overlays for district plans. • Regulations for consistent format, structure and regional plan provisions.
Public participation	• Comprehensive. • Expectation of involvement. • Little incentive to participate in plan development. • Wide and broad appeal rights.	• Participation targeted at plans. • Limitation on scope of full notification under the Planning Act • No ability to relitigate content from higher order documents. • More limited appeals.
Planning	• Multiple plans and policies. • Broad system scope and consideration of effects.	• A regional spatial plan. • A natural environment plan and combined district plan for a region. • Narrow scope and effects for regulation and decision-making. • A requirement to not repeat higher order objectives.
Consenting	• Multiple (and redundant) activity categories. • More than minor test determines who is affected.	• Reduced number of activity categories. • More than minor test determines who Is affected.

5. Te Tiriti o Waitangi and Māori rights and interests

133. A legislative design principle set by Cabinet was to "uphold Treaty of Waitangi settlements and the Crown's obligations".

134. The Crown's obligations to Māori in respect of planning and environmental management are based in the Treaty of Waitangi. Treaty settlements have been used to codify these obligations for many iwi and hapū (but not all). However, these settlements rely on the broader framework within the RMA to operate. We are in no doubt that the rights and interests of Māori go well beyond what are recognised and provided for in Treaty settlements, and we are clear that future legislation must reflect this as the RMA does.

How the current system works

135. Resource management in New Zealand is inherently connected to the recognition and protection of Māori rights and interests under the Treaty of Waitangi. The RMA was heralded for embedding the principles of the Treaty of Waitangi into law and for providing new opportunities for Māori participation in decision-making. This has become a significant aspect of resource management practice. Principles of the RMA include matters of significance to Māori:

    a. Section 6(e) requires that those exercising functions and powers to recognise and provide for "the relationship of Māori and their culture and traditions within their ancestral lands, water, sites, waahi tapu, and other taonga".

    b. Section 6(g) requires those exercising functions and powers to recognise and provide for the protection of "protected customary rights" under the Marine and Coastal Area (Takutai Moana) Act 2011.

    c. Section 7(a) requires those exercising functions and powers to have particular regard to "kaitiakitanga".

    d. Section 8 requires those exercising functions and powers to "take into account the principles of the Treaty of Waitangi".

136. These provisions influence regional and local planning instruments, and consideration of applications for resource consents and designations.

137. The RMA also includes a range of mechanisms for Māori participation, including:

    a. The requirement to take into account iwi management plans when preparing or changing regional and local planning instruments.

    b. Mana Whakahono a Rohe agreements with local authorities about how iwi/hapū will participate in RMA decision-making processes.

    c. Joint management agreements that provide for iwi/hapū and local authorities to jointly perform local authority functions under the RMA.

d. Provisions providing for the transfer to iwi/hapū of local authority functions under the RMA.

e. Consultation requirements in relation to national direction, and regional and local planning instruments.

f. An assessment of an activity's effects as part of a resource consent application must include an assessment of cultural effects, where relevant.

Issues identified

138. The RMA has been criticised by some for failing to deliver adequate protection of Māori interests. The Waitangi Tribunal, for example, has repeatedly criticised the relative weakness of the RMA's Treaty clause and the potential for Māori interests to be 'balanced out' in the hierarchy of matters to be considered by RMA decision-makers under sections 6-8, as a breach of the principles of the Treaty. Conversely, others have been critical of the way cultural effects have been recognised in consenting processes, with councils' risk aversion sometimes forcibly conciliating applicants and interested parties including iwi or hapū.

139. While RMA provisions enabling and requiring Māori participation have expanded over the last 20 years, challenges remain in making use of those tools and ensuring the system works well to recognise Māori interests and deliver efficiency for all parties. The Waitangi Tribunal has made many recommendations for reform, including as part of its Wai 2358 inquiry into Māori rights and interests in water.

140. Nonetheless, iwi and hapū have negotiated Treaty settlements against the backdrop of these provisions and sought to address deficiencies in the RMA through further tailored natural resources redress. Although we have not undertaken a detailed analysis of the 77 enacted Treaty settlements and related statutory arrangements that will need to be upheld in the new resource management system, we are advised that most of them interact with the RMA to varying extents.

Options considered

141. The main options we considered are whether to retain, amend or remove:

a. Protections for Māori interests as set out in Part 2 of the RMA.

b. Mechanisms for Māori participation in the Resource Management system.

Recommendations

142. Our proposed approach is to carry forward the main protections for Māori interests that are in the RMA, with some more specificity as to how they are applied.

Recognising the principles of the Treaty

143. The NZ First-National coalition agreement includes a commitment to review legislation that includes reference to Treaty principles – and to either repeal such references or replace them with specific requirements related to the relevance and application of the

Treaty. The intent is to ensure that, where it is appropriate to encapsulate the Treaty in legislation, the provisions are clear and specific about how the Treaty applies in that context.

144. Our consideration of how the new legislation should provide for the Treaty has been made in light of the purpose of the review. We considered a range of options for a Treaty clause in future legislation including:

    a. Replication of section 8.

    b. A stronger general clause (eg, give effect to the principles of the Treaty).

    c. A descriptive clause that explains how the architecture of each Act gives effect to the principles of the Treaty.

    d. A directive clause that specifies what must be done to comply with the Crown's obligations under the Treaty.

145. After careful consideration, the majority of the EAG agrees that future legislation should retain the section 8 RMA requirement for persons exercising powers and functions under the RMA to take into account the principles of the Treaty of Waitangi.

146. The reasons for our recommendation include:

    a. The relationship and kinship connections of Māori with the environment is fundamental to the Māori world view and is inherent to the guarantees and protections afforded by the Treaty.

    b. Planning and environmental management represents a major intersection with the Māori relationship with the environment that has been devolved to local government. In such a case, it is important that the Crown's obligations to Māori are upheld.

147. We also recommend that principles to assist in the application of section 8 are identified to reflect key imperatives of the new system. These could include:

    a. Seeking to involve Māori as early as possible in resource management decision-making.

    b. Providing meaningful opportunities for Māori to engage in relevant planning issues within their area of interest.

    c. Protecting the ancestral relationships Māori have with natural resources in their rohe.

    d. Ensuring decision-makers have appropriate knowledge, skills and experience of Māori issues, or access to it.

148. We consider such decision-making principles will provide increased certainty about how the more general Treaty clause in section 8 of the RMA should be applied. This is consistent with our proposed approach to providing principles to inform achievement of the goals in the new Acts.

Recognising Māori interests

149. The majority of the EAG agree that future legislation should include objectives that require provision for Māori cultural matters, similar to those in sections 6(e), 6(g) and 7(a) of the RMA – the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga.

150. We note that:

    a. The relationship of Māori with these sites and resources is fundamental to their participation in the resource management system.

    b. After more than 30 years, the application of sections 6(e), 6(g) and 7(a) are well-traversed. Importantly, the provisions do not create a veto power. Māori interests must still compete for the attention of the final decision-maker against other interests and can be set to one side, where appropriate.

151. We therefore agree that future legislation should retain reference to these matters but combine them into a single provision to support more efficient assessment of those interests, where they apply.

Providing for Māori participation

152. The majority of the EAG agree that future legislation should retain the existing RMA mechanisms for Māori participation and make further provision for Māori engagement.

153. Specifically, iwi and hapū engagement in national direction and plan-making should be frontloaded and a default structure set up for these processes:

    a. The opportunities are enabled for Māori to more effectively participate in monitoring and oversight.

    b. The need for NSZs to provide substantial flexibility in land use of appropriate multiply-owned Māori land.

    c. The statutory acknowledgments are incorporated into the making of spatial and regulatory plans.

154. We also consider that there is an opportunity for iwi management plans, which can provide a wealth of information about iwi relationships with their rohe, to be a powerful tool to inform regional spatial plans (the central feature of the new planning system). Increasingly, iwi management plans are also being considered in consenting processes under section 104(1)(c) of the RMA. In the case of discretionary activities, we suggest their inclusion as a matter for consideration, in their own right, where it is relevant.

155. We recommend that councils be required to keep records about the iwi/hāpu groups in their area, and for this information to be made available for planning and consenting processes.

Upholding Treaty settlements and other arrangements through the reform process

156. Given that the future legislation will retain planning and consenting regimes, we anticipate that most standard settlement redress should continue to interact with the new system broadly as it does now. The amendments to settlement legislation required to uphold these mechanisms could be more consequential than substantive. We recommend officials provide further advice about how provision is made for standard redress mechanisms such as statutory acknowledgments in the legislation.

157. More substantive natural resource redresses, such as the Waikato and Waipā River and the Whanganui River settlements, have a more complex interplay with the RMA, and will require careful consideration.

158. Agreements with Māori under the Marine and Coastal Area (Takutai Moana) Act, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act and other RMA arrangements (such as Mana Whakahono ā Rohe, Joint Management Agreements and Transfers of Power) also need to be upheld and transitioned into the new system.

159. We recommend substantive engagement with iwi and hapū at an early stage of the policy development process following the release of our blueprint, to agree how all arrangements can be upheld in the new system.

6. More concise national policy and greater use of national standards, including standardised zones

160. A legislative design principle set by Cabinet was to "provide for greater use of national standards to reduce the need for resource consents and simplify council plans, such that standard-complying activity cannot be subjected to a consent requirement".

161. Increased standardisation will be via national direction instruments.

How the current system works

162. National direction refers to national-level instruments prepared by the Minister for the Environment (and the Minister of Conservation in respect of the New Zealand Coastal Policy Statement [NZCPS] under the RMA). There are four main types of national direction: national policy statements (NPS), national environmental standards (NES), regulations, and national planning standards.

163. National direction is used to set:

    a. Objectives for identified statutory goals (eg, the requirement to provide at least sufficient development capacity in the National Policy Statement on Urban Development [NPS-UD], and the requirement to maintain or improve freshwater quality in the National Policy Statement for Freshwater Management [NPS-FM]).

    b. Nationally consistent approaches for the management of certain activities (eg, national environmental standards for telecommunications infrastructure).

    c. Nationally consistent methods for technically complex matters (eg, the contents of a housing and business development capacity assessment).

    d. A nationally consistent approach to plan-making and content (eg, definitions in the national planning standards).

    e. Implementation requirements for other government policy or international obligations (eg, marine pollution regulations).

164. The process for developing national direction has recently been amended by the Resource Management (Freshwater and Other Matters) Amendment Act 2024. It is now a straightforward process that requires notification to the public and iwi authorities, no less than 20 working days to make a submission, and a report and recommendations to the Minister. The person preparing the report and recommendations must consider the matters in Part 2 of the RMA.

Issues identified

165. For many years, one of the main criticisms of RMA implementation was the failure of central government to use the powers available to it to set national direction.

166. Over the last 10 years, central government has responded to the call. However, instruments have been developed in isolation from one another, with insufficient attention to their interaction and how the system should function overall. The problem has become more acute as more instruments have been developed and conflicts between them have increased.

167. There are now 29 separate national direction instruments (including regulations and the national planning standards). The current resource management reform work programme proposes to develop 7 new national direction instruments and amend 14 existing instruments: the largest-ever set of changes to national direction.

168. Implementing national direction creates a significant workload and cost for councils. They must also use processes that are slower than those available to central government and can take many months or even years to conclude. This means they simply cannot respond quickly enough to the more-nimble national direction changes. Council implementation plan changes always lag behind national direction and, in recent times, have often been out of step with national policy.

169. System users have difficulties balancing conflicting policies in different pieces of national direction. The interpretation of national direction (including conflicts between and within instruments) is a significant area of debate in the Courts.

170. Overall, our views of national direction are:

    a. There is still insufficient national direction in some key areas, including natural hazards (although note this is currently under development).

    b. There is poor alignment and coherence between national direction instruments.

    c. It is overly complex, dense and over-reaching (amounting to more than 1,000 pages, without the new national direction under development), and in some cases it is poorly drafted and/or without policy to guide interpretation (eg, National Environmental Standards for Air Quality [NES-AQ]), making it challenging to implement.

Options considered

171. We considered a range of options for changes to national direction:

    a. NPD: Simplify content, remove duplication and improve drafting.

    b. National standards: Enable greater standardisation in the system.

    c. National direction structure and process: Align national direction with our proposed approach to the structure of primary legislation.

Recommendations

172. Our proposed approach to national direction will shift policy-setting in the planning and environmental management system to the national level. It seeks to deliver a more efficient system through simplification and standardisation.

173. We recommend national direction powers and instruments under both the NEA and the Planning Act. The purpose of national direction under the NEA is to provide nationally consistent objectives, policy, standards and methods for the regulation of natural resources. The purpose of national direction under the Planning Act is to provide nationally consistent objectives, policy, standards and methods for the regulation of land use.

174. The Minister for the Environment will be empowered to develop:

    a. A single mandatory NPD under each Act.

    b. National standards under each Act, including NSZ.

    c. Environmental limits under the NEA only.

    d. Regulations under each Act.

175. We also recommend that the role of the Minister of Conservation for matters relating to the management of the coastal environment be transferred to the Minister for the Environment.

National policy direction

176. We recommend that, in developing the NPD under each Act, the Minister be required to provide for the legislated goals in each Act. As per the decision-making principles in each Act, the NPD would provide guidance to users as to how to resolve conflicts between the objectives and policies contained in that instrument – for example, by specifying what goal has primary, or which activities might be afforded exemption pathways. The NPD under each Act should also be developed with a view to ensuring they are aligned with one another. The decision-making principles specified in each Act will support this to occur.

177. The NPD under the NEA would cover matters currently addressed in the NPS-FM, the National Policy Statement for Indigenous Biodiversity (NPSIB) and the NZCPS. These would be stripped back to their core policy elements. Implementation provisions will be rehomed to standards or regulations.

178. The NPD under the Planning Act would cover matters currently addressed in the NPS-UD, existing and proposed national direction on infrastructure (including renewable energy), and proposed national direction on natural hazards, once again focused on essential policy matters.

National standards

179. We recommend that the power to set national standards be made available to the Minister under both Acts. National standards will be for the purpose of implementing the NPD under each Act and providing a consistent approach to the regulation of activities.

180. We recommend national standards do this by:

a. Setting rules to regulate an activity or the effects of an activity that can apply to all parts of an eligible spatial area with no discretion for councils about where or how they apply (eg, rules regulating the discharge to air of agrichemical sprays).

b. Setting rules to regulate the effects on an activity in a specific geographic location (eg, the beds of lakes and rivers, leaving discretion to councils to decide which rivers and lakes they apply to).

c. Setting NSZs and overlays to apply to a specific spatial area, leaving discretion to councils to choose where to apply the zones and overlays, but no discretion as to their content.

d. Setting NSZs with substantial flexibility in land use on appropriate multiply owned Māori land. The expectation is that these zones would enable land use activities, provided that they are supported by adequate servicing and any proposed activity does not unduly impinge on neighbouring properties.

e. Setting standard methods for developing and implementing planning provisions, including where that might apply (eg, criteria for identifying SNAs and ONFLs, setting management units for environmental limits, and how to measure water quality).

f. Other aspects of regional spatial and regulatory plans, such as structure, format, definitions and electronic accessibility.

181. We recommend that NSZs and overlays have a small degree of built-in flexibility to provide for a range of outcomes (within the zones parameters) across different local authorities. For example, a zone might provide for a range of height in relation to boundary requirements or a range of minimum lot sizes. This will enable better uptake of the zones and reduce the need for bespoke plan provisions.

182. We are aware of the use of private covenants on land titles that may impose additional restrictions on the use of land that are more onerous than those contained in standards and regional and district plan rules. These covenants may undermine the use of national standards, particularly NSZ, but we recognise there are a variety of trade-offs to consider. We suggest the Government initiates work to address the impact of covenants alongside the development of our proposed legislation to replace the RMA.

Environmental limits

183. The NEA will require environmental limits are set and used to determine the boundaries of acceptable use of natural resources (allocation quantum or cap). There would be a duty on the Minister for the Environment to either prescribe limits nationally or set default methods for limits to be developed at the regional level. Limits would cover attributes of air, freshwater, soil and ecosystems, and be set within management units. Environmental limits are discussed in more detail in the next section of the report.

Regulations

184. The power to develop regulation will be needed under both Acts. The scope of this power should be limited to administrative matters such as the setting of fees, forms, templates or process timeframes.

185. In order to keep the primary legislation as short as possible, we recommend moving some of the detailed process matters covered in the RMA to secondary legislation in the future system.

A review of existing national direction

186. Existing national direction instruments straddle matters relevant to the Planning Act and the NEA. As part of a transition to a future system, we recommend national direction be reviewed with a view to simplifying content, removing duplication and improving drafting. As part of this process, it should then be restructured along the lines above.

National direction development process

187. The proposals above reflect a shift in the system towards greater standardisation at the national level. To be successful, they depend on the development of a significant body of well-considered national standards, environmental limits and NSZs. This is a significant and ongoing implementation task for central government.

188. As outlined above, the process for developing national direction under the RMA has recently been amended. We recommend it is retained under the Planning Act and the NEA.

189. The process for developing national standards, environmental limits and NSZs will require considerable technical input. To kick-start the process of greater standardisation at the national level, we recommend that the Minister for RMA Reform establish a reference group of external experts to assist in the development of these instruments. This should include technical specialists and representatives of local government, iwi/hapū, and those with enforcement expertise. Where relevant, the group should consider where best practice from the current system can be applied more generally rather than 'reinventing the wheel'.

7. Environmental limits and other protections

190. A legislative design principle set by Cabinet was to "strengthen and clarify the role of environmental limits and how they are to be developed".

191. Many commentators have pointed out that important natural resources regulated under the RMA have deteriorated over the last 30 years because the framework has lacked clear environmental limits. This reset of the resource management system is an opportunity to ensure, in the words of the Cabinet, "environmental protections are set in a way that protects what matters and is clear about what cannot be done".

What are environmental limits?

192. An environmental limit defines the extent of nature's capacity to absorb pressure from the use and development of natural resources. Environmental limits can help ensure resource use is sustainable by defining and protecting how much of a resource is needed to provide for the life-supporting capacity of the resource. They can also serve to protect human health from harmful contaminant levels.

193. In our view, environmental limits are best thought of as a:

    a. minimum acceptable **state** of an aspect of the natural environment, or

    b. maximum amount of acceptable **harm or pressure** on the natural environment.

194. Environmental limits are central to modern environmental management and can provide:

    a. A consistent, measurable way to determine acceptable environmental states to assist in the management of cumulative effects.

    b. Certainty for development pathways – limits help avoid debate over what level of impact is acceptable.

    c. A way to ensure the life-supporting capacity of air, water, soils and ecosystems are maintained now and for future generations.

    d. A scarcity cap within which to allocate the resource, and potentially trade.

    e. A way to drive improvement and accountability in the regulatory system.

    f. A basis for standardised data gathering and monitoring.

    g. Social licence, by demonstrating environmental performance against accepted benchmarks.

    h. A point beyond which the costs of breaching the limit far outweigh the benefits, such that bespoke consideration of these trade-offs is unlikely to be cost-effective.

195. Environmental limits are not themselves a restriction on resource use; rather, they are the basis for managing resource use within the limit.

196. Not all aspects of the natural environment lend themselves to protection through limits as defined above. Place-based tools – such as spatial plans, zones and overlays – provide a clearer mechanism for identifying and protecting the values and characteristics of matters such as ONFLs and Significant Natural Areas (SNAs).

How the current system works

197. The purpose and principles of the RMA provide a strong basis for environmental limits and other environmental protections to be set. They require:

    a. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations.

    b. Safeguarding the life-supporting capacity of air, water, soil and ecosystems.

    c. Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

    d. Recognising and providing for matters of national importance, including ONFLs and areas of significant indigenous vegetation and significant habitats of indigenous fauna.

    e. Having particular regard to other matters, including the intrinsic values of the ecosystem.

198. These matters are taken forward through national direction and plans, with little prescription in the primary legislation as to how limits are to be specified or place-based tools are to be used.

199. Limits are set in national direction for air quality, freshwater, soil, and some aspects of biodiversity. However, the lack of a specific legislative framework has led to inconsistent terminology and approaches within and across different topic areas. The NPS-FM is one of the more recent and developed examples. Since 2014, this has prescribed a framework of attributes (eg, E. coli, total nitrogen, total phosphorus and a process for regional councils to set target attribute states [TASs]) to achieve freshwater objectives. TASs must be set at or above national bottom lines, or current state, whichever is the higher quality. Councils use restrictions on resource use, rules and other methods to achieve those TASs.

200. The NPSIB is an example of a framework for place-based protections. It directs councils to establish consistent approaches in their policies, plans and strategies to maintain indigenous biodiversity. It sets out consistent ecological criteria used by councils to identify where SNAs are located and where an effects management framework is to be applied within identified areas.

201. The RMA includes a range of important empowering provisions that provide the basis for development of resource management approaches (many of these are covered in other parts of this report):

a. A presumption that the use of natural resources is restricted, unless allowed by a rule or consent.

b. Provision for national direction and regional and district plans to set objectives, policies, rules and other methods for managing resources.

c. The requirement to avoid, remedy or mitigate adverse effects on the environment.

d. A consenting framework, including the requirement for an assessment of environmental effects (AEE).

e. A broad definition of effect, including potential effects, and cumulative effects (the consequence of individually minor, but collectively significant, actions on the receiving environment).

f. Environmental monitoring.

g. Compliance and enforcement.

Issues identified

202. We identified the following issues in relation to environmental limits (or the insufficiency thereof) and other environmental protection mechanisms in the current resource management system:

a. Many outcomes for the natural environment have deteriorated, suggesting management under the RMA has been inadequate; see results of previous inquiries into the performance of the RMA or the environmental reporting series jointly produced by the Statistics New Zealand and MfE.

b. There is no specific legislative framework for environmental limits in the RMA itself, leading to inconsistent terminology and approaches in different topic areas.

c. There is uncertainty about development as a result of the RMA's reactive and case-by-case management approach. A lack of clear limits in plans leaves individual project proponents to argue the case for their applications and invest time and effort to establish the safe limit themselves. Regulators find it difficult to evaluate the acceptability of the effects of an individual application without an appreciation of how much 'resource headroom' is available.

d. There is variable management of cumulative effects. Few councils consistently monitor permitted activities (generally due to inability to cost recover) and they lack tools to track and manage contaminant loads and adverse effects as they accumulate towards significant or material levels. This can lead to inefficient allocation and management, resulting in over-allocation. It may prevent new users from accessing resources, create uncertainty for existing users and communities, and pose a risk of irreversible environmental harm.

e. There has been a lack of national direction for how place-based protection tools are developed and implemented, leading to inconsistent approaches. For example, despite ONFLs being considered a matter of national importance in the RMA since 1991, central government has provided little direction on how to identify these places and what counts as inappropriate development.

f. Monitoring and data systems are inadequate. Setting limits requires quality science, data and modelling to justify restricting activities on private land for a public good. However, this is costly and time-consuming to develop. Successfully managing within limits requires a well-designed and funded data-and-monitoring system to evaluate performance and trigger a management response. New Zealand's current regional council-operated environmental-data systems lack design and coherence, compromising effectiveness. Inefficient funding mechanisms, and a lack of prioritisation within council budgets, frustrate efforts to set clear and justifiable limits, and hamper effective decision-making, policy evaluation and ultimately outcomes.

g. The RMA has struggled to direct restoration in already degraded or overallocated environments, instead focusing on avoiding and mitigating adverse effects.

h. A one-size-fits-all approach is not always appropriate. We are aware of regions spending effort and resources to meet nationally directed requirements for freshwater limits that are out of proportion with the size of their local problem, due to coarse and inflexible national direction. This diverts attention from resolving other more locally important issues.

i. Management of contaminated soils to protect human health is currently administered by district councils with other land-use matters. However, we are concerned that district councils lack the right skills and expertise to effectively perform this function.

Options considered

203. We considered several options for improving limit-setting and resource management within limits:

    a. Better distinguishing between the available environmental protection tools, and between a limit and the methods to achieve the limit.

    b. Using primary legislation to prescribe a framework for environmental limits.

    c. Using national direction to set a consistent approach for environmental limits and place-based protections, allowing flexibility for local context and responses that are proportionate to the scale of the issue within the region.

    d. Having an expanded toolbox at the regional level to support a limits-based system with the potential for strategic environmental assessments (SEAs), offsetting and compensation – and new allocation mechanisms to deal with overallocated catchments (discussed in the next section of this report).

    e. Changes to institutional arrangements for limit-setting and environmental monitoring and data systems.

Recommendations

204. We recommend the NEA prescribes a framework requiring environmental limits, new roles for the EPA in limit-setting, and a wider range of tools to support a limits-based system, including environmental offsetting.

205. The main aim of our proposals is to provide greater assurance that environment limits and place-based protections will be set, as well as simplification and standardisation of the implementation approach, and efficiencies through delivery of some functions at the national level.

Ensuring environmental limits have a clear statutory foundation

206. The purpose, goals and principles of the NEA (discussed above) provide a framework for the use, protection and enhancement of the natural environment; identify key aspects of the natural environment that need to be protected; and make clear that use and development is to occur within environmental limits. This will ensure there is a clear legislative basis for setting environmental limits and place-based protections.

Requiring environmental limits to be set for core aspects of the natural environment, with a role for the Environmental Protection Authority (EPA)

207. We recommend the NEA requires environmental limits to be set for the purpose of protecting the values of human health and the life-supporting capacity of the natural environment. Primary legislation will define these values within the domains of air, water (freshwater and coastal water), soil and ecosystems – and subsequent regulation will identify the attributes that are to be managed.

208. We recommend the EPA is given the responsibility for developing environmental limits at the national level and provides a 'centre of excellence' for limit-setting at the regional level. The Minister for the Environment would be required to set limits based on the recommendations of the EPA, or to prescribe a method for them to be set at the regional level.

209. Our view is that identifying the attributes for which limits should be set is a science-based technical exercise (that can include mātauranga Māori), whereas setting the limits requires a judgment. The EPA is at 'arm's length' from ministers, which makes it well-placed to perform this technical implementation role. It also makes sense to pool capabilities nationally, rather than duplicate this work across multiple regions.

A balance between national and regional decision-making

210. Our view is that limits to protect human health should be set nationally, whereas limits to protect the life-supporting capacity of the natural environment would be set by regional councils, following a method prescribed nationally based on the recommendations of the EPA.

211. The NEA would include the following framework for setting limits:

    a. The mandatory domains for which limits must be set: air, water (freshwater and coastal), soil and ecosystems.

    b. The criteria for setting management units (eg, how to delineate airsheds, catchments, etcetera).

    c. A process for the EPA to set limits nationally to protect human health.

d. A process for regional councils to follow to set regional limits to protect life-supporting capacity for key attributes of the mandatory domains.

e. A requirement to cap resource use to ensure a limit is not breached. The cap would represent the assimilative capacity or quantity of environment available for use above the limit (discussed further below).

f. The allocation method for access to resources within and beyond acceptable limits (discussed further below).

A supporting management framework

212. The NEA must require that limits are complied with, with provision to prescribe a transition pathway to account for the difficulty in reversing existing overallocation.

213. Defending limits will be achieved by managing environmental effects through rules, standards and other methods. As discussed with reference to the decision-making principles in the NEA, environmental offsetting would be made available as a way of managing activities within limits where appropriate.

Other place-based tools for environmental protection

214. The NEA will also need a framework for the development of place-based environmental protection tools for SNAs and ONFLs, with adequate consideration for how any affected property rights will be upheld (see earlier discussion as to compensation for takings).

215. The NPD (discussed earlier) will address how goals to protect biodiversity, landscapes and other important natural values are achieved. National standards would be used to prescribe a 'menu' of zones and overlays for protection of these matters, allowing discretion for regional councils to select and apply them appropriately in a local context.

New institutional arrangements for compliance and enforcement and environmental monitoring

216. We cover these matters in later parts of this report but, in summary, we recommend the EPA sets monitoring requirements for environmental limits that will be carried out by regional councils. The EPA's 'centre of excellence' will support councils in carrying out monitoring requirements.

217. A new national regulator (with regional presence) is proposed to lead compliance and enforcement functions under the NEA and the Planning Act.

8. Allocation of natural resources within limits

218. Population growth, economic development, climate change and environmental deterioration are placing increasing pressure on New Zealand's natural resources. These pressures need to be managed, and resource use allocated, within prescribed environmental limits.

How the current system works

219. Resources allocated under the RMA include:

    a. The taking or use of water (other than open coastal water).

    b. The taking or use of heat or energy from water.

    c. The taking or use of heat or energy from the material surrounding geothermal water.

    d. The capacity of air or water to assimilate a discharge of a contaminant.

    e. Coastal space.

220. Under the RMA, allocation is managed through consents and/or rules in national direction or plans. The current approach is characterised by:

    a. 'First in, first served' for consent processing (see description below).

    b. Priority for existing users over new.

    c. Permitted activity rules allowing people to access resources, including at a de minimis level (eg, stock drinking water allowed for by section 14 [3][b]).

221. Council plan-making typically confirms existing users' rights. The key provisions that govern resource allocation under the RMA are set out in table 11.

Table 11: Allocation provisions in the Resource Management Act 1991

Allocation provisions	
Who gets to use the resource	The principle of 'first in, first served' has been developed through case law. It means when two resource consent applications apply to use the same resource, the first complete application must be heard and decided first. Councils may establish rules to allocate the taking or use of freshwater, heat or energy from water, the assimilative capacity of air and water, and space in the CMA (RMA section 30(1) (fa) and (fb)). They can also overrule sections which give priority to existing users (124A). However, these provisions are rarely used. The RMA also provides a process for tendering consents to occupy space in the CMA. However, again, these provisions are rarely used.

Allocation provisions	
"Renewal" of right to use the resource	While consents cannot be 'renewed', generally, existing consent holders are given priority in consideration of their application over new applications (for the same resource) on expiry of a consent. This is sometimes also described as part of 'first in, first served'. Conditions to address environmental effects or efficiency requirements may be modified or added on 'renewal'.
Transferring the resource	The RMA provides for the transfer of coastal, water and discharge consents (sections 135–137) if it is allowed by a plan, or through a consent. Few councils have enabled transfers through plans. A small number of transfers do occur, especially water consents in water-short areas such as Canterbury. However, unless expressly allowed by plans, these must go through a full consenting process.
How to adjust allocation	The RMA has provisions to adjust consents if the use of the resource under the consent is having adverse effects on the environment (section 128). However, councils rarely use the review provisions as they consider them costly and litigious and that they favour the existing consent holder (requiring the activity to continue to be viable after the review). Typically, councils only adjust allocations to account for new information/environmental changes through plan changes, which existing consents must comply with over time when a consent expires, and a new consent is applied for. This makes for a very slow process, as consents can last for up to 35 years (although consents for water takes that have been issued recently tend to be 10 to 12 years in duration), and the ability to make changes is limited by the requirement to consider the value of investment by the consent holder (section 104). For water takes, councils frequently include rules that enable the adjustment of access to consented volumes during times of water shortage (eg, only able to take 50 per cent of consented volume)
Payment for resource use	There are various instruments under the RMA (royalties under section 359, Coastal Occupation under 64A) which could require payment for the use of a resource. However, they are rarely used, and when they are (eg, sand and shingle in coastal areas), the rate is set at a low level.

Issues identified

222. Under the current model, councils are reactive and do not have to consider what the future demand for resources might be or how to provide for it. This is administratively and economically efficient where resources are plentiful.

223. However, issues arise as a resource becomes fully or overallocated. New users cannot access resources, even when they might have higher value uses than existing users. Existing users have little incentive to be innovative and efficient in their resource use if they are guaranteed priority to a resource over others or new users, and do not face financial incentives to be more efficient or surrender unused allocations.

224. Councils can develop alternative allocation approaches. However, these powers are rarely used. This means the current system is not well-positioned to allow councils to respond to changing circumstances – including when climate change, new science or community expectations make current allocations unsustainable and risk the environmental limit being breached.

225. The Crown has acknowledged Māori rights and interests in freshwater since the first serious attempt to introduce national freshwater regulations through the Sustainable Water Programme of Action in 2003–2004. This was clearly set out by the Deputy Prime

Minister Bill English in the High Court in 2012 in the context of the Mixed Ownership Model litigation:

> *The Crown acknowledges that Māori have rights and interests in water and geothermal resources… The recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the ongoing use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use… At the outset of discussions between Ministers and the Iwi Leaders Group, it was agreed that there would be no disposition or creation of property rights or interests in water without prior engagement… with iwi.*

226. The Crown is a party to a number of appellate, High Court, and Māori Land Court proceedings where Māori groups are seeking to test claims to customary rights to freshwater, riverbeds and aquifers.

Options considered

227. We considered the following options:

a. Market-based approaches (eg, trading).

b. Collaborative/co-operative approaches (eg, catchment groups).

c. Administrative approaches requiring comparison of the merits of applications.

d. Economic instruments (eg, taxes, levies and resource rentals).

e. Improvements to the status quo (eg, changes to consent durations, powers to review and change consent conditions, powers to direct common expiry of consent terms).

f. Ceasing consenting in overallocated catchments (first in, first served).

Recommendations

228. We recommend developing a more deliberate framework for natural resource allocation under the NEA, including a requirement to develop alternatives to the first in, first served approach when a natural resource becomes scarce.

Māori rights and interests in freshwater management

229. We note the Crown's commitment to address Māori rights and interests in freshwater management. Addressing these interests should be progressed alongside the development of alternatives to the RMA's 'first in, first served' approach to access to freshwater resources.

230. The NBA approached this by:

a. Preserving any rights in freshwater and geothermal water consistent with the Crown's 2012 acknowledgments in the High Court (noted above), and stating it did not create or transfer any proprietary interests or extinguish customary rights.

b. Establishing a freshwater working group to produce a report recommending an approach to allocation that was to inform an allocation statement agreed between the Crown and iwi and hapū to be implemented through regional plans.

231. In progressing further work on replacement legislation for the RMA, we recommend that the Government consider a similar approach.

Determining an allocable quantum of resource

232. Allocating resources based on the 'first in, first served' approach is administratively efficient until a point of scarcity is reached. As this point is approached, regional councils must be required to determine how much resource is available for allocation and choose an appropriate alternative allocation method.

233. Determining this point of scarcity will require an assessment of the capacity or assimilative capacity of a resource. This should be done as part of an Strategic environmental assessment (SEA) in a regional spatial planning process.

234. Resources identified as being near (eg, 80 per cent) to fully allocated would trigger a requirement for councils to make them subject to alternative allocation approaches set in part of the regulatory plan prepared in accordance with the NEA.

A requirement to select an allocation method

235. It is likely that a 'mosaic' approach to allocation methods would work best, with councils choosing the approach most suitable for each catchment. For example, a one-size-fits-all allocation approach for freshwater is unlikely to work due to the different circumstances in each catchment (demand, number of users, variety of land use, hydrological conditions, etcetera).

236. Councils would be required to select from available approaches set through national instruments. If new entrants want access to the resource, then the chosen allocation approach must provide for this without undue cost to the last person in.

237. Our assessment of freshwater allocation approaches that are likely to work includes:

a. Market-based approach: Provides the least-cost way of achieving an optimal allocation and strong incentives for technological change. Likely to be best-suited to larger catchments where these benefits outweigh the upfront costs of establishing and operating a market.

b. Collaborative/co-operative: Likely to provide good outcomes where it is driven by users, but unlikely to provide good outcomes if it is the result of a requirement to work co-operatively. There are examples of co-operative approaches to allocation under the current RMA system with water-user groups working together to allocate water amongst their members. Continuing to enable this is likely to be beneficial.

c. Approach that considers and compares the merits of individual applications: Likely to be administratively costly and dependent on council decision-making of the relative merits of different uses.

d. Standards approach: Using increasingly stringent standards on resource users to improve the performance or reduce the impact of the activities contributing to over-allocation. This can provide a uniform and less administratively costly approach to allocation but provides less flexibility for varying responses across resource users.

e. Improvements to the status quo 'first in, first served' system: Likely to be the best approach in smaller catchments and under-allocated catchments. This is discussed further below.

Managing fully and overallocated resources within limits

238. We recognise that some natural resources are already fully or overallocated. Fully allocated means that the resource use has reached the cap and that there is no room for further use without risking the limit being breached. We also recognise that some natural resources are overallocated and mechanisms are needed to claw back the overallocation within a target timeframe.

239. In these circumstances, there needs to be opportunity for users wanting to access a resource that is fully allocated to gain access without increasing overallocation or exceeding the environmental limit.

240. In considering solutions, we are mindful that the benefits and costs of resource use are shared fairly. Requiring new entrants to undertake all actions (eg, restoration and research) creates a very high bar for entry and affects those who have contributed least to the allocation problem. Conversely, existing users have typically invested based on the rules of the day, and 'shifting of goal posts' may threaten this.

241. The natural environment plan will be required to confirm a process for managing allocation in overallocated catchments back within the allocable quantum. The plan, which will be subject to public consultation, will be required to set timeframes and methods for returning resource use to within environmental limits, and specify an alternative allocation method to 'first in first served' (as discussed above). Plans should also consider the following approaches:

    a. New entrants to a fully allocated resource are either required to:

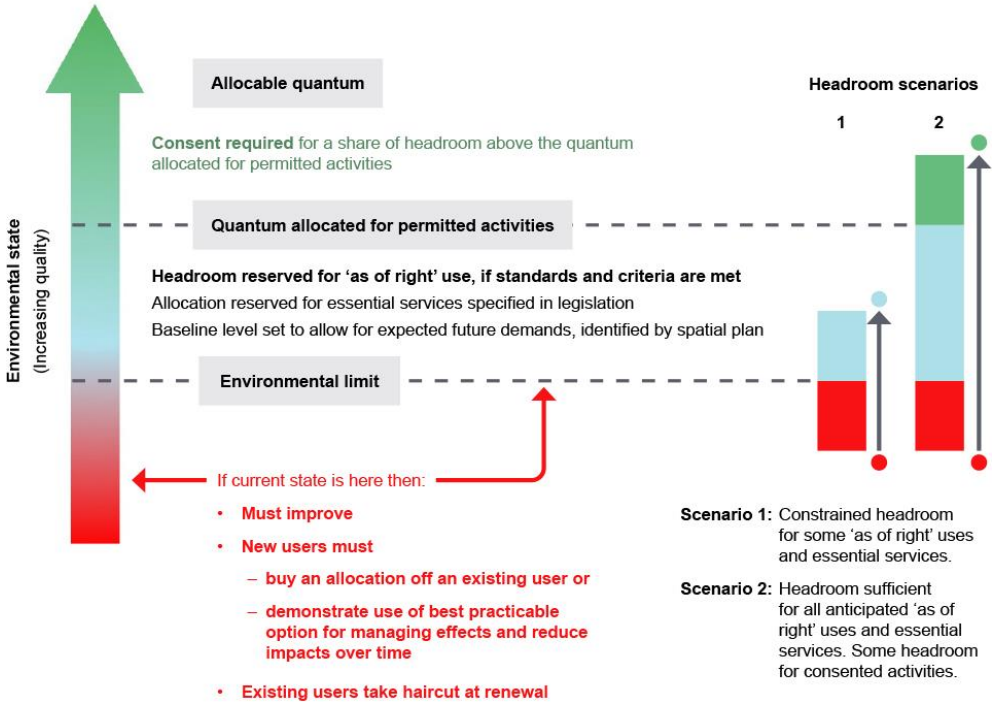
        i. Buy an allocation from an existing user, ensuring that there is no exceedance of the allocable quantum. Thought will need to be given to what supporting services are required to facilitate efficient trading. These could range from a brokerage service to auctions for time-limited access.

        ii. Demonstrate their project is subjected to a consent regime designed to reduce impacts over time and make use of resources clawed back from other users. To avoid arbitrary interpretation and loss of trust, we recommend national direction and specific guidance to ensure consistent implementation.

    b. Existing users reapplying to use an overallocated resource are required to contribute towards getting back to the limit, either by 'taking a haircut', or by funding an offset. This contribution should be in proportion to their contribution to the over allocation.

242. The concepts above are reflected in the Figure 2 below.

Figure 2: Allocation scenarios



Charging for use of natural resources

243. We propose to introduce charging for natural resource use as a means of recovering the administrative costs of the system and addressing overallocation. Charging for natural resource use will also drive more efficient use of resources and discourage hoarding.

244. We propose two forms of charges:

a. **A charge for administrative costs:** This would be used to recover the costs of administration of the NEA at the national and regional level, including the costs of the new compliance and enforcement regulator (discussed later in this report) as well as the costs of environmental monitoring. It would be levied on all users nationally, collected by regional councils, with the revenue shared by central and local government.

b. **A specific charge in overallocated catchments:** This would be levied on all users within an overallocated management unit. It would be used to fund actions identified in the improvement plan consulted on and agreed by the community to address the overallocation and return resource use to within limits. The levy could then be used to deliver best value for money interventions needed to achieve the limit (eg, retiring a piece of land to reduce sediment generation).

9. Spatial planning

245. A legislative design principle set by Cabinet was to "use spatial planning and a simplified designation process to lower the cost of future infrastructure".

How the current system works

246. Spatial planning is a form of long-term strategic planning that identifies development opportunities, informed by environmental constraints and the investment needed to unlock that development. Best practice spatial planning is based on robust data and other information and follows a rigorous process, with high levels of community and stakeholder engagement and expert input.

247. In New Zealand, only the Auckland spatial plan – the Auckland Plan 2050 – is required by statute.[9] However, Tier 1 and Tier 2 local authorities[10] are required to prepare a future development strategy (FDS) under the NPS-UD, which is a narrow type of spatial plan. Urban growth partnerships have been established in Tier 1 areas[11] to facilitate collaboration between central government, local authorities and mana whenua. These voluntary partnerships have produced spatial plans that incorporate FDS elements.

248. The need to provide housing and infrastructure to accommodate growth in fast-growing urban areas has been a key driver of spatial planning in New Zealand and has resulted in spatial plans with a strong focus on identifying:

    a. Future urban development areas (informed by environmental constraints, such as hazards, ONFLs and highly productive land).

    b. Infrastructure and investment priorities (which can support early protection of future infrastructure corridors and strategic sites).

249. Some spatial plans also identify opportunities to improve the natural environment, such as the cross-regional, blue-green open space and recreational network in the Hamilton to Auckland Corridor Plan.[12] Sea Change – Tai Timu Tai Pari, the marine spatial plan for the Hauraki Gulf, is another important exception. Sea Change is the most comprehensive example of marine spatial planning in New Zealand to date. It is unique in that it aims to tackle land-based sources of environmental degradation and includes New Zealand's first area-based fisheries plan.

250. Internationally, land-based spatial planning has a stronger focus on supporting economic growth and competitive cities and regions, with housing, business land and

[9] Sections 79–80 of the Local Government (Auckland Council) Act 2009.

[10] A list of Tier 1 (high-growth) and Tier 2 (medium-growth) local authorities is appended to the NPS-UD - https://environment.govt.nz/assets/publications/National-Policy-Statement-Urban-Development-2020-11May2022-v2.pdf

[11] Waikato and Hamilton to Auckland Corridor (Future Proof), Western Bay of Plenty (SmartGrowth), Greater Wellington – Horowhenua, Greater Christchurch, Queenstown lakes.

[12] HamiltonAucklandCorridorPlan.pdf

infrastructure a critical part of that overarching goal. Marine spatial planning is also well-established, including in Australia, China and many European Union countries.

Issues identified

251. We identified the following spatial planning limitations in New Zealand:

a. The absence of a statutory framework for spatial planning (outside of Auckland) has led to significant variation in approach and quality, partly due to a lack of consistent and robust data and other spatial inputs.

b. Spatial plans do not have strong weight to direct regulatory, transport and funding plans, which limits their ability to integrate and coordinate land-use planning, infrastructure planning and investment.

c. There is a lack of certainty that spatial plans will flow through into regulatory plans and central and local government investment decisions. Strategic decisions and major projects agreed through spatial planning can be relitigated through subsequent planning, designation and consenting processes, resulting in delays and additional cost.

d. Central government infrastructure funding is a major shaper of cities and regions. Despite this, central government's involvement in spatial planning in New Zealand has been variable, with extensive involvement in urban growth partnerships and minimal involvement elsewhere.[13] Insufficient central government involvement and a lack of clarity about national spatial priorities can contribute to poor strategic alignment between central government and local authority infrastructure planning and investment – and create barriers to spatial plan implementation.

e. There are often insufficient implementation programmes to coordinate multiple parties to deliver projects and other actions identified in spatial plans, including inconsistency in the level of detail and approach to prioritisation.

f. There are insufficient infrastructure funding and financing (IFF) tools to enable projects and other initiatives identified in spatial plans to be delivered. IFF is outside the scope of our report, but we acknowledge that it is being considered under the Government's Going for Housing Growth (GfHG) programme.

Options considered

252. Our starting point was to consider whether the new Planning Act should require spatial planning or whether it should remain largely voluntary with some requirements contained in NPD or regulations.

253. We considered options for where spatial planning requirements would apply and the geographical scale of spatial plans. Options included requiring each region to have a spatial plan or targeting spatial planning requirements to a smaller number of priority

[13] In many international jurisdictions, including Australia, Scotland and Ireland, central and/or state government has a strong role in spatial planning, and are also the key agents responsible for funding the large-scale and transformative projects and priorities identified in spatial plans (projects that in the New Zealand context are likely to be funded or co-funded by central government).

areas. We also considered whether spatial plans should be regional (but able to focus on specific parts of the region) or whether boundaries could be bespoke, and we thought about the case for a national spatial plan.

254. We also considered whether spatial planning should apply to the CMA.

255. In relation to the matters that spatial plans should cover, we assessed several options on a spectrum from a narrow to broad scope, including the following:

    a. **Narrow scope:** Focused on enabling development and infrastructure in urban environments, informed by environmental constraints (based on FDS policies).

    b. **Medium scope:** Focused on enabling development and infrastructure in urban environments and infrastructure that serves, but is located outside, urban areas, and is informed by environmental constraints. There would be flexibility to cover other significant opportunities, including in the CMA, in a way that enables and does not restrict development.

    c. **Broad scope:** Covers development and infrastructure in urban, rural and coastal areas, informed by environmental constraints along with opportunities to improve the natural environment.[14] Compared with the other options, spatial planning would have a stronger focus on growth and change in rural and coastal areas beyond the urban-rural interface.

256. We considered whether and how to strengthen the role for spatial planning in the system, including by giving spatial plans strong weight to direct regulatory plans and inform local-authority transport and funding plans. This policy choice has implications for the process to develop spatial plans, because the more directive spatial plans are, the greater the likelihood they will impact property rights, and the more rigorous the process needed to develop them.

257. There are a range of options for who should oversee the development of a spatial plan. We ruled out the autonomous regional planning committee model applied under the repealed NBA and SPA due to its complexity and impacts on local government accountability, and Treaty settlements and related arrangements. We considered the following options, all of which would need to be designed to uphold Treaty settlements and related arrangements:

    a. **Local authority-led:** Local authorities in the region (or other spatial planning area) are jointly responsible for preparing a spatial plan. They are required to engage with others, including iwi/hapū, central government, infrastructure providers, developers and communities.

    b. **Spatial planning partnership:** Local authorities in the region (or other spatial planning area), central government and iwi/hapū work together to jointly prepare a spatial plan. The partnership is required to engage with others, including infrastructure providers, developers and communities.

[14] Based on the broad range of considerations in the repealed SPA.

c. **Bespoke arrangements:** Determined on a region-by-region basis. For example, legislation would provide core principles or requirements, and a process to establish the governance body.

258. We considered various options for the process to prepare a spatial plan and how that would then relate to the process for preparing a regulatory plan (under either Act). While the process set out in the repealed SPA provided a useful starting point, we considered additions to increase the rigor of the process and other changes to support a more streamlined system overall, including:

    a. A requirement for all local authorities in the region (or other spatial planning area) to enter into an agreement at the start of the spatial planning process that describes the geographical areas, issues and opportunities that the spatial planning process will focus on; how decision-making arrangements will apply to different parts of the spatial plan (eg, regional and sub-regional layers); and how the local authorities will work together and with others to prepare the plan.

    b. A requirement for an SEA to be completed as part of the development of a draft spatial plan.

    c. The provision of a role for IHPs to hear submissions on a draft spatial plan and to either make recommendations to local authorities on changes to the plan or make the final decisions on the plan.

    d. The provision of merits appeals to the Environment Court and/or appeals on points of law to the Environment Court or High Court.

259. Options we identified to support implementation of spatial plans, included requiring spatial plans to contain an implementation chapter, or requiring a separate document to coordinate the actions of multiple parties to deliver projects and other actions identified in the spatial plan. Requirements related to implementation of spatial plans could be contained in the Planning Act or in regulations.

260. We also considered how spatial plans and implementation plans could work together to identify strategic priority areas for public investment (without restricting development outside those areas where the required infrastructure can be funded by the private sector).

Recommendations

Spatial planning will play a vital role in the new system

261. Our view is that spatial planning has a vital role to play in the new system. It will identify the spatial implications of environmental constraints such as hazards, SNAs, ONFLs and highly productive land, and support a permissive approach to development in areas where those constraints can be avoided or appropriately managed.

262. Spatial plans for a region will include the CMA.

263. We recommend that spatial plans focus on identifying:

a. Sufficient future urban development areas (consistent with the GfHG programme and well-functioning urban environments).

b. Development areas that are being prioritised for public investment.

c. Existing and planned infrastructure corridors and strategic sites.

d. Where necessary, existing and planned uses that require separation from incompatible activities (eg, heavy industrial land, quarries and ports).

264. Identification of these broad areas and uses would be informed by robust data and mapping of environmental constraints. Spatial plans will indicate whether infrastructure or other development is planned or needed in the short-, medium- or long-term and how it is intended to be sequenced. Other implementation matters will be addressed through separate coordination documents (discussed below). Spatial plans will not restrict development in alternative locations, subject to environmental constraints and NPD.

265. Infrastructure identified in a spatial plan will have access to a streamlined designation process to avoid re-litigation of the need for and broad location of the infrastructure. Subsequent approvals will be narrowed to the precise location of the designation and design matters (how the work should proceed, not whether it should). This will incentivise active engagement in the spatial planning process from infrastructure providers and landowners, timely and cost-effective infrastructure provision, and provide early certainty for private investment. As we detail later, infrastructure providers who do not identify their infrastructure in a spatial plan will need to go through the standard process to insert a designation in the regulatory plan.

266. We recommend that spatial planning requirements sit under the Planning Act but are designed to help integrate decisions under the Planning Act and NEA at a strategic level, resolving conflicts where possible. Spatial planning will also promote integration of regulatory planning under the Planning Act, with long-term planning under the Local Government Act 2002 (LGA) and regional land transport planning under the Land Transport Management Act 2003 (LTMA).

267. The NEA will contain the framework for setting environmental limits and identifying other environmental constraints that will be reflected in spatial plans. The Planning Act will contain the framework for spatial planning, with appropriate cross-references to the NEA.

Spatial planning should be scalable

268. We recommend that each region be required to have a spatial plan, but that there be flexibility for local authorities to scale the plans to focus on specific sub-regions, issues and opportunities, provided they cover mandatory content matters. Sub-regional spatial planning could then be brought together into an integrated regional spatial plan. There should be provision for inter-regional spatial planning for infrastructure corridors and other matters that may affect two or more regions.

269. Spatial plans should be succinct documents, mostly maps. They should clearly communicate the spatial implications of environmental constraints and strategic priorities for infrastructure and development in the region without getting bogged down in detail.

270. While it is important that spatial plans can be tailored to the circumstances of the region, we recommend standardisation of some matters such as data inputs, and mapping and presentation conventions. This would allow spatial plans across New Zealand to be easily compared and concatenated to form a national spatial plan.

271. We consider that a national spatial plan would be useful to provide a strategic overview of national spatial priorities and to recognise that others have the same perspective. Regional spatial plans and other relevant plans and strategies together would provide a high-level spatial view of regional priorities and their interactions. For example, a national spatial plan would visually illustrate key aspects of regional spatial plans overlaid with content from the Infrastructure Commission's 30-year National Infrastructure Plan, government policy statements, and relevant national sector strategies. As national sector strategies are developed over time (eg, on matters such as energy, minerals and ports), key spatial components could be incorporated into the national spatial plan. We see national spatial planning as primarily an amalgamation and presentation exercise, not an extensive spatial planning and engagement process in its own right.

Regional spatial plans should focus on enabling urban development and infrastructure within environmental constraints

272. In terms of the scope of regional spatial planning, we recommend the Planning Act include a succinct list of key matters that must be considered and addressed in a spatial planning process (mandatory matters), with the option to also consider and address other matters provided they meet a significance threshold and are consistent with NPD (optional matters).

273. Recommended mandatory spatial planning matters include:

    a. **Environmental constraints** to the use of and development of land and in the CMA, including (but not limited to) hazards, highly productive land (defined substantially more narrowly), SNAs, ONFLs, and implications of environmental limits and other restrictions (consistent with national direction). We envisage that constraints would be mapped by regional councils at a regional scale.

    b. **Existing and future key infrastructure** including infrastructure corridors and strategic sites, and opportunities to make better use of existing infrastructure.

    c. **Other infrastructure services** that may be needed to serve future urban areas (eg, schools, open space and community facilities), without mapping them.

    d. **More than sufficient sequenced future urban development areas** including strategic priority areas for public investment in the short-, medium- and long-term (consistent with FDS and responsiveness policies under the NPS-UD). This would not exclude development in other areas provided it is consistent with NPD. Environmental constraints can be avoided or appropriately managed and the necessary infrastructure can be funded either publicly or privately.

    e. **The gross pattern of urban, rural, industrial and other development types** to the extent required to inform consideration of scenarios and options for future urban development and infrastructure, or to identify where separation of incompatible activities may be required (see below).

f. **Statutory acknowledgements** from Treaty settlement legislation relevant to the region, and Sites and Areas of Significance to Māori **(**SASMs), identified by territorial authorities, informed by iwi and hapū management plans.

274. The Planning Act would also allow (but not require) regional spatial plans to identify major existing or planned development that requires protection from incompatible activities (eg, ports and heavy industrial areas), integration with future infrastructure, and/or coordination across multiple parties to deliver. This could include developments in urban, rural and coastal areas where identification in the spatial plan would support the development without creating barriers to alternative developments (except where necessary to avoid environmental constraints or achieve separation between incompatible uses).

Spatial plans should have strong weight to direct regulatory plans and inform transport and funding plans

275. We recommend that spatial plans have strong weight and direct regulatory plans. This will simplify and streamline the system and provide earlier certainty for developers and investors by avoiding re-litigation of decisions made through spatial planning at the regulatory planning stage.

276. An important role for spatial planning is to integrate and align regulatory planning with infrastructure planning and investment. To support spatial planning as an effective integration tool, we recommend that long-term plans (LTPs) under the Local Government Act 2002 (LGA) and regional land transport plans (RLTPs) under the Land Transport Management Act 2003 (LTMA) be required to align with spatial plans. Keeping these plans aligned will be an ongoing and iterative process. For example, a significant change to a spatial plan may require a change to the relevant LTP or RLTP and vice versa.

277. To support transparency of decision-making, local authorities should be required to publicly identify the extent to which the LTPs and RLTPs align with the relevant spatial plan, any barriers to achieving alignment, and what is going to be done about any misalignment. The Planning Act will provide for spatial plans to be updated on a regular basis, including to reflect changes in NPD and to maintain alignment with regulatory plans, LTPs and RLTPs.

278. Spatial plans will also inform central government funding and budget processes. For example, spatial plans could inform (and be informed by) regional deals, government policy statements, and the Government's response to the Infrastructure Commission's 30-year National Infrastructure Plan. As discussed above, a national spatial plan will be a useful tool to support integration of central government and local authority planning and investment. Integration would also be supported by central government involvement in spatial planning processes (discussed below).

The process to prepare spatial plans should be both robust and flexible

279. As spatial plans will have strong weight to direct regulatory plans and inform LTPs and RLTPs, it is important that the process to prepare them is robust. We recommend that the Planning Act contain core process requirements and provide a flexible framework for relevant local authorities to agree how they will work together and with others to develop the spatial plan. Legislative requirements could be supplemented by regulations and guidance where necessary.

280. This approach will ensure the process to develop a spatial plan is robust while allowing it to be tailored to the circumstances of a region and existing arrangements. In some cases, it may be appropriate for an existing committee or other governance body, such as an urban growth partnership, to oversee the development of a spatial plan and make recommendations to the relevant local authorities.

281. Core requirements in the Planning Act would cover matters including the need to uphold existing and future Treaty settlements and related arrangements; participation and engagement requirements (including specific requirements to engage with central government, iwi/hapū, infrastructure providers and relevant sector groups); minimum process steps (including the need for an SEA); and the roles and responsibilities of regional councils and territorial authorities.

282. The Act or regulations would also set maximum time periods for the notification of a draft spatial plan and adoption of a final spatial plan (excluding resolution of any appeals). The time periods would need to be determined in the context of the timing and sequencing of implementation of the new legislation as a whole. However, we expect it would take 12 months to prepare a draft spatial plan for notification. The first spatial plan for a region could be accompanied by a transparent improvement plan to identify where further data or modelling (eg, on hazards) is required and when it is expected to be available to inform a review of the spatial plan.

283. In addition to setting out core process requirements, the Planning Act will require all local authorities in the region to enter into an agreement to guide the spatial planning process. This will need to comply with relevant statutory provisions and cover matters including:

    a. Key geographical areas, issues and opportunities for the spatial plan to focus on (recognising that additional matters may be raised through the spatial planning process).

    b. The roles of each local authority in the spatial planning process, including which matters affect the whole region and require the involvement of all local authorities, which matters affect only part of the region and could be progressed by a smaller group of local authorities then 'stitched together', and the allocation of responsibilities between regional councils and territorial authorities.

    c. The mechanics of how the local authorities will work together, including meeting procedures and voting rights and what the secretariat arrangements will be. For example, the local authorities could establish a new joint committee under the LGA or use an existing joint committee (such as an urban growth partnership), meaning the joint committee provisions in Schedule 7 of the LGA would apply.

    d. How each local authority will ensure that its arrangements with iwi/hapū and other Māori groups under Treaty settlements and related arrangements – and existing tools (such as mana whakahono ā rohe and joint management agreements) – are upheld during the spatial planning process.

    e. How the local authorities intend to work with central government, including relevant agencies and Crown entities, to develop the draft spatial plan. We do not recommend there be a mandatory requirement to have a central government member at the decision-making table. However, this could be agreed between the local authorities and the minister responsible for the Planning Act at their

discretion. The agreement should also identify matters to be covered in the spatial plan that are nationally significant, noting that some infrastructure that has significant benefits for New Zealand may not be significant for the region or sub-region it is located in.

f. How the local authorities intend to work with others with a strong interest in spatial planning for that region, including infrastructure providers, development and community sector groups, and neighbouring local authorities.

g. How the local authorities will co-operate to engage with communities using a variety of approaches aimed at reaching a diverse range of people.

h. How they will use dispute resolution processes.

284. We envisage that the joint committee of local authorities (or other governance body) would be supported by a secretariat of technical experts drawn primarily, but not solely, from the relevant local authorities. They would work with central government, iwi/hapū, infrastructure providers, stakeholders and communities to prepare the draft spatial plan in accordance with Planning Act requirements, national direction, any relevant regulations, and the spatial planning process agreement.

285. We recommend the Planning Act require draft spatial plans to be provided to the Secretary for the Environment no less than three months prior to notification. The Secretary would audit the draft spatial plans to ensure they meet the statutory requirement to give effect to national direction and support compliance with environmental limits, consulting with other relevant agencies and Crown entities and seeking direction from ministers as required.

286. Once the joint committee (or other governance body) has incorporated any feedback from the Secretary for the Environment, it would recommend the draft spatial plan to each relevant local authority to be approved for public notification. The Planning Act should include a dispute resolution process to be used if one or more local authorities does not approve the draft spatial plan for notification, with a 'backstop power' for the minister responsible for the Planning Act to direct that the draft spatial plan be notified – if specified conditions are met and having considered advice from the Secretary for the Environment and the relevant local authorities.

287. The secretariat would publicly notify the draft spatial plan, receive submissions and further submissions, and provide them to an Independent Hearing Panel (IHP) jointly appointed by the local authorities of the region, along with a summary of submissions. Further detail about IHPs and summaries of submissions is provided in the regulatory planning section of our report.

288. The IHP would hear submissions on the draft spatial plan and make recommendations to each relevant local authority, copied to the joint committee (or other governance body) and secretariat. Depending on the approach to regional and sub-regional matters set out in the local authority agreement, some recommendations may require a decision from all local authorities in the region, while others could be decided by a smaller group of local authorities (eg, the regional council and territorial authority for the district/sub-region that the recommendation relates to).

289. The joint committee (or other governance body) would provide advice to each local authority about whether they should accept or reject the IHP's recommendations that

affect the region or their district. The dispute resolution process set out in the Planning Act could be used where two or more local authorities cannot agree whether a recommendation relevant to the region or their district should be accepted or rejected.

290. For decisions on spatial plan provisions that will be given effect to through the regulatory plan, appeals would be available as follows:

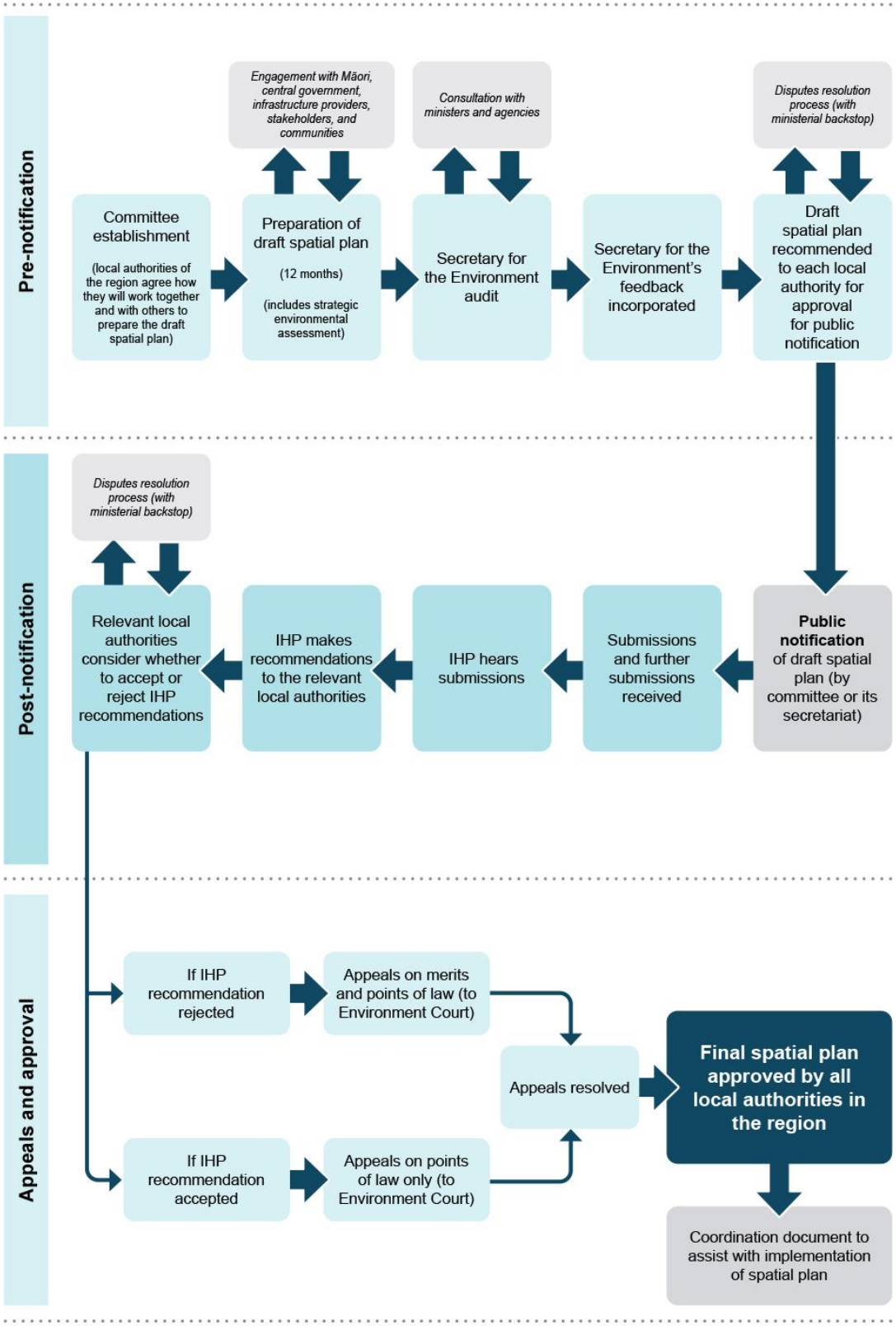
    a. Appeals to the Environment Court on points of law where an IHP recommendation has been accepted by the relevant local authority or authorities.

    b. Appeals on merits to the Environment Court where an IHP recommendation has been rejected by the relevant local authority or authorities.

291. In our view, a role for IHPs and limited appeals are necessary given the determinative impact spatial plans will have on property rights through their strong impact on regulatory plans.

292. IHPs would provide expert input into, and scrutiny of draft spatial plans, including their alignment with national direction. We considered whether IHPs should make the final decisions on spatial plans but accept this would raise significant issues for local government accountability and upholding Treaty settlements and related arrangements. We therefore think they should make recommendations to each relevant local authority and the final decisions should sit with the local authorities (subject to appeals).

Figure 3: Spatial planning process



Spatial plans will need to be implemented in a coordinated way and progress should be monitored and reported on

293. Spatial plans will identify strategic priorities at a high level, for example by identifying which future development areas will be prioritised for public investment in the short-,

medium- and long-term, the preferred sequencing of development with associated rationale, and whether future infrastructure corridors are needed in the next 10–20 years or longer-term. However, spatial plans will not provide detailed timelines for development and infrastructure delivery. Timing would be better addressed through implementation planning as local authorities, central government, infrastructure providers and others will need flexibility to reprioritise actions identified in a spatial plan to respond to relevant changes in regulation, funding, and the environment. It may also be possible to bring some development areas forward in timing; for example, where the necessary infrastructure can be funded by the private sector.

294. It is essential that spatial plans are implemented and do not just 'sit on a shelf'. We consider there would be benefits in a separate coordination document for each spatial plan to address the mechanics of how actions identified in the spatial plan will be implemented, including timing and who is responsible for each action. These should primarily focus on critical steps to deliver the actions and the coordination of efforts by multiple parties. The documents should not, for example, cover non-critical, business-as-usual tasks that can be progressed by a single local authority.

295. Relevant local authorities would lead the development of the coordination document, but they would need to involve all those with a role in delivering the spatial plan, including central government agencies, Crown entities, iwi/hapū, and private infrastructure providers.

296. To support a consistent approach to preparing the coordination documents, the Planning Act will set core requirements. These will build on requirements for FDS implementation plans and implementation plans for regional spatial strategies under the repealed SPA, such as:

    a. **Content of coordination document**, including a list of actions identified in the spatial plan, the relative priority of each action (consistent with any direction in the spatial plan about strategic priorities and sequencing), any dependencies between actions, the critical steps to deliver the actions, who is responsible for them, timing, whether actions already have the required funding and, if not, who is responsible for seeking funding.

    b. **Description of who needs to be involved** in preparing the document, including provision for targeted engagement (public consultation will not be required), and a requirement that a person's or organisation's agreement be obtained before they are identified as responsible for an action or critical step.

297. Progress towards implementing the spatial plan will be monitored and reported on annually. The coordination document will be updated at least every three years, with flexibility for out-of-cycle updates.

Coordination documents, and monitoring and reporting on progress in delivering actions identified in spatial plans, will support the successful implementation of spatial plans. However, these mechanisms will not address all barriers to implementation, such as IFF constraints. We understand that opportunities to improve the IFF toolbox are being considered as part of the Government's GfHG work programme and note such work as an essential complementary workstream for the success of resource management reform.

10. Regional and district planning

298. All of the legislative design principles set by Cabinet have some bearing on the system of regional and district planning – in particular, the directive to "realise efficiencies by requiring councils to jointly prepare one regulatory plan for their region". The design of regional and district planning follows higher-order decisions about the structure and scope of primary legislation, and the role of national direction.

How the current system works

299. Regional and district planning is the primary means through which policy is developed and set in the current resource management system.

300. Planning is both a process and an outcome. It needs to integrate multiple (often conflicting) views, information, challenges, and opportunities to reach appropriate decisions. Because of their impact on property rights, plans can be thought of as a social contract between a council and their community, setting out the agreed and expected parameters for development in a region or district.

301. The key provisions in the RMA that set the framework for regional and district planning are as follows:

    a. Part 3 sets out the duties and restrictions for activities which provide the basis for their regulation through national direction and plans.

    b. Part 4 sets out the functions of regional councils and territorial authorities.

    c. Part 5 requires local authorities to prepare policy statements and plans to assist them to carry out their functions and achieve the purpose of the Act.

    d. Schedule 1 sets out the processes to make and change plans, including the standard process, streamlined process, freshwater planning process, and intensification streamlined planning process. The latter processes have been introduced to address perceived inadequacies in the standard process.

Issues identified

302. Regional and district planning has faced significant criticism for failing to deliver desired outcomes – particularly for housing and freshwater (noting that for many years neither the RMA nor national direction set specific goals for these matters).

303. While the RMA was intentionally designed as a devolved framework, central government has increasingly stepped into regional and district planning matters to fix perceived failings. However, unstable national policy settings (including the RMA itself) have added to complexity and inefficiency at the regional and local level.

304. Planning issues are largely a product of wider system settings, including the structure, incentives and resourcing of local government; an emphasis on public participation and appeal rights within processes; an overly complex framework in the RMA (including many plans to navigate, with unnecessary variation in approaches); and plans being

internally inconsistent or lacking direction on how conflicts are managed – leaving the hard decisions to consenting processes.

305. There are several factors contributing to these issues, including:

    a. Part 2 of the RMA leaves significant discretion for local government to develop plans to achieve sustainable management as they see fit (especially in the absence of national direction, which has expanded in recent years).

    b. Variability in the approach to developing plan structure and content. The national planning standards were developed to begin addressing this issue but have not been fully implemented and, in our view, do not go far enough.

    c. Local political economy – in urban areas, property owners have strong incentives to oppose change (eg, intensification); in rural areas, landowners have incentives to oppose restrictions. These incentives shape local political decision-making, enforcement, and regulatory outcomes.

    d. Limited resources – the cost of obtaining the environmental science required to justify environmental thresholds in plans is significant, and often beyond the means of councils with a smaller rating base. Expensive appeals can be a disincentive for councils to promote controversial provisions.

306. Planning practice has evolved over the life of the RMA. Councils have become increasingly risk-averse, resulting in plans that are complex and prolix. Because recourse to higher documents during a consenting process is now discouraged, the repetition of imperatives throughout the system is rife, and plan provisions are lengthy in an attempt to provide more certainty. All of these factors make even straightforward consent applications disproportionately long and overcomplicated.

307. It is not uncommon for applications for contemplated activities (an industrial use in an industrial zone) to run to hundreds of pages, assessing permitted matters such as traffic, noise, visibility and others, because of a proliferation of policies and a full discretionary activity status.

Options considered

308. We considered a range of possible changes to planning arrangements including:

    a. Retaining regional and district plans, with more implementation support and oversight.

    b. Using a regional spatial plan and more complete national planning standards to improve alignment and remove unnecessary variation between plans.

    c. Combining a regional spatial plan with a regional regulatory plan, consolidating all plans at the regional level.

309. We considered a range of possible changes to planning processes, including:

    a. Leaving councils to determine their own plan development and consultation processes, subject to general consultation principles in the LGA.

b. Prescription of process steps and timeframes.

c. Building flexibility into the process to accommodate changes of different scales.

d. Use of IHPs.

e. Changes to appeal rights.

310. We identified the following options in relation to planning content:

a. Significant local discretion to develop plans under a broad and enabling purpose and principles and functions (as under the RMA).

b. Local discretion, but within the context of increased NPD and new principles/requirements to guide planning content.

c. Significant standardisation at the national level through national standards and standardised zones.

311. An important role of regulatory plans is classifying whether activities are permitted or require a resource consent. We considered a range of options for developing activity categories including:

a. Retaining all RMA activity categories.

b. Reducing the number of categories and reorganising them to enable a more permissive system.

c. Taking a binary approach where activities are either permitted or not.

Recommendations

Plans under the Planning Act and the Natural Environment Act

312. Regulatory controls on resource use, expressed spatially, will be required to implement both the Planning Act and the NEA.

313. We propose a model where each local authority is responsible for preparing the planning content relating to their functions under the Planning Act and NEA. Each territorial authority will prepare its chapter of the combined district plan under the Planning Act. Each regional council will prepare a plan for its functions under the NEA. 'One plan' per region will be achieved through a national e-planning portal that provides a seamless user experience.

314. The role of the natural environment plan is to regulate the use, protection and enhancement of natural resources. It will be the vehicle through which regional councils address natural resource management, as under the RMA. We also propose that regional councils are given additional responsibilities that are better performed at a regional scale. These include identifying and managing the risk associated with natural hazards, and the identification and protection of ONFLs and SNAs.

315. The role of the combined district plan is to regulate land use. This will be how territorial authorities deliver their functions under the Planning Act. Territorial authorities will

retain their current responsibilities for managing subdivision and land use (except in respect of SNAs and ONFLs).

316. We consider that management of natural hazards such as flooding may well need to involve territorial authorities, particularly in districts or cities that have already completed significant hazard assessment. We recommend that, at the outset of the spatial planning exercise, all local authorities in a region be required to enter into an agreement allocating responsibilities for natural hazards management before commencing the combined district plan and natural environment plan processes.

Regulatory plan development

317. Developing the first regulatory plans for a region is an opportunity to embed the new concepts and approaches of our system design. It is important that the regulatory plan-making process is efficient, achieves a cohesive regional approach (building on the spatial plan), and provides for an appropriate level of local decision-making.

318. The Planning Act will prescribe the process for developing combined district plans. The NEA will prescribe the process for developing the natural environment plan. Plan development prior to public notification will include engagement with communities, including iwi/hapū. Where specific engagement expectations with iwi or hapū are prescribed by Treaty settlement, they must be upheld in addition to any general requirements of consultation with iwi/hapū.

319. Regulatory planning processes will not be 'starting from scratch' as they will be informed by the outcomes of the spatial plan. Engagement and consultation on regulatory plans will not have to examine every issue, but matters should be considered at a more granular level. For example, this would include engagement and consultation on where each of the relevant standardised provisions (including standardised zones and overlays) apply, and the development of any bespoke plan provisions.

320. Developing a regulatory plan (and for subsequent plan reviews and plan changes) will require preparation of an evaluation report to demonstrate compliance with higher-level policy imperatives. This is intended to be a 'lighter touch' version of a section 32 report under the RMA. The evaluation report must outline how the plan has given effect to NPD and the regional spatial plan, the rationale for planning provisions, and how communities and iwi/hapū have been consulted and their views reflected in the regulatory plan. We recommend the evaluation report is provided to the Secretary for the Environment three months prior to public notification of the plan or plan change. The Secretary can provide direction back to the local authority if he or she considers that it has not appropriately given effect to national direction.

321. We also recommend that a separate justification report is used for any bespoke plan provisions. These reports are intended for decision-makers and those impacted by a development and need to demonstrate the rationale for the deviation from nationally set provisions and for how the provisions are the best expression of the goals of the relevant legislation in this local context. They form the basis for assessing regulatory takings and submission and appeal pathways. Justification reports will not be required where a plan adopts a national standard, zone or overlay.

322. We recommend each local authority approve its component of the regulatory plan for notification. There should be opportunities for submissions.

323. We recommend that the summary of submissions (as provided for in the RMA) be simplified by requiring summarisation by theme without a need to address each individual submission point. The process should be similar to that for select committees.

324. We recommend submissions on regulatory plans cannot be made on:

    a. The content of an NSZ or overlay.

    b. The use of a nationally set method to determine a matter (eg, SNA, ONFL).

    c. Matters already determined through the spatial plan.

325. We recommend submissions on plans can be made on:

    a. The location of NSZs and overlays and any other national standards (where provided for).

    b. Bespoke provisions that provide for local variation (or the need for them where not proposed).

326. To assist transition, we recommend submissions on the natural environment plan and combined district plan be heard together by an IHP, which will be jointly appointed by all relevant local authorities in a region and make recommendations to them. The IHP will have a specific role to ensure the regulatory plans implement the regional spatial plan, and to resolve cross-boundary issues potentially arising between individual chapters of the combined district plan and the natural environment plan.

327. We are aware that the Productivity Commission noted[15] appeal rights on plans in New Zealand are broader than other comparable jurisdictions (eg, Australia, England and Wales). We consider that providing comprehensive national direction will significantly reduce the ability to appeal plan content – and that merits appeals provide a necessary check on councils' ability to regulate beyond that provided by national direction.

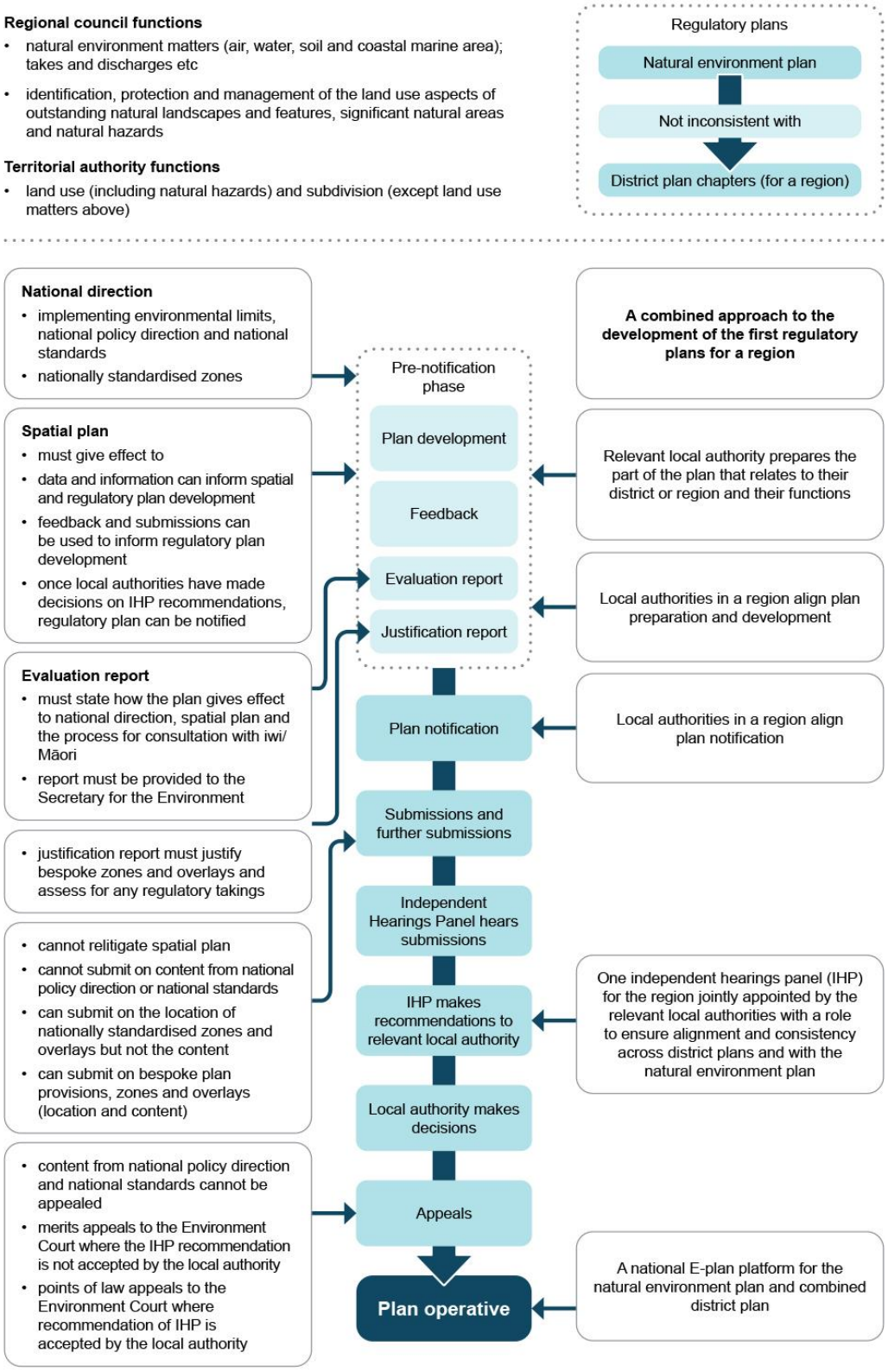
328. We recommend that where the local authority accepts the recommendations of the IHP, appeals to the Environment Court would be limited to points of law. Where recommendations of the IHP are rejected, broader appeals on the merits of a decision should be available to the Environment Court.

329. We recommend that where local authorities choose to develop bespoke provisions, there be a 'stickier' process, including the ability to make submissions and further submissions on the content of those provisions as well as where they apply. Appeals to the Environment Court will be available on the merits of those bespoke plan provisions.

330. Decisions of the Environment Court will be able to be appealed to the Court of Appeal, and with leave from the Court of Appeal to the Supreme Court, removing the additional step of appeals to the High Court to promote better access to the higher courts.

[15] Better Urban Planning Report March 2017

Figure 4: Regulatory planning process



Plan changes and plan reviews

331. Spatial plans provide a strategic direction for growth and development; the regulatory plans provide the framework for implementing that direction. A balance between certainty and flexibility is required to ensure that the direction set in a spatial plan is

achieved, while accommodating a constantly changing economic and environmental context.

332. We recognise private plan changes are an important 'market test' for areas of development identified in the regulatory plan and we are cautious about constraining these. On the other hand, private plan changes impose material administrative costs on councils. Developers will have had significant opportunity to input into a spatial and regulatory plan, and any limits on private plan changes occurring in the period after the development of a regulatory plan will not be unduly constraining.

333. We recommend an agile approach that allows growth and development to occur in accordance with the spatial plan, while not unduly constraining private plan changes (even if inconsistent with the spatial plan) provided the developer funds the development.

334. We recommend:

    a. Reducing and simplifying the number of plan-change process options currently in the RMA that make the legislation overly complicated and difficult to understand.

    b. Providing certainty by limiting when private plan changes can occur after the development of a regulatory plan.

335. To support the transition to the new system, we recommend the Acts:

    a. Limit private plan changes in the period after the passage of the Acts and prior to the development of the initial regulatory plan (to limit a potential ‘gold rush’ on potential developable land).

    b. Provide no ability to lodge a private plan change to the combined district plan made under the Planning Act for a period after the notification of a regulatory plan (three to five years). A local authority should also have the discretion to decline a private plan change proposal if the matter has already been addressed by a plan change in the previous two years.

336. We are aware that the Government’s GfHG programme is proposing to require 30 years of ‘live zoned’ land in high-growth urban areas (the “Housing Growth Targets”). However, we are also conscious that this approach will place a significant financial burden on many councils because of the work required to assess natural hazards, traffic modelling etcetera that is currently required before such live zoning. The new system should seek to strike a balance between ensuring sufficient development capacity is provided while minimising wasted effort and unnecessary technical work.

337. In thinking of solutions that can still achieve the Government’s objectives, we considered Western Australia’s approach where indicative zoning decisions are made, with structure plans then used as a trigger to proceed to subdivision and consenting. No further plan change process is needed.

338. We recommend developing an agile land release mechanism as an alternative to plan changes to enable development areas to be brought online when these are consistent with the regional spatial plan.

339. To achieve this, we recommend that where growth areas are identified in a spatial plan and then zoned as an indicative urban zone in the regulatory plan, that land will be able to be released for development without a formal plan change. The regulatory plan would be required to specify triggers for release such as infrastructure availability – developing and agreeing a detailed structure plan, land price indicators, or finalisation of a contribution to vesting of reserve land. This mechanism would be available as soon as the plan (or relevant parts of the plan) had legal effect (after the resolution of any appeals).

340. Where an indicative urban zoning is released for development through something other than a formal plan change process, a local authority must determine an appropriate process to scrutinise and confirm the completeness and robustness of the planning associated with that zoning area. The process should be proportionate to the scale, complexity and risk associated with the development and the extent to which it varies from the NSZ.

341. We also recommend timeframes be specified for each 'trigger' (eg, a structure plan must be in place for land sequenced in the spatial plan for the next 10 years) to provide certainty to landowners and the community.

342. We recommend regulatory plans be reviewed at least every 10 years.

Regulatory plan content

343. The content of plans is shaped by the proposals we have discussed earlier in this report, including for the scope and structure of legislation, the functions of regional councils and territorial authorities under the respective Acts, national direction, spatial plans, environmental limits, and resource allocation.

344. It is useful to draw this together here. Plans will:

    a. Implement NPD, national standards and environmental limits, including NSZs.

    b. Implement the regional spatial plan by translating identified constraints and development opportunities into appropriate zones and other regulatory provisions.

    c. Use zones as the main tool in the Planning Act components of a regulatory plan, drawing on the NSZs.

    d. Ensure through the regional council's chapters of a regulatory plan that environmental limits will not be exceeded (or where a limit is already exceeded, implement measures to move towards meeting it).

    e. Apply or (with justification) modify national standards in the regional council's chapters of a regulatory plan.

    f. Not repeat statutory goals and principles, NPD or other objectives and policies provided in national standards (as per the decision-making principles).

345. This amounts to a significant standardisation for regional and district planning, which will facilitate use of a nation-wide e-platform. This will in turn reduce costs to users of

the system and enable better system monitoring, with feedback loops using this information to ensure that the goals of the Acts are being achieved.

346. We recommend that regional and district councils retain discretion to develop bespoke plan provisions to address local circumstances, where this is warranted. Bespoke plan provisions must be:

    a. Bounded by the scope of the primary legislation and local authorities' functions.

    b. Developed in a way that does not impose an unreasonable regulatory burden on owners of land.

347. We recommend that the new legislation allows local rules to be more stringent than that provided for in national direction similar to the provisions in section 43B of the RMA.

348. We recommend that national direction can state how local authorities must monitor and report on how they are giving effect to national direction – and the methods and requirement for doing so, similar to section 45A(2)(g) of the RMA.

Activity categories

349. Regulatory plans use activity categories to set what is allowed or encouraged and what is not. We propose to increase the scope of permitted activities and remove activity categories that are not well used or are unnecessary. We also suggest more clearly defining the role of the available activity categories in primary legislation to improve consistency in how they are used within regulatory plans and national standards.

350. We recommend the following activity categories that will apply in regulatory plans and national standards:

    a. **Permitted activities** are activities allowed by a plan or by national direction and can be subject to standards. No planning consent or permit is required, and a person may proceed with the activity as of right. We propose the expansion of the permitted activity category to allow for registration and monitoring of permitted activities – including supporting resource allocation, compliance and monitoring, and, where obtaining the consent of a third party, would remove the need for a consent. This may require the person undertaking the activity to notify the local authority. Permitted activities may include standards that require the payment of fees; for example, to support monitoring and compliance functions.

    b. **Restricted discretionary activities** are for activities that are appropriate in a zone (ie, they are anticipated) but a planning consent or permit is required to assess specified matters. Restricted discretionary activities can be notified where they have effects that are more than minor. Assessment is limited to the matters listed in the plan and to the matter(s) for which there is a non-compliance (ie, only for height in relation to boundary if it is the built form that breaches the permitted activity standard), and is only for the level of effects over and above those effects that would otherwise be permitted (ie, the permitted baseline). The restricted discretionary activity category will encompass both simple applications (eg, where there is a breach of a standard) or complex applications (eg, a large subdivision in

an area zoned residential). The activity can be granted or declined but only on the basis of the item or items over which discretion is reserved.

c. **Discretionary activities** require a planning consent or a permit and are those activities that may or may not be appropriate. A full assessment of effects is required. This category is for both activities not anticipated by a plan or specified as being inappropriate due to reverse sensitivity issues (eg, a school in or near a heavy industrial zone) or are inconsistent with the regional spatial plan (eg, development in an area subject to natural hazard risk). These activities would be notified if their effects are more than minor. The assessment of effects is limited to those over and above effects already permitted. The objectives and policies of a regulatory plan play a key role in deciding if the activity is appropriate or not. The activity can be granted or declined.

d. **Prohibited activities** are activities for which an application for planning consent or a permit cannot be made (ie, a plan change would be required to enable an application). This category should be used sparingly and only where the adverse effects of the activity on the environment or the risk to life is unacceptable. For example, it may be appropriate to make residential activity prohibited where the risk to life from a natural hazard such as landslide is extreme, or for childcare centres in a heavy industrial area.

351. We recommend retaining the provisions in the RMA that provide a streamlined process for activities that have temporary or marginal non-compliances with permitted activity standards (section 87BB of the RMA).

11. Planning consents and permitting

352. All of the legislative design principles set by Cabinet have bearing on the consenting system, and in particular "provide for greater use of national standards to reduce the need for resource consents and simplify council plans, such that standard-complying activity cannot be subjected to a consent requirement."

353. The design of application processes follows decisions discussed earlier in this report, including in relation to property rights, spatial plans and regulatory plans.

How the current system works – overview

354. A resource consent provides permission to carry out an activity that would otherwise contravene the restrictions in Part 3 of the RMA, an NES or a plan.

355. Activities that require consent are listed in an NES or a plan, and an application must be made to the relevant local authority. The RMA outlines the process steps for the application, including the information that must be provided, whether or not to notify affected parties or the public (who can make a submission, whether a hearing is required, how the decision is made, the types of conditions that can be imposed, and the process for appeals.

356. There are currently three notification routes in the RMA:

    a. Non-notified.

    b. Limited notification, which occurs when:

        i. There are minor or more adverse effects on affected persons, and all or some of those persons have not given their written approval to the application.

        ii. The plan or an NES state that the activity must be limited notified.

        iii. There are special circumstances that warrant it.

    c. Public notification, which occurs when:

        i. The adverse effects on the environment (excluding affected persons) are more than minor.

        ii. The plan or an NES state that the activity must be publicly notified.

        iii. The applicant has requested it.

        iv. There are special circumstances that warrant it.

    d. Notification (limited or public) provides the means for affected persons (limited) and interested parties (public) to submit and provide input into the substantive

decision-making on the application. Submissions can be in full or partial support or opposition of the application, or neutral. Making a submission includes the right to be heard at any hearing of the application, and to subsequently appeal the decision to the Environment Court.

357. Once a consent is lodged with the local authority, a statutory processing 'clock' starts. Process steps must meet specified timeframes. Local authorities may stop the processing clock to ask for further information. Applicants may also ask for the processing clock to be stopped – a power that is often used so that issues with submitters can be resolved without the need for a hearing.

358. There are two other consent processes under the RMA – direct referral (by the applicant) of an application to the Environment Court and 'call ins' for nationally significant proposals, which can be considered by the Environment Court or a Board of Inquiry.

Issues identified

359. Notwithstanding various efforts to reform the consenting system, it remains the subject of complaints that it is overly complex, costly and slow. Practice across local authorities and applicants is variable, leading to different approaches in different parts of the country.

360. Engagement with local government suggests that common reasons for consenting delays include inadequate applications, requests for further information, hearings and complex consenting issues (including complicated or uncertain environmental effects). Our own experiences suggest that the complexity of policy documents in the system compounding with councils' increasing risk aversion results in information requirements out of all proportion to the potential implications or effects of an application.

361. Some targeted efficiency improvements to consenting processes are being made in Phase 2 of RM Reform. Phase 3 is an opportunity to consider more significant changes intended to both reduce the number of consents required and improve certainty for all users where they are still needed.

362. The notification provisions of the RMA are complex and fraught. Public notification can lead to many submissions from people who are not directly affected by the application. There is a perception that people have a right to be notified or make a submission even when there is no direct impact on them or their property. The threat of having a notification decision judicially reviewed is blamed for risk-averse behaviour by councils.

Options considered

363. We considered a range of options for changes to consent provisions, including in the following areas:

    a. Notification – including what is the appropriate level of effects to determine who should be involved.

    b. Decision-making criteria (section 104 of the RMA).

    c. Processes – such as pre-application meetings and appeal rights.

d. Should provision be made for adaptive management.

e. Modifying or removing additional consent process tracks.

f. Addressing the requirement for emergency works to obtain a consent after the fact.

Recommendations

364. Our proposed changes to application processes codify good practice, simplify the system, and improve efficiency. Our proposals apply to both the Planning Act and the NEA, unless otherwise specified.

365. First, we recommend a change in nomenclature that is more intelligible to non-expert users of the system. Permissions secured under that Planning Act will be called 'planning consents' or 'subdivision consents'. Permissions under the NEA will be called 'permits'.

366. We recommend consideration be given to putting planning consents and permit process steps, information requirements, AEE requirements and timeframes into regulations to reduce the length of primary legislation and assist in making timely system changes, as practice reveals necessary changes.

367. We recommend removing alternative consent processing tracks such as direct referral and nationally significant proposals.

368. We recommend that a broader regime be provided to enable emergency works required for remedial work after a natural disaster (and where the works are required for hazard remedial work). Councils should be encouraged to approve works proposed by third parties, where they can demonstrate satisfactory performance of the works. That could be achieved by a requirement to provide appropriate certification by a suitably qualified and experienced person once the works are complete. In such circumstances, the requirement to subsequently obtain a resource consent could be limited to situations where there is an ongoing need to comply with conditions.

Notifying planning consents and permits

369. We recommend changes to ensure that only those materially affected by an activity participate in the planning consent and permit process. We anticipate that providing less opportunity to participate in the consent and permitting process will encourage participation in both spatial planning and regulatory plan processes.

370. We recommend notification be based on whether the activity or effect will result in *more than minor effects* on a person or the natural environment. While this does not change the test for public notification, it does raise the bar for whether a person is considered to be adversely affected and has the right to make a submission on the application.

371. We recommend full notification of a planning consent under the Planning Act be limited to the district within which the activity is located. In the case of cross-boundary effects, the scope should include those affected in adjoining districts. We envisage this will include residents in addition to iwi/hapū and companies and incorporated societies that

have a history of operation in the district. Public notice under the NEA will not be limited.

372. We recommend a new route to challenge notification decisions by way of administrative review in the Planning Tribunal. At present, the only means of recourse is by judicial review to the High Court.

Planning consents and permit decision-making

373. Although the new system will require fewer consents, some planning consents and permits will still be needed. The criteria used to assess planning consent and permit applications should be different for restricted discretionary and discretionary activities to recognise their different functions in the system. Under the RMA, these criteria are combined in section 104.

374. We recognise that, in some circumstances, planning consent will be required under the Planning Act and a permit will be required under the NEA – similar to the approach to regional and land-use consents now (from regional and district councils respectively). Permission granted under one Act has no impact upon an application under the other Act.

375. We recommend the following components for decision-makers evaluating both restricted discretionary and discretionary activities under both Acts. The decision-maker must:

    a. Have regard to the positive effects and benefits of the activity.

    b. Limit its assessment of effects to matters within the scope of the Act under which the application is being considered.

    c. Not consider less than minor effects.

    d. Have recourse to the relevant Act's goals only where there is no lower-level direction on relevant topics (because there has been no need for repetition through the policy hierarchy).

    e. Consider only the effects of the structure (and not the structure itself) when making decisions on reconsenting for long lived infrastructure.

    f. Not consider the effect on a competitor of trade competition but allow the ability to consider the positive benefits of trade competition.

    g. Not consider effects that comply with a standard or rule (the permitted baseline) even as part of a full discretionary activity.

376. For restricted discretionary activities, we recommend that the assessment of the actual and potential effects of the activity – and the assessment against the objectives and policies of the plan – be for the matter that has breached the relevant standard and the extent of the breach only. For example, if an activity is a restricted discretionary activity because it breaches a noise standard, then only the noise effects need to be assessed. If two or more standards are breached, each relevant matter would be assessed.

377. For discretionary activities, we recommend consideration of consistency with the spatial plan and the relevant objectives and policies of the regulatory plan.

378. For restricted discretionary and discretionary activities under the NEA, the precautionary principle should also apply.

Planning consent and permit application process steps and timeframes

379. We did not have time to consider all application processing steps and timeframes in detail.

380. We consider there are many opportunities to improve planning consent and permit processes through good practice as well as legislative changes. We recommend using regulations to prescribe application process steps, requirements, checklists and templates. This will provide consistency across local authorities and does not add to the regulatory burden for applicants.

381. There are also opportunities to reconsider timeframes in light of our recommendations in the rest of this report. We recommend further work be done on the ability to extend timeframes and to request further information and whether these should also be included in regulations. We note the following opportunities for improvement.

382. Pre-application steps:

    a. Require engagement between applicants and the council.

    b. For smaller-scale applications that look likely to be non-notified, agree appropriate experts who might avoid the need for external peer review and reduce costs.

    c. Mandatory use of checklists for required information; use of agreed report template.

383. During consent processing:

    a. Reporting and decision-making by exception – requiring council reports and decisions to only address any areas of disagreement and enable reliance on trusted advisors.

    b. Requiring councils to provide applicants with draft consent conditions.

    c. Use of the Planning Tribunal as a circuit-breaker for disputes between applicant and council regarding information sufficiency, affected persons, and conditions (covered in a later section of the report).

384. Pre-hearing management:

    a. Application and supporting documentation is considered to be evidence for the hearing.

    b. Submitters must provide evidence within a defined time period after submissions close.

    c. Section 42A report from the council evaluating evidence from submitters and material provided with application.

d. Joint witness statements prior to hearings.

e. Applicants to provide rebuttal evidence addressing only outstanding matters in contention in advance of hearing.

385. Hearing:

a. Ensure quality decision-making by mandatory use of independent commissioners, with performance monitored (ie, there is an ability to complain to an industry body about poorly performing commissioners).

b. Require hearing panels to turn their minds to whether a hearing is necessary at all or can be limited to particular topics that remain in contention.

c. Create an environment without undue formality to encourage participation.

d. Provide opportunities for online participation, or participation on weekends or after standard working hours.

e. Require all evidence to be taken as read.

f. Enable setting of page limits either by regulation or by each hearing panel.

g. Limit the cases of parties to matters raised in submissions.

h. Provide a panel-led hearing process – a more inquisitorial style of hearing (eg, with 'hot tubbing').

Adaptive management

386. Adaptive management is a process that can be used to allow an activity to proceed when there is imperfect information about that activity. An adaptive management approach uses conditions to provide for monitoring and the potential for further mitigating actions, or for the activity to cease if it is having unintended and detrimental consequences.

387. We recommend providing an adaptive management framework in both Acts that allows activities to proceed in situations where there is imperfect information.

388. We recommend providing plans with the ability to specify the types of planning consents and permits (and activities) that can use an adaptive management approach.

389. We recommend the primary legislation specify that adaptive management can be used in planning consents and permits provided the approach taken:

a. Allows an activity to commence on a small scale at its outset, so that its effects can be understood.

b. Sets baseline information and requires ongoing monitoring and reporting.

c. Includes provisions to allow for flexibility for an activity to adapt or cease temporarily.

d. Includes provisions to allow for an activity to be discontinued permanently, where the effects are found to be detrimental in ways that were unanticipated at the time consent was granted.

12. Designations

390. A legislative-design principle set by Cabinet was to "use spatial planning and a simplified designation process to lower the cost of future infrastructure".

How the current system works

391. A designation is an RMA mechanism that allows a requiring authority (usually a minister of the Crown, network utility operator or a local authority) to use land for a 'public work' such as a road, telecommunications facility, school or prison.

392. A requiring authority lodges a notice of requirement with the relevant territorial authority (or it is included when a district plan is reviewed). The territorial authority may publicly notify a notice of requirement and, if necessary, hold a hearing. The territorial authority then makes recommendations on the notice to the requiring authority which makes the final decision. The decision of the requiring authority can be appealed to the Environment Court by those who have made a submission. A territorial authority makes the final decision on its own designations.

393. Where the land is not owned by the requiring authority, the requiring authority can have recourse to the compulsory acquisition powers of the Public Works Act 1981 (PWA).

394. The effect of a designation is that the requiring authority can do anything on the land that is in accordance with the designation without having to apply for a consent. Where the requiring authority does not own the land, the landowner cannot do anything on the land that may impact on the designation, without the requiring authority's permission.

395. Once a designation is in place, an outline plan may still be required to approve the details of a project, before work begins. An assessment of an outline plan is undertaken by the council without notice to any party. If the requiring authority does not accept the council's suggested changes, the council may appeal to the Environment Court.

396. When making recommendations to a requiring authority on a proposed designation, a territorial authority must consider the effects on the environment of the project, having particular regard to any relevant provisions of planning documents.

    a. Whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work.

    b. Whether the work and designation are reasonably necessary for achieving identified objectives.

397. Phase 2 of RM reform currently proposes to:

    a. Extend the default lapse period for designations from 5 to 10 years.

    b. Extend requiring authority powers to ports authorised under the Port Companies Act 1988.

    c. Require assessments to be proportionate to the actual and potential environmental effects of the proposal.

d. Only require a full assessment of alternatives and whether, or not a designation is reasonably necessary on land that a requiring authority does not own or have an interest in.

Issues identified

398. The designation process is deliberately designed as a two-step process. The initial intention of this was to firstly provide a broad authorisation for the public work, in the nature of zoning, with subsequent provision for an outline plan with project-level detail, like a resource consent. Over time, designation procedures have grown more and more like resource consent applications, as requiring authorities seek to avoid the need for a second process. We think it is important to bring back high-level authorisation where details can be addressed later, particularly as signalling intended infrastructure well in advance of its construction is part of separating incompatible activities and planning for well-functioning urban and rural form.

399. The process for a local authority to determine its own notice of requirement is also provided for by making use of the general designation process "with all necessary modifications". In practice, the lack of clear direction to territorial authorities about their rights and responsibilities has often led to councils subjecting themselves to higher standards than other requiring authorities.

400. Another limitation of designations is that they often overlap with regional council resource consent requirements, which will translate into NEA permits in the new system. If designations and consents are sought separately, communities are frequently confused, and the approval process is inefficient.

Options considered

401. As discussed above, the Government is currently making changes to designation provisions through Phase 2 of its resource management reform programme. We have considered changes that will build on those proposals:

a. Providing a role for spatial planning in showing indicative infrastructure corridors and designations, the weight it might have, and how it may or may not affect people's property rights.

b. The ability to better coordinate designations with permits to use natural resources such as water takes, discharges and occupation of the CMA.

Recommendations

Providing for designations under the Planning Act

402. Designations are an important infrastructure delivery mechanism and need an efficient and effective process. We also recognise the rights of landowners who may be subject to a notice of requirement to a fair and robust process.

403. Our proposed approach to spatial planning (discussed earlier) seeks to improve infrastructure planning and coordination – and should provide for the identification of designations at the broad-brush, indicative level originally contemplated by the RMA.

Adjoining landowners and other interested parties will have rights of submission and further submission.

404. We do not recommend extending designation powers to permit applications under the NEA. Rather, the outline plan process should be augmented so that applications for any permits under the NEA are addressed at the same time. Limited notification should automatically be given to those affected by the designation, and if the permits require full notification, then the outline plan process should similarly be notified.

405. We agree with the Phase 2 changes and that these should also be transferred into any future resource management reform.

13. Stronger and more focused compliance and enforcement, including a national compliance regulator

406. A legislative design principle set by Cabinet was “shift the system focus from ex ante consenting to strengthen ex post compliance monitoring and enforcement”.

407. We take that to mean that the system must focus less on the process of giving permission, and more on ensuring that people act consistently with the regulatory requirements.

408. Earlier in our report, we recommend changes to planning and consenting processes that will increase standardisation of requirements for common activities as a way of reducing the need for individual bespoke consents. However, whether regulatory requirements are set through bespoke plan rules and resource consent conditions, or through nationally consistent standards, the outcomes sought by those regulatory requirements will only be achieved if complied with.

409. In our view, the most important factor determining the level of compliance with regulatory requirements is the design of the regulatory system. The basic building blocks for achieving high levels of compliance are simple, easily understood, and clear requirements that are accessible to those who need to comply with them. Our earlier recommendations are intended to deliver greater regulatory clarity and certainty. There are many tools such as system-generated email follow-ups that now exist and can, for little cost, assist system users with compliance, rather than seeking out failure.

410. We stress, however, that compliance (by which we mean behaviour consistent with regulatory requirements) cannot solely be delivered by reliance on ex post enforcement. The most efficient regulatory regime is one where compliance is ‘designed in’ to the regulatory requirements, supported by excellent guidance and information, and risk-based monitoring of compliance. No amount of compliance and enforcement activity can overcome the limitations of a regulatory system where the requirements are vague, uncertain, unclear, or able to be interpreted in multiple ways.

How the current system works

411. Under the RMA, the primary responsibility for compliance and enforcement sits with local government (although since 2020, the EPA has also had RMA compliance and enforcement powers). While the RMA provides a broad statutory obligation that local authorities enforce the requirements of their policy statements and plans, individual councils have wide discretion about how they deliver compliance and enforcement activities. Every council makes its own decisions about how and when to enforce its rules and the level of resourcing it provides to compliance and enforcement activities.

412. Compliance monitoring of resource consents is typically funded by user charges, but councils are generally unable to fix fees for monitoring of permitted activities, other

than a small number of NES-permitted activities. Enforcement activities are mostly funded through general rates as, although the RMA provides for 90 per cent of court fines and 100 per cent of infringement notice fees to be paid to the Council, fines make up a small proportion of Council costs for their compliance and enforcement activities.

413. There are approximately 800 full-time-equivalent staff working in resource compliance monitoring and enforcement in New Zealand, with around three-quarters of these working in the 15 regional authorities. Collectively, these staff annually undertake around 60,000 consent inspections, respond to 30,000 RMA-related complaints or incidents, and issue thousands of abatement notices and infringement notices. Those activities lead to 100–200 enforcement-related matters being subject to action in the courts each year.

414. The RMA includes both civil directive enforcement tools (abatement notices and enforcement orders) and criminal punitive offence provisions. Civil enforcement tools are heard in the Environment Court under a civil jurisdiction, while offences are heard by an Environment Judge sitting in the district court under a criminal jurisdiction. The criminal court operates under the much more stringent "beyond reasonable doubt" burden of proof.

Issues identified

Institutional arrangements

415. Devolution of discretion around compliance and enforcement resourcing and priority to 78 individual local government entities has led to fragmentation and inconsistency in practice, capability, capacity, competency and priority.

416. The degree of variability is a structural problem, driven by competing functions and priorities, along with unmanaged or unrecognised conflicts of interest and biases within the entities charged with enforcing the law. The fact that a small number of councils have become highly proficient in their enforcement role demonstrates the variability is not simply inherent in the legislative framework, but is a product of how it is implemented, resourced and prioritised.

417. Even among regional and unitary authorities where the majority of resource management compliance and enforcement activity currently occurs, there are large variations in resourcing and compliance activity that cannot readily be explained by regional variations in resource use. Variability is even more marked among territorial authorities. The enforcement activity that does occur happens mostly in the large metro councils and is virtually or totally absent in smaller councils. Half of territorial authorities reported no enforcement activity at all in 2022-23, and many reported having no dedicated RMA compliance staff.[16]

418. Pursuing criminal charges through the district court requires that enforcement agencies are highly competent. Developing that level of capability and competence demands that time, resources and priority be given to a function that may not be as politically popular as other council spending. The complexity and cost of pursuing charges for resource

[16] National Monitoring System 2022/23

management offending through the courts is simply beyond the reach of smaller territorial authorities.

419. For these reasons, we do not believe the current institutional arrangements can provide the credible threat needed to support the proposed shift to ex post compliance and enforcement. Significant change is needed.

Legislative powers and tools

420. The current system includes many tools that should be retained, as they form a solid foundation for an effective compliance and enforcement regime administered by a highly skilled and focused regulator.

421. However, there are opportunities to improve how the current system works. There has been broad agreement for the last decade that fines are currently too low, and that the profit gained (or compliance costs avoided) from offending often outweighs the financial consequences imposed through enforcement. On top of this, prosecutions are expensive, the fines rarely cover costs, and the time taken to get a prosecution outcome can result in environmental harm continuing while liability is established.

422. While prosecution is an important and appropriate component of an effective compliance and enforcement system, we think that the new system also needs to provide regulators with a broader range of tools to enable them to better target the prevention, reduction and mitigation of environmental harm that arises from non-compliance.

423. These opportunities include:

a. Enhancing approaches for seeking financial assurance through broader use of bonds and the ability to require resource users to hold remediation insurance.

b. Using civil pecuniary penalties to complement the existing criminal-liability regime, representing a 'middle ground' between criminal prosecution and infringement notices, targeted at offending with high harm but low culpability or intentionality.

c. Taking an approach similar to the Health and Safety at Work Act 2015 by clarifying that individuals will be directly liable if they fail to exercise due diligence to ensure their organisation complies with environmental compliance requirements.

d. Considering options to reduce the financial incentives to offend, including by enabling the recovery of the proceeds of environmental offending such as through monetary-benefit orders.

e. Enabling a transparent, publicly reported system for regulators to accept restorative undertakings from genuinely remorseful offenders that are enforceable, and focused on restoring the harm of offending, minimising the risk of future offending, and raising awareness about the risks of the activity, as an alternative to traditional criminal prosecution.

f. Expanding the scope of court orders to include the ability to direct publication of adverse publicity orders.

Options considered

Institutional arrangements

424. We considered a range of possible changes to strengthen institutional arrangements including:

    a. Establishing greater oversight and stronger central direction of local government compliance and enforcement activity.

    b. Establishing an independent oversight agency with a similar role to the New South Wales Inspector General of Water Compliance[17] with oversight, monitoring and directive functions.

    c. Centralising compliance and enforcement functions into a national regulator with regional compliance hubs that would be responsible for enforcing all resource management regulatory requirements (national, regional and local rules).

425. We have concluded that the best way to resolve the current levels of variability and inconsistency in resource management compliance and enforcement is to establish a national compliance and enforcement regulator with a physical presence in each region.

426. This approach enables compliance and enforcement to be overseen by a single governance entity, and to be guided by nationally consistent policies, procedures and decision-making. A national entity provides significant opportunities in terms of economy of scale to retain the specialist skills required and is likely to be financially more efficient. The national regulator's functions would include the full range of compliance and enforcement activities currently undertaken by councils, including compliance monitoring, complaint and environmental-incident response, and enforcement. The legislation would enable the transfer of compliance functions to the relevant regional or local authority if that was the most efficient and effective implementation approach.

427. A critical element for the success of the national regulator will be the ability to influence the policy development process (national, regional and local) to improve policy enforceability. For this reason, the national regulator would include an operational policy arm tasked with overseeing that standards and rules can be efficiently enforced. This function would also ensure a flow of intelligence on any compliance issues back to the councils to inform s128 consent reviews, and future consent applications.

428. We considered whether this national regulator function should sit within the EPA or in a new independent agency. We note that currently there are approximately 800 full-time equivalent (FTE) employees working in resource management compliance and enforcement roles in local government across New Zealand. The EPA currently has 40 FTEs working in compliance and enforcement across all of its regulatory responsibilities, and 236 FTEs in total. In practice, "sitting the national regulator in the EPA" would entail a four-fold increase in the size of the EPA, effectively making it an entirely new organisation.

429. We also noted that the EPA currently has a very small regulatory presence in resource management compliance and enforcement, having taken only a handful of formal

[17] Home | Inspector General of Water Compliance (www.igwc.gov.au)

enforcement actions under the RMA (mostly abatement notices and infringement notices). This suggests that the EPA may not have sufficient capability, credibility or experience in the resource management compliance and enforcement arena to automatically be considered the logical home of a national regulator. What is more, the EPA's current role includes processing authorisations under the HSNO Act and the RMA. Making the EPA the national environmental compliance and enforcement regulator risks recreating the multiple conflicting responsibilities issues observed currently in local government.

430. Regardless of how the national compliance and enforcement regulator is established, it must have the ability to provide direct input into policy development to ensure standards and rules can be effectively enforced and complied with.

Legislative powers and tools

431. We support the compliance and enforcement changes proposed by the Resource Management (Consenting and Other System Changes) Amendment Bill, including an increase in financial penalties for non-compliance, enabling consideration of compliance history, providing greater opportunity to recover costs from those breaking the rules, and to prohibit insurance for fines. These changes represent helpful incremental improvements to the resource management system.

432. Achieving the Government's vision to increase the focus on ex-post compliance and enforcement will require the system to become more nuanced, so that regulators have a broader range of compliance and enforcement tools suitable to the wide range of situations they must respond to.

433. We have reviewed the updated compliance and enforcement regime that was introduced by the NBA and agree that these provisions are helpful and useful additions to the enforcement toolbox that should be introduced as part of the new legislation, with one exception as below.

434. We do not agree with the NBA's extension of the limitation period for laying criminal charges from one year to two years. We are concerned that a blanket extension of the limitation period will mean laying charges at the end of a two-year period will become the norm. Given that a court hearing may not occur for months or even years after charges are laid, it is unreasonable to expect a person to be able to mount a credible defence for a strict liability offence that occurred so far in the past. We recognise the intent of this change was intended to ensure that sufficient time is available to investigate the occasional highly complex case that may occur. We think a better approach would be to enable a regulator to seek an extension to the limitation timeframe from the court, subject to establishing an unusual degree of investigative complexity.

435. We note two further opportunities to improve efficiency related to RMA enforcement orders.

    a. The Court may issue an enforcement order to change or cancel a consent if the information made available by the applicant contained inaccuracies that materially influenced the decision to grant the consent. We recommend that the restriction that only consent authorities can apply for such an order be removed, so that any party can have access to this tool.

b. We are aware of instances where work needed to restore the environment to its prior state after unlawful activity (such as unlawful earthworks, stream diversions or wetland drainage) triggers the need for a resource consent. Currently, a court-imposed enforcement order can direct an offender to undertake a specific action, but the enforcement order cannot itself authorise the work. We recommend that provision be made to allow court-imposed restorative enforcement orders to both direct and authorise specified actions where the Court considers that appropriate.

Recommended approach

Institutional arrangements

436. We recommend compliance and enforcement functions be centralised into a national regulator with a regional presence to deliver resource management compliance and enforcement activities.

437. The scope of the national regulator's functions would include compliance monitoring, complaint and incident response, enforcement of legislative responsibilities, national standards, plan rules, and resource consent conditions.

438. The national regulator would be funded through tripartite contributions from local government, central government and the proceeds of compliance monitoring and enforcement actions.

439. The legislation would enable the transfer of compliance functions where that was the most efficient and effective implementation approach.

Legislative powers and tools

440. We recommend that the existing provisions of part 12 of the RMA be retained in the new Acts.

441. We support the compliance and enforcement amendments to the RMA being proposed in the Resource Management (Consenting and Other System Changes) Amendment Bill and recommend that these amendments are carried across into the new Acts.

442. We recommend that the new Acts adopt the compliance and enforcement provisions introduced in part 11 of the NBA, except for the proposal to extend the limitation period for prosecutions to two years.

443. We recommend that the new legislation takes an approach like the Health and Safety at Work Act 2015 and makes individuals directly liable if they fail to exercise due diligence to ensure their organisation complies with environmental compliance requirements.

444. We recommend that provisions be adopted to enable an enforcement order to act as an authorisation for ordered works to remediate the effects of environmental offending, where those ordered works would otherwise require a resource consent.

445. We recommend that any person may apply for an enforcement order to change or cancel a consent if information made available to the consent authority by an applicant for a resource consent contained inaccuracies that materially influenced the decision to grant the consent.

14. More efficient dispute resolution, including a new planning tribunal

446. A legislative design principle set by Cabinet was "provide for rapid, low-cost resolution of disputes between neighbours and between property owners and councils, with a Planning Tribunal (or equivalent) providing an accountability mechanism".

How the current system works

447. There is currently no mechanism in the RMA similar to that described by Cabinet. Resource consent applicants who are unhappy with outcomes may appeal council decisions to the Environment Court or, where an application has been processed without the involvement of any other party, the applicants may use a faster objection process. An objection effectively involves the council itself examining its own decision. That more straightforward mechanism may also be followed up by an appeal to the Environment Court if the applicant remains dissatisfied with the outcome.

448. Objections are also available to address disputes in certain resource consent processing steps; for example, where a submission is struck out or an application is determined to be incomplete. Objections may also be made in relation to resource consent processing costs. According to National Monitoring System data for the years 2018/19 to 2022/23, between 350 and 450 objections were lodged each year.

449. Other processing problems can theoretically be addressed by way of judicial review, which is the mechanism used by third parties who seek to challenge a council's decision to process a resource consent without notice to third parties. The costs of judicial review are high, and the process is slow (usually taking more than a year).

Issues identified

450. The numbers of objections are relatively low compared with the number of consents issued each year. The EAG's experience is that this is not because there are few disputes about elements of resource consent processing. Rather, it is because the tools available are not useful. First, the time taken to resolve an objection is not proportionate to the circumstances when an objection arises, and so there is no effective mechanism by which a council's procedural decisions can be challenged. Second, applicants are slow to raise the ire of the council through a complaint when the council is yet to make a determination of its substantive resource consent application.

451. To take the example of an application improperly determined as "incomplete", it is faster and often cheaper for an applicant to provide the information requested to "complete" their application, rather than to challenge that decision. Additionally, the applicant is conscious that the processing planner has many upcoming decisions to make about its application (notification, decline or grant) and it does not want to get offside with that person. So, unreasonable requests for information are simply met, rather than challenged.

452. The judicial review process is orders of magnitude more expensive and slower than an objection. It is beyond the reach of all but the wealthiest system participants.

453. Existing tribunals are neither empowered nor equipped to deal with a full range of planning and environmental management disputes, although the Disputes Tribunal has jurisdiction to hear complaints relating to private nuisance that has resulted in damage, loss, or destruction of property.[18]

454. We also note the importance that bodies charged with hearing or resolving disputes have relevant skills and experience, including knowledge of te ao Māori.

Options considered

455. We considered the following options for the potential scope of functions of a Planning Tribunal:

    a. Administrative review functions that provide a swift forum for examining and correcting overreach in council processes.

    b. Appeals on the merits of council decisions.

    c. Mediating and determining disputes about neighbourhood-friction effects like noise, construction, and shading between neighbours.

    d. Policy and plan review functions, including reviewing draft national direction against process requirements in the Acts, and evaluating regulatory plans prior to notification.

    e. System monitoring functions, including investigating systems or procedures for council decision-making.

456. We also considered what form the Tribunal might take, including:

    a. Building on and expanding the current section 357–357B provisions and processes of councils under the RMA.

    b. Adapting an existing tribunal, such as the Disputes Tribunal, to also deal with planning and environmental management-related matters and disputes.

    c. Making the Planning Tribunal a division of the Environment Court.

457. Finally, we considered the procedures of the Planning Tribunal and how it would practically function, taking into account the direction from government that it should provide a rapid and low-cost service.

[18] As set out in section 10(1)(c) of the Disputes Tribunal Act 1988.

Recommendations

Functions of the Planning Tribunal

458. The Planning Tribunal should deal with precise questions about particular issues. We recommend restricting the scope of the Planning Tribunal to backwards-looking inquiries such as review of a council's performance of a function in a particular instance (notification, requests for further information, and costs). The Tribunal should focus on the correctness of decisions that have been made or actions taken. The Environment Court should retain its prospective evaluation of applications for resource consents and designations, as well as its appellate role in relation to regulatory plans (discussed in more detail above).

459. As we set out later in this report, this system will also provide for reviews of regulatory plans and examination of systemic issues relating to the performance of public bodies under the Planning Act and NEA. These functions would not be a good fit for a Tribunal, which we see as performing straightforward assessments of particular problems for individuals at speed.

460. In determining the scope of functions of the Planning Tribunal, we recommend applying three principles:

    a. Disputes concerning council processes related to resource consent applications should be dealt with by the Planning Tribunal. We expect this will include most of the objections currently dealt with under sections 357–357B of the RMA (to the extent the relevant process remains in the system). It will also include notification of resource consent applications, providing an additional forum to the inherent jurisdiction of the High Court.

    b. Interpretation of existing consent conditions also falls within the backwards-looking focus of the Planning Tribunal.

    c. Disputes requiring prospective evaluation of effects or requiring enforcement sanctions (eg, appeals on abatement notices or enforcement orders) will continue to be determined by the Environment Court. This will include appeals against a council's decision to decline a resource consent, or an application to change or cancel a resource consent condition.

461. Based on this division, we recommend the functions of the Tribunal should include:

    a. Objections to council requests for further information and commissioning of reports.

    b. Objections in relation to other matters listed in section 357 of the RMA.

    c. Objections in relation to costs sought by councils.

    d. Determining whether a submission is within the scope of a consent or plan.

    e. Interpretation of consent conditions (the applicant, council or anyone else could seek this).

f. The striking out of consent conditions where they are challenged as being unlawful or 'ultra vires'.

g. Challenges of notification decisions.

462. Disputes over neighbourhood-friction effects such as noise or construction should be dealt with through existing compliance and enforcement mechanisms. Disputes over matters such as whether a neighbour should have been notified of an activity will be addressed through the Tribunal's function of reviewing challenges to council decisions over who is an affected person.

Form of the Planning Tribunal

463. We favour the Planning Tribunal being a standalone entity rather than adapting an existing body such as the Disputes Tribunal. The Planning Tribunal will have a mix of administrative-review and dispute-resolution functions rather than being solely a dispute-resolution body like the Disputes Tribunal. Being a standalone body will also allow the Tribunal to have a specialist focus and the necessary skills and expertise and help support the building of a national body of jurisprudence and best practice.

464. However, we recommend further consideration is given to whether, for administrative purposes, the Tribunal operates as a lower-level division or adjunct to the Environment Court. It being an adjunct to the Environment Court could help to keep wider environmental and planning-dispute mechanisms under one jurisdiction and support the sharing of skills, practice and information between the two bodies. This, and other operational matters to be worked through, will require further discussion with the Ministry of Justice and the Environment Court.

465. The Tribunal will provide an opportunity for quick learning and changes in the system, particularly as it is transitioned and implemented from the RMA. This information can flow back into the system and improve practice and build capability. We recommend MfE gathers and disseminates the findings of the Planning Tribunal to local government, and planning and resource-management practitioners, on a quarterly basis.

Procedures of the Planning Tribunal

466. We have had regard to the Ministry of Justice's Tribunal Guidelines[19] in considering the procedures of the Planning Tribunal. In general, and in common with other tribunals, we think the Planning Tribunal should have the power to regulate its own procedures and the flexibly to adjust those based on the case before it.

467. We recommend the Tribunal has the following procedural features:

a. Online filing of applications and materials (while noting that not all communities have digital capacity).

b. Most matters are decided on the papers, but with the ability for an adjudicator to call for participation of the parties, either to conciliate an outcome or to better inform an adjudicated outcome.

[19] Tribunal-Guidelines-201904.pdf

c. Published adjudications, with the option to have the case anonymised (eg, neighbour disputes would be prime candidates for anonymisation).

d. No legal or professional representation.

468. The Government's intention is for the Tribunal to be low-cost. We think application fees should not create a barrier to accessing the Tribunal but should be set at a level to make a contribution to cost recovery. The Planning Tribunal will provide both public and private benefits and therefore the total cost of the Tribunal should be shared between taxpayers and users. We do not expect the fee will recover costs for using the Tribunal, but it should be set at a level that reflects the level of private versus public benefit. We note, for example, that the Disputes Tribunal has an operational cost of around $24 million per annum of which around $2 million is offset by filing fees. Disputes Tribunal fees are set at $59, $117, and $234 depending on the value of the claim.

469. While we expect decisions to be made quickly, we do not think it is appropriate for timeframes to be imposed on a Tribunal to make a decision. Other tribunals and courts are not subject to such constraints. To provide a useful, low-cost dispute resolution mechanism, however, we would expect to see the following types of default procedures:

a. Online filing and service on the respondent council.

b. Electronic provision of the relevant council file by the council to the Tribunal within two working days.

c. Determination on the papers within:

i. 5 further working days for objection matters.

ii. 20 further working days for interpretative questions (eg, meaning of a consent condition).

iii. 20 further working days for notification questions.

470. The Planning Tribunal will need to be suitably resourced with adjudicators with experience in the planning system (eg, planners and lawyers). Adjudicators will sit on their own, so will would need to have at least a Making Good Decisions Programme certification.

471. We recommend the Tribunal has discretion to make decisions in its own right, like quashing notification decisions or amending consent conditions, as well as referring matters back to the council for reconsideration. The ability of the Tribunal to conciliate outcomes is important. In an administrative review of a council's non-notification decision, for example, we imagine that the Tribunal could not only cancel the council's non-notification decision if warranted but could resolve the substantive dispute by imposing conditions that the neighbour would have sought had the matter been returned to the council and notified. This would represent a substantial time and cost saving for both the consent holder and neighbour.

472. We recommend that appeal pathways remain open for most decisions of the Planning Tribunal. In most cases, this will be to the Environment Court, but for determinations that would otherwise have triggered judicial review, it is appropriate that the High Court performs that function.

473. We address other appeal pathways throughout this report, noting that we think the Environment Court is best placed to hear appeals on spatial and regulatory plans, whether they be appeals on points of law or merits appeals. We think that there are too many steps in the appeal chain, and that access to the higher courts should be more available.

15. Improved monitoring and system oversight

474. Earlier in the report, we outlined our proposed approach to compliance and enforcement, as well as some of the monitoring needed for setting and maintaining effective environmental limits and assessing the effectiveness of spatial plans.

475. This section addresses, at a high level, the other forms of monitoring and oversight activities that are essential for making well-informed and robust decisions about the use, protection and enhancement of the environment – and holding decision-makers to account for the implementation and goals of the system. As identified at the outset of this report, establishing a system where we can tell whether we are trending in the right or the wrong direction is essential, particularly for management of environmental resources.

How the current system works

476. The RMA has multiple provisions that require or enable monitoring and oversight functions to be caried out. At the highest level, the Minister for the Environment is responsible for monitoring the implementation and effectiveness of the RMA, including national direction. The Minister has a range of powers to obtain information from councils, investigate council performance of their RMA functions and powers, and to require councils to change or review plans to address resource management issues.

477. At the regional and local levels, the RMA requires local authorities to monitor a range of matters, including the state of the environment in their region or district, the efficiency and effectiveness of their policy statements and plans, and the exercise of resource consents. The RMA provides considerable discretion for how this monitoring occurs, although some recent national direction – particularly the NPS-FM and NPS-UD – has been more prescriptive on what monitoring occurs and how it is done.

478. The RMA does not require councils to involve iwi/hapū in monitoring activities. However, iwi/hapū can be enabled to carry out monitoring activities through transfers of council functions, as in the case of some water quality monitoring in Lake Taupo, or through Mana Whakahono a Rohe agreements. There is little uptake by councils of these opportunities.

Issues identified

479. Effective monitoring and oversight in the resource management system has been, and will continue to be, challenging. Monitoring is costly, resource-intensive and subject to large amounts of uncertainty and temporal lags that make it difficult to attribute environmental outcomes to specific policy interventions.

480. The existing regional-council-operated monitoring and data systems are inadequate for supporting and implementing an environmental-limits-based system. It is currently hard to justify when to restrict activities seeking to use natural resources such as water and air, which creates uncertainty for both project proponents and communities.

481. Some of the key problems that we see in the current system and approach to monitoring are:

    a. Inconsistent and fragmented monitoring networks that have not kept pace with change. This has resulted in some significant data and evidence gaps, and a lack of consistent long-term data sets across the country.

    b. A lack of robust monitoring frameworks for understanding the impacts of policies and interventions on behaviours, and a focus on monitoring processes over outcomes. This has resulted in weak feedback loops between environmental monitoring and policy functions.

    c. Misaligned incentives, accountabilities and drivers between levels of government to carry out monitoring and oversight activities meaning monitoring functions have often been deprioritised.

    d. Limitations in the use of tools and processes to capture, store and share data and information effectively.

    e. Funding constraints for monitoring, including where monitoring budgets are often targeted for reprioritisation.

    f. Capability, and capacity constraints, to carry out monitoring activities to the level necessary, including inadequate iwi/hapū involvement in developing monitoring frameworks and carrying out monitoring.

Options considered

482. We have considered the following matters in relation to monitoring and oversight in the system:

    a. Including core requirements for monitoring and oversight in primary legislation.

    b. Standardising monitoring requirements that can be both adapted locally but still aggregated into a national picture.

483. Mandating local and central government actions to investigate and address issues identified through monitoring:

    a. Mechanisms to better involve iwi/hapū in monitoring and oversight.

    b. Making periodic system-wide assessments, including by independent bodies.

484. Ministerial powers to monitor and intervene in the system to address problems:

    a. Reallocating roles and responsibilities for monitoring and oversight, including changes to institutional roles and responsibilities.

Recommendations

485. It is vital that the planning and environmental management system is underpinned by better environmental information and data than is currently available. The environmental data and information system needs to be more coherent and deliberate

in the data it collects, able to provide the right data at the right time to help decision-makers, and be accessible to all who want to contribute, access and use data. We support the Parliamentary Commissioner for the Environment (PCE's) recommendations – made across multiple reports and over several years – that New Zealand's environmental monitoring, data and information system needs reform, and sustained investment and leadership by central government.

486. Our recommendation is to establish a national regulator (with regional presence) for conducting compliance and enforcement. This may also prove to be a logical home for carrying out other monitoring activities. But this question should be addressed as part of a wider review of the environmental data and information system.

487. As outlined earlier, we do stress that a better-resourced monitoring and data system is required to enable efficient and effective resource management within limits. We recommend that the EPA be funded to undertake monitoring and data collection in support of limit-setting and management.

Environmental and regulatory monitoring

488. We recommend the Acts have the following features for monitoring and reporting on the state of the environment and the implementation and effectiveness of plans:

    a. The enabling intent of section 35 of the RMA should be retained and the existing monitoring functions split across the Acts. Broadly speaking, the NEA should focus on monitoring the state of the natural environment (including environmental limits), resource-allocation accounting, compliance with permits and permitted activities under the NEA; and the Planning Act should focus on monitoring plans, planning consents and permitted activities under the Planning Act.

    b. The EPA should set out mandatory monitoring requirements as part of developing environmental limits at the national level. These requirements can be at varying levels of prescription and should be developed in consultation with regional councils. The EPA should also provide implementation support to councils as an expert "centre of excellence".

    c. Outside of environmental limits, the Acts should continue to enable central government to issue regulations prescribing indicators, methods, and standards for the purposes of monitoring and reporting. Any prescriptive monitoring requirements should be consistent with the Acts' procedural principles, so they are proportionate to the issues being addressed, cost-effective and practicable to implement.

    d. Monitoring the implementation and effectiveness of regional plans should have a direct connection to the process for reviewing regional plans (and potentially similar to the approach taken under the NBA).

    e. The NEA should require councils to make its state-of-environment monitoring data readily available to the public through its website.

    f. The RMA's general requirement for councils to take appropriate action when issues arise should be retained, with the ability for regulation to require more specific actions when needed.

g. Councils should consider providing iwi/hapū with the opportunity to be involved in developing monitoring methods and to carry out monitoring activities where this is agreed with the local authority.

System oversight by central government

489. Central government's oversight of the new system will be critical to its transition and implementation from the RMA, and its efficient and effective operation over time.

490. Learning the lessons from the RMA, central government will need to take a more proactive, coordinated and transparent approach to monitoring system performance. This should include developing feedback mechanisms for councils, iwi/hapū, and communities who are active in the day-to-day operation of the system to have meaningful input into identifying problems and assist in the development of proportionate and well-targeted responses.

491. We recommend that central government conduct periodic assessments of system performance as part of its oversight responsibilities. We think consideration should be given to:

    a. Producing regular, targeted assessments of system implementation and effectiveness based on current implementation and work programme priorities. This should include a multi-year monitoring and reporting plan for the implementation of the Planning Act and the NEA.

    b. More closely aligning with the national environmental reporting regime under the Environmental Reporting Act 2015. This could provide a mechanism to draw closer connections between the performance of the resource management system and environmental outcomes.

    c. Having an independent review point every 10 years. This could be commissioned by the Minister for the Environment, conducted by a parliamentary select committee, or undertaken by the PCE, with a focus on particular questions and issues.

492. We recommend retaining the Minister for the Environment's current powers under the RMA to investigate council performance of resource management functions, request information from councils, and direct plan changes and reviews. We are aware of proposed changes being progressed through Phase 2 of the resource management reforms to add new ministerial powers relating to enforcing compliance with national direction.

493. We have not had time to consider the wider institutional landscape for system oversight. However, we think there is a potential opportunity for more active monitoring of the performance of regulatory bodies within the system.

494. We are aware of overseas examples – like Ireland's Office of the Planning Regulator, the United Kingdom's Office of Environmental Protection, and Environmental Standards Scotland – which can monitor public authorities' compliance with environmental law and take actions where they consider a public authority is failing (or has failed) to comply. As noted earlier, we do not think this is an appropriate role for the Planning Tribunal and would likely need to be housed within an independent Crown entity,

similar to the Climate Change Commission, or as part of an augmented and expanded role for the PCE.

16. Institutional roles and responsibilities

495. The decision-making framework we have described in this report includes several proposed changes to institutional roles and responsibilities. It is useful to draw these together to provide a collective picture of their impact.

496. Overall, our recommendations amount to a significant shift of planning and environmental management decision-making to the national level. Our view is that this is necessary both to make more efficient use of our capabilities in planning and environmental management as a nation and to deliver a more efficient and standardised set of planning instruments to ease the implementation burden on local government.

497. Despite this shift, regional councils and territorial authorities will continue performing critical functions in the new system. In particular, they will continue to be the primary decision-makers setting spatial plans that identify development constraints and opportunities, drawing on the views of local communities. And they will remain the primary regulators, albeit with a more fit-for-purpose set of nationally developed tools.

National level

498. The key changes at the national level are:

    a. Expanded role for the EPA in environmental limit setting, coastal management, and overseeing environmental impact assessment for significant developments.

    b. Clearer role for the Minister for the Environment in development of NPD, environmental limits and national standards, including NSZs.

    c. The Minister for the Environment takes on the current responsibilities of the Minister of Conservation in respect of the coastal environment under the RMA.

    d. New national compliance and enforcement regulator to deliver coordinated, consistent and risk-based compliance activities, complaint and incident response, and enforcement responses to achieve national and local regulatory objectives.

    e. A role for the minister responsible for the Planning Act to amalgamate regional spatial plans, the national infrastructure plan, and other national policies and strategies into a national spatial plan illustrating national priorities (not a regulatory instrument).

    f. Secretary for the Environment's audit of regional spatial plans and regulatory plans.

    g. A role for the Minister for the Environment in improving the national platforms for housing the 'data lake' created under the revamped system monitoring regime, and for the establishment of a consolidated set of regional regulatory plans.

Regional councils

499. The main changes for regional councils are:

    a. Contributing to the preparation of the regional spatial plan.

    b. Preparation of the natural environment plan.

    c. New responsibilities for identifying and setting rules to protect indigenous biodiversity, ONFLs, and manage natural hazards and contaminated land.

    d. Reduced responsibility for management of the CMA.

    e. Reduced role in policy and plan development as a result of the increased use of national standards and limits.

    f. Reduced consenting workloads.

    g. Reduced role in compliance and enforcement (limited to supporting the national regulator with information and intelligence).

500. Regional councils will retain their current functions for natural resource management under the RMA aside from these changes.

Territorial authorities

501. The main changes for territorial authorities:

    a. Contributing to the development of the regional spatial plan.

    b. Closer coordination with other councils, as part of aligning regulatory plan development into one combined district plan per region.

    c. Reduced role in policy and plan development as a result of increased use of national standards and limits.

    d. Reduced consenting workloads.

    e. Reduced role in compliance and enforcement (limited to supporting the national regulator with information and intelligence).

502. Territorial authorities will retain their current functions for managing land use and environmental effects under the RMA aside from these changes.

Māori participation

503. The main changes for iwi and hapū:

    a. Participation in regional spatial planning processes. Local authorities will be responsible for providing iwi/hapū with opportunities to participate in the preparation of draft spatial plans. There will be flexibility to tailor participation arrangements to regional and local circumstances, including the ability to use existing mechanisms (eg, joint committees, mana whakahono ā rohe) as

appropriate. All participation arrangements will need to uphold existing and future Treaty settlements and related arrangements. Iwi/hapū will also be able to participate in public consultation on draft spatial plans and make submissions on draft plans.

b. Greater involvement at the front end of the planning process with an expectation that there will be less need for involvement at the lower end of the system in terms of permit and consent applications.

Decision-making

504. The main changes proposed are:

a. Mandatory IHPs for spatial plan and regulatory plan development.

b. The creation of a Planning Tribunal to administratively review council decisions, provide declaratory functions over the meaning of consent conditions, and resolve planning disputes between neighbours.

c. Appeals to the Environment Court on regional spatial plans (points of law only where IHP recommendation accepted, de novo and points of law where IHP recommendation rejected).

d. Appeals on points of law to the Environment Court, as well as de novo hearings.

17. Transition to the new system and supporting its implementation

505. Transition involves the process of moving from one system to another. It involves deciding when parts of the new system start, what things from the old system are kept, and how parts of the old system move to the new system.

506. Collectively the legislative provisions that address these issues are known as commencement, savings and transitional provisions.

507. Moving to the new system we have designed will also requires changes to institutional roles and responsibilities, as well as investment in new functions.

How the current system works

508. The current system was transitioned (from the previous system) by making district schemes under the Town and Country Planning Act 1977, district plans under the RMA, and deeming permits from other legislation (such as the Water and Soil Conservation Act 1967) to be resource consents. The purpose and principles, processes and concepts under the RMA commenced on enactment. Consenting from these plans used the (new) RMA to make decisions. All activities affecting natural resources (eg, structures in the beds of lakes and rivers, discharges to air and water, and water takes) were made discretionary activities and consented from the Act until regional plans were established.

Issues identified

509. The key issue for transition is the length of time it takes to move from one system to another. Experience moving from the Town and Country Planning Act 1977 to the RMA showed that it took nearly 10 years for new RMA plans to be developed. The greater the departure from existing Part 2 RMA matters, the more complex the transition. There are still deemed permits from pre-RMA existing in the current system.

510. While a rapid transition is important, it is also crucial that it is done in a way that does not create undue complexity in the transition period nor undermine final outcomes for planning instruments. To avoid rework and duplication and ensure the goals of the Acts will be achieved, planning instruments need to be developed in a logical sequence.

511. As current national direction, regional and district plans (that set consenting requirements) have been developed under the purpose and principles of the RMA (ie, Part 2) – and the new Acts set new purposes, goals and decision-making frameworks – transitional provisions must provide a pathway for consent decision-making under the RMA to move to planning consents and permit decision-making framework under the new Acts.

512. A key dependency is the need to transition Treaty settlements. Where redress has been provided under the RMA, it needs to be translated into the new legislation by updating

the settlement legislation. Commencing the new legislation (or parts of the new legislation) prior to this may result in the redress provided not being upheld.

513. We understand that 20 RMA national direction instruments are currently being created or changed and that some are likely to require plan changes and implementation timeframes that may overlap with proposed timeframes for replacing the RMA. Delivering this work programme alongside replacing the RMA is likely to pose significant resource challenges for central and local government and will need to be carefully managed.

Options considered

514. We considered several options to assist the transition to the new system:

    a. A transition that requires the development of each new instrument in sequence (with no overlap), from national direction to spatial plans and then regulatory plans. Under this option, consents and permits under the new system would not begin until the new regulatory plans were in place.

    b. A transition in which RMA regional and district plans and consents are deemed to be instruments under the new legislation. This option enables the majority of the system to commence and for consenting to begin using the new goals, principles, processes and other concepts, while other parts of the system are being developed (new national direction, then spatial plans and then regulatory plans).

    c. A process to disapply plan rules or consent conditions that are not aligned with the narrower scope of the new Acts.

    d. Using the Resource Management (Consenting and Other System Changes) Amendment Bill to remove redundant statutory process requirements to start relieving the implementation burden on local authorities early.

Recommendations

515. To enable the fastest possible transition, we recommend an approach that deems existing district plans to be part of combined district plans under the Planning Act – and regional plans to be natural environment plans and commences key aspects of the Acts – as soon as practicable after enactment. The intent of this approach is to enable decision-making and planning consents and permits to begin under the new legislative framework as soon as possible without affecting access to natural justice.

Transition approach

516. We recommend that consent applications that have been lodged and plan changes or reviews that have been notified under the RMA should be allowed to continue under the RMA until they have finished, and all appeals and objections have been resolved.

517. We recommend that:

    a. Existing national direction, spatial plans (including existing parts of Regional policy statements (RPSs) that have a spatial component, future development strategies developed under the NPS-UD, and some other spatial plans if robustly prepared in

accordance with consultation principles under the LGA), regional plans and district plans be deemed to be national direction, spatial plans, natural environment plans and district plans under the new Acts.

b. The remaining parts of RPSs should be 'switched off', with the ability to seek approval of the minister to continue elements of those documents where there is a real need (eg, identification of different categories of geothermal systems in the Waikato Regional Policy Statement; the functioning of the regional plan depends on this).

c. Key concepts such as the more-than-minor adverse-effects threshold, activity categories, notification, decision-making criteria, and scope of the system commence as soon as practicable after enactment.

d. New compliance and enforcement tools commence as soon as practicable after enactment.

e. Planning consents, permit and designation process improvements commence as soon as practicable after enactment.

f. New plan change process improvements, including the evaluation report and justification report requirements, commence as soon as practicable after enactment.

518. We recommend that any change in functions of local authorities that affects who is responsible for the development or implementation of that function commences on the development of the spatial plan (for its inclusion in the spatial plan) or the regulatory plans (for the development of objectives, policies and rules). This would apply to ONFLs, SNAs, contaminated land and natural hazards.

519. We also recommend that new plan changes be restricted in the period between the development of a spatial plan and the development of the combined district plan and the natural resource plan.

520. We recommend that, to stage the introduction of the new system, development and establishment of the new national compliance and enforcement regulator and the Planning Tribunal occur after the replacement legislation is enacted.

521. We have also identified several functional overlaps that are more appropriately dealt with by other regimes. Some changes can be made relatively quickly, such as removing overlaps with archaeology approvals. Other matters, like heritage, should remain in the resource management system until they are ready to be removed, to avoid leaving gaps. However, we recommend that requisite legislative changes to these other regimes are prioritised to bring forward the benefits of making leaner and more focused planning and environmental management decisions.

522. While we considered the ability to turn off plan rules that are not aligned with the narrower scope of the new Acts, the diversity of planning documents means this will be resource intensive and also likely to limit the effectiveness of doing so. However, we recommend a process be provided to seek a review of a resource consent to strike out consent conditions that may no longer be appropriate.

523. We recommend amending the RMA to remove the requirement to undertake existing statutory requirements that will result in rework on enactment of the replacement legislation. This would include requirements such as plan review or the still mandatory implementation of the national planning standards.

Prioritising delivery of the new system

524. We recommend that the development of national standards – especially standardised zones and overlays (for land-use regulatory plans) and environmental limits – be completed first and, where possible, commenced in parallel with legislative development. We consider that standardisation of land-use regulation has the potential to provide comprehensive system benefits and efficiencies. This will primarily involve the identification and selection of current best practice rather than 'reinventing the wheel'.

525. Regional spatial planning should start as soon as possible following enactment of the legislation and adoption of NPD and of standards or regulations that provide direction for spatial planning, including standardised data inputs, and mapping and presentation conventions. Imperfect information is not a reason to delay spatial planning as spatial plans can be reviewed and amended where necessary in response to significant new information.

Treaty settlements

526. One of the legislative design principles is to uphold Treaty of Waitangi settlements and the Crown's obligations. Our recommendations for upholding Treaty settlements and other arrangements through the reform process are discussed earlier.

527. We recommend the new legislation include an interim requirement to give equivalent effect to redress until agreement is reached on how that redress will be upheld, enabling implementation to proceed while the process to fully transition settlement arrangements is completed.

Implications for Phase 2 national direction

528. To avoid potentially wasted effort by system users and councils needing to make plan changes to implement national direction, we recommend aligning Phase 2 national direction with our proposals where appropriate. We acknowledge that this could delay delivery of some Phase 2 instrument but consider the benefits will be outweighed by delivering a more effective and efficient system overall.

Supporting implementation of the new system

529. To support successful implementation of the new system, upfront and continued investment is important. We are excited about the benefits that the new system can deliver, and there will be a small window of reprieve from reform fatigue to set the right course for the implementation journey. We need to learn the lessons from poor investment in RMA implementation during its transition from the Town and Country Planning Act 1977, which meant the RMA did not work as intended.

530. Successful implementation requires investment in NPD, national standards, and developing environmental limits. NSZs and other national direction will need to be in place for the development of natural environment plans and combined district plans.

531. Upfront investment in non-regulatory tools and information, which would ideally be ready when the legislation commences or shortly after, includes:

    a. Fact sheets, guidance, training and other support for decision-makers and other system users.

    b. Digital platforms, such as shared GIS/data and consenting portals, to realise efficiencies and improve user experiences.

    c. Filling key data and evidence gaps as quickly as possible, particularly where needed to set environmental limits. Improving data and evidence will be an ongoing priority for investment.

532. We see a lot of potential for enabling greater use of emergent technology in the system such as machine learning and artificial intelligence (AI). Over time, AI should be able to assist much more across system processes, including plan preparation and design, hearings and submissions, and the evaluation of options and alternatives.

533. We also see an opportunity to provide guidance to support the development of iwi/hapū management plans in a manner that ensures these documents are targeted to the needs of the planning and resource management system and that they will have their intended impact on the planning process.

534. Sustained investment in changing the culture and behaviours contributing to current problems will also be important. This will require investment in:

    a. Credible enforcement by the national compliance and enforcement regulator to offset more permissive up-front assessments.

    b. Capability and capacity building, particularly for local authorities to perform new or changed roles and responsibilities efficiently and in accordance with legislative goals, and for iwi/hapū to engage earlier in the planning process.

    c. Equipping the Planning Tribunal to resolve smaller disputes quickly.

535. Processes that would support successful implementation of the new system on an ongoing basis include:

    a. Greater monitoring of system performance – and prompt and proportionate action taken where needed.

    b. A transparent and proportionate process for addressing poor performance by decision-makers in the system, and processes to support compliance with professional codes of practice (and similar).

536. It would be useful to have a document that local authorities and other system users can refer to that explains what is being done to support implementation of the new system, who is responsible, and when the support will be provided. For example, MfE could prepare a system improvement plan and publish it on its website. This could be updated regularly, at least annually.

18. Concluding remarks

537. We were asked by Cabinet to develop a blueprint for two pieces of legislation to replace the RMA that sought both to better enable development and to improve management of our natural environment. We do not see this as an inherent contradiction, but rather as a possibility that is within our grasp.

538. The approach we have developed will be familiar to current users of the system – it includes expected elements such as national standards, plans and consents. Our contribution has been to paint a picture of what our management system could look like if these tools were developed and deployed to their best effect. In our view, this will be a system that is far simpler, swifter, more effective, and one that delivers proportionate and measured responses to land and resource use.

539. Our system establishes clear goals that follow the imperatives given to us by Cabinet. We provide spatial and regulatory plan-making tools that can reconcile policy conflicts. We require policy to be succinct and limited to situations where it adds value to the goals of the twin Acts. We lighten the burden of regional councils by establishing standards and tools for setting standards at a national level. We do the same for district councils with the provision of NSZs. We reinforce all these tools with decision-making and procedural principles to assist decision-makers in reaching tough decisions about resource use.

540. Our approach will require input from all sectors in the design of national-level instruments, and this collaboration will be a significant step towards removing the distrust and risk aversion that pervades the current system. The new system will free economic activity from unnecessary constraint and, at the same time, point us more clearly in the direction of identifying and meeting essential environmental limits.

541. Our blueprint has been prepared in a compressed timeframe, and it confines itself to a high-level approach. There will be many more questions to answer along the way to a new system. We are, however, enthusiastic about the design and execution of that new system. Having completed this initial task, we feel optimistic that our blueprint is a vision that can capture the imaginations of system users and the public, achieve a broad consensus for change, and provide the basis for enduring reform.

Appendix: Expert Advisory Group member biographies

Janette Campbell (Chair)

Janette Campbell is a barrister at Auckland's Bankside Chambers, specialising in resource management law. She has 30 years of experience representing clients before councils and the courts, and has extensive practical experience in advancing resource consent applications, designations and policy documents. Janette has also served as a Hearings Commissioner, advised regional and district councils on their decision-making roles, and has provided advice to boards of inquiry. Before joining Bankside Chambers, she was a partner at Meredith Connell.

Christine Jones

Christine Jones is the General Manager – Strategy, Growth & Governance at Tauranga City Council. She has worked in senior management roles at the Council since 2001, with varied experience covering growth management, land use and urban planning, infrastructure and also strategic planning. Christine has expertise in integrated approaches to urban planning, providing for and delivering serviced business and residential land. She has also had significant involvement in best practice work in local government.

Paul Melville

Paul Melville is General Manager – Policy and Advocacy at Federated Farmers. He has extensive policy experience working in senior roles across the private and public sectors. Paul was a member of the New Zealand delegation to United Nations climate change negotiations in Doha, Warsaw, Lima and at Paris, taking the lead on agricultural issues. He brings a lifelong knowledge of farming, having grown up on a dairy farm near Te Awamutu, Waikato.

Rukumoana Schaafhausen

Rukumoana Schaafhausen is of Ngāti Haua descent and has a background in law and governance. She was recently the Chair of Waikato-Tainui (a group of Māori iwi based in Waikato region), and is currently serving across a number of iwi, community, private and public organisations in governance roles including Contact Energy, Kiwi Capital Group, Alvarium Investments NZ, Tindall Foundation, and The Kings Trust. Rukumoana is passionate about initiatives that promote economic growth, environmental stewardship, and social equity for Māori communities.

Kevin Counsell

Kevin Counsell is an economist, and during the Group's formation was an economic consultant and expert at NERA Economic Consulting, but has since become Chief Economist at the Ministry for Regulation. He specialises in economic analysis and expert testimony, including in urban development, resource management, and environmental policy issues. Kevin has nearly

25 years of experience as a professional economist and has served as an expert witness before the New Zealand Environment Court and IHPs. He holds a Master of Commerce degree in economics (with distinction), a Bachelor of Commerce degree in Economics (First Class), and an undergraduate degree in Mathematics.

Gillian Crowcroft

Gillian Crowcroft is Technical Director – Environment at Harrison Grierson. She is a resource management practitioner with more than 30 years of experience in environmental science, strategy, policy and planning. Gillian has significant expertise in freshwater management and is a freshwater commissioner. Prior to working at Harrison Grierson, she worked at Auckland Council and Auckland Regional Council in strategy, policy and science roles.

Mark Chrisp

Mark Chrisp is a founding director at Mitchell Daysh Ltd. He has 35 years of experience as a planning and resource management expert. Mark specialises in policy and plan development, resource consents and project management, with a focus on the energy, dairy, infrastructure and land development sectors.

Acronyms used in this report

AEE	Assessment of environmental effects
AI	Artificial Intelligence
CMA	Coastal Marine Area
EAG	Expert Advisory Group
EPA	Environmental Protection Authority
ETS	Emissions Trading Scheme
FDS	Future development strategy
GfHG	Going for Housing Growth
HNZPTA	The Heritage New Zealand Pouhere Taonga Act 2014
HSNO	Hazardous Substances and New Organisms Act 1996
IFF	Infrastructure, funding and financing
IHP	Independent hearings panel
LGA	Local Government Act 2022
LTMA	Land Transport Management Act 2003
LTP	Long-term plan
MfE	Ministry for the Environment
NBA	Natural and Built Environment Act 2023
NEA	Natural Environment Act
NES	National environmental standards
NES-AQ	National Environmental Standards for Air Quality
NPD	National policy direction
NPS	National policy statements
NPS-FM	National Policy Statement for Freshwater Management
NPSIB	National Policy Statement for Indigenous Biodiversity
NPS-UD	National Policy Statement on Urban Development
NSZ	Nationally standardised zones

NZCPS	New Zealand Coastal Policy Statement
ONFLs	Outstanding natural features and landscapes
PCE	Parliamentary Commissioner for the Environment
PSGE	Post settlement governance entity
PWA	Public Works Act 1981
RLTP	Regional land transport plan
RM	Resource management
RMA	Resource Management Act 1991
RPS	Regional policy statement
SASM	Sites and areas of significance to Māori
SEA	Strategic environmental assessment
SNA	Significant natural area
SPA	Spatial Planning Act 2023
TAS	Target attribute state
USA	United States of America