REFORM OF THE RESOURCE MANAGEMENT SYSTEM

The urban context

Greg Severinsen
ACKNOWLEDGEMENTS

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<th>Abbreviation</th>
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<tbody>
<tr>
<td>CCO</td>
<td>Council controlled organisation</td>
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<td>EDS</td>
<td>Environmental Defence Society</td>
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<td>EPA</td>
<td>Environmental Protection Authority</td>
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<td>GPS</td>
<td>Government policy statement</td>
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<td>GST</td>
<td>Goods and services tax</td>
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<td>NES</td>
<td>National environmental standard</td>
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<td>Nimby</td>
<td>Not in my backyard</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NPS</td>
<td>National policy statement</td>
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<td>NZTA</td>
<td>New Zealand Transport Agency</td>
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<td>RMA</td>
<td>Resource Management Act 1991</td>
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<tr>
<td>SNA</td>
<td>Significant natural area</td>
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The enduring strength of cities reflects the profoundly social nature of humanity. Our ability to connect with one another is the defining characteristic of our species.

Edward Glaeser, 2011

The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city.

David Harvey, 2008

... the happy city, the low carbon city and the city that will save us are the same place, and [we] have the wherewithal to create it.

Charles Montgomery, 2015

Aotearoa New Zealand’s current resource management system is broken. It is failing to achieve its purpose and has become complex, dysfunctional and inaccessible.

Kahui Wai Māori, 2019

Repeated amendments to [New Zealand’s] planning statutes have increased their complexity and reduced their coherence... The natural and built environments require different and distinctive regulatory approaches.

New Zealand Productivity Commission, 2017

... much remains to be done to ensure that the principle of partnership inherent in the Treaty moves towards an everyday reality... The time is ripe to undertake a comprehensive review of the Resource Management Act and other significant legislation comprising the resource management system.

Hon Tony Randerson QC, 2019
FOREWORD

Over the past three years the Environmental Defence Society has taken a first principles look at how New Zealand’s resource management system could be reformed. It has produced two extensive synthesis reports – the first analysing the system and outlining different possible options for change and the second putting forward a preferred model and a timeline for reform.

These have been core inputs into the government’s independent review panel, ably led by the Hon Tony Randerson QC, whose final report was released just after this report was completed. We encourage readers to consider the two reports alongside each other, and we note that there is a significant degree of alignment between them.

The purpose of this report is to consider how our cities and other urban areas fit within the broader narrative of system reform. Cities pose unique and complex problems, challenges and opportunities, so a dedicated focus is needed. But they are also part of a much broader system, so it’s crucial that urban reform is looked at in a wider context.

It has become clear that our cities are not performing as they should be. This is across the board. Housing affordability is a massive concern. Roads are congested. Water infrastructure is ageing and failing. People are getting sick. The environment is also becoming more degraded. Urban waterways are some of the most polluted in the country. The climate is changing, putting thousands of urban dwellers and billions of dollars of assets and infrastructure at risk. Land use and infrastructure decisions are not well coordinated. The list goes on. Overall, we need a strong, effective and integrated vision for our cities as we head into a future that is going to be very different to our present. Our frameworks do not currently provide that.

The system itself has become clunky, complex and hard to navigate. We have heard many calls to simplify the Resource Management Act, to split it up, or to get rid of it entirely. The Opposition has said that, on its watch, the RMA would be gone by lunchtime and there is momentum for reform across the political spectrum.

This report strongly agrees that there is a case for fundamental change. We need to be seeking synergies between social, economic and environmental outcomes, not trading them off against each other. The environment should not be seen as an impediment to growth and change. Urban imperatives are not just about development. Cities should be environmental assets, as well as places for humans to live, work and play. And good urban planning offers us many win-win scenarios if we’re willing to pursue them. Bold action is required, not just passive and reactive management. Covid-19 has woken New Zealanders up to the possibility that we can do things very differently. It is an opportunity we need to grasp.

We conclude that the RMA needs to be replaced. There should be a new Act – an Environmental Stewardship and Planning Act – not just another round of amendments.

This Act can and should draw on the good aspects of the RMA. In particular, it needs to retain an integrated approach to environmental management, and that includes having a single framework for both land use and other matters like water, soil, air and biodiversity. We shouldn’t have separate legislation for “planning” and “environment”. And yet there would be fundamental changes from what we have now, including a new purpose and principles, a different approach to national direction, revamped processes for planning and consenting, and associated institutional changes.

What we have now is not well targeted to the dynamism of urban contexts, nor to the strict protection of environmental bottom lines in and around cities. It’s also time to rethink our approach to local government, and what functions would be better placed at the regional level. A partnership approach to the Treaty needs to be embedded more strongly. How we plan and fund infrastructure needs a rethink. So too does the Building Act. Most importantly, greater alignment and coordination is needed to manage urban growth, infrastructure and long-term environmental issues, including climate change.

A new legislative framework for spatial planning will be crucial to that.

Transformational urban change requires us to also think much more broadly – to tax and economic settings that improve environmental wellbeing as cities grow and change; to incentives for consumers and manufacturers to reduce waste, pollution and address carbon emissions; to nudges that drive small-scale but cumulatively significant behavioural change; and to the institutional arrangements that provide a strong, independent, science-based and inter-generational voice in decisions that we can no longer afford to have politicised.

As urban issues become more pronounced, and as the government considers the recommendations of the Randerson Panel, we trust that this report will be a useful and constructive addition to the reform conversation. We live in rapidly changing times and sustainable and successful cities will be a vital part of our future.

Gary Taylor CNZM QSO
Chief Executive
Environmental Defence Society
1. Introduction

In its Reform of the Resource Management System project, the Environmental Defence Society (EDS) has looked, from first principles, at how Aotearoa New Zealand can manage its environment and resources better in the future. A comprehensive rethink is urgently required, not just another round of tinkering to legal frameworks.

Over the past three years we have produced two reports on this vast subject. The first (the culmination of Phase 1) analysed the resource management system as a whole and presented options for change. The second report (marking the completion of Phase 2 of the project) put forward a single preferred model and a timeline for how its pieces could be put into place over a period of years. Towards the end of Phase 2, the government established a panel of experts, ably chaired by the Hon Tony Randerson QC, to investigate resource management system reform and produce independent recommendations. This process has drawn on EDS’s work, and its final report is keenly anticipated at the time of writing.

In recent weeks and months there has been even greater interest in questions of system reform. Momentum is growing. We face an election period in which the Resource Management Act (RMA), environmental stewardship and the resource base on which our wellbeing depends will be hotly debated topics.

So too will the more specific topics of urban development, renewal and change. Questions about our urban environments – how our towns and cities are planned, how they function and how they interact with people and the environment – are core to wider questions about resource management reform. In fact, issues like housing affordability, infrastructure performance and urban environmental risks are key factors driving a case for change.

This document marks the conclusion of a third phase of EDS’s system reform work. It looks more specifically at how resource management system change would play out in the urban context.

Although the RMA is a key element of the “resource management system” in and around urban areas, this system is about much more than just the that Act. It is about all the formal mechanisms by which we protect and cherish our natural heritage, provide for New Zealanders’ social, cultural and economic wellbeing, and preserve resources for future generations.

How the system applies to the urban context is therefore wider than traditional notions of urban “planning”. It extends to foundational questions of ethics; what the system is there for; legal and planning principles; the need to address climate change; funding and institutional arrangements; a wide range of incentives for deeper behavioural change; and much else. Reform needs to be holistic, synergistic and transformational. It is not just about how we facilitate urban development,
provide more housing, or bypass the RMA. We need to be more ambitious than that, directing our energies to common goals that can be mutually beneficial from many perspectives. The conversation is not about economy or development versus the environment. It’s about creating a system in which development supports the environment and where the environment in turn enhances people’s overall wellbeing. Only then can our cities be sustainable.

The RMA is central to all this, because it deals with how we use urban land and the connection with broader environmental wellbeing. But while many aspects of the RMA are good and need to be retained and rejuvenated, in our view the Act as a whole is past its use by date and needs to be replaced, particularly when we look at its role in urban matters. It is groaning under its own weight and complexity and reflects the assumptions of a time very different from our own. And it is certainly inadequate for a future that will be very different from the present. What we replace it with will be of crucial importance to future generations of people and nature.

Infrastructure funding frameworks like the Local Government Act 2002 and Land Transport Management Act 2003 are also core to urban-focused reforms. This is because the health and wellbeing of urbanites depends on things like roads, gutters and pipes, and because land use change (including for housing) often cannot happen without supporting infrastructure. Infrastructure provision is particularly problematic when cities are growing rapidly. But these frameworks, and the institutional and funding mechanisms that underpin them, have potential to enhance environmental outcomes too.

Many other current and proposed legislative frameworks relating to cities are important, including the Building Act 2004, Climate Change Response Act 2002, Urban Development Act 2020, Waste Minimisation Act 2008 and others. Above all of this, there is a pressing need for higher level strategic spatial planning that ties these more targeted statutes and plans together, and which directs them to common and coordinated aims as cities grow, contract or change over time. And – looking deeper still – there are hard conversations to have about the desirability of population growth and distribution, the sustainability of an economic model predicated on growth, and increasing social and economic inequality.

The structure of the report can be seen in Figure 0.1. We first explore questions of scope (what do we mean by urban, built and natural?), reform objectives, problems and challenges (including the changed context provided by Covid-19), before devoting several chapters to looking at the RMA. Should it be split, to address urban issues better? Are its normative foundations – its purpose, principles and underlying philosophy – adequate in cities? What is the role of national direction, and council planning and consenting, in the future? What institutional changes should support all this?

Ultimately, the question of whether we “keep” the RMA or “throw it away” is too simplistic to be a good starting point. Instead, after working through all the things that need to change (and stay), we really need to ask whether it would be sufficiently transformed to be thought of as something new. While continuity is important for many things, we now think that a new statute is needed. And a new name would send a powerful signal that its stance would be quite different.

We then look at reforms to infrastructure and construction frameworks like the Local Government Act, Land Transport Management Act and Building Act, including supporting institutional and funding arrangements. Ensuring that mechanisms for funding infrastructure and public services are both sufficient and send the right incentives for investment will be equally as important as changing regulatory and policy tools under the RMA. How we design institutions – councils, central government agencies, independent watchdogs and others – is intimately related to both.

Crucial to a new system will be how land use, infrastructure and other objectives and processes (eg for climate change) are coordinated with each other. We outline a new legislative framework for spatial planning and other measures (eg aligned processes and principles across legislation) that would be designed to achieve this. After exploring the concept of an urban development authority as an additional tool for achieving better coordination in urban planning, we conclude by touching on the more systemic aspects of reform that will be needed to support urban change.

Our key points and recommendations are found in blue boxes throughout the report, and have been compiled in Appendix 1. A pictorial representation of the key building blocks of a future system can be seen in Appendix 2.
2. Scope and objectives

In Chapter 2 we begin by looking at the report’s scope, concluding that it is artificial and ultimately unhelpful to draw sharp distinctions between matters that are “urban” or “non-urban”, or “built” or “natural”. There are considerable overlaps and linkages between all of these things and a holistic lens is needed when thinking about the place of cities in a future system. Cities and buildings have complex connections with people, communities, freshwater, air, land, biodiversity and climate over both space and time. It is risky to think about things like urban development, housing, indigenous flora and fauna, climate change and freshwater in policy silos.

In Chapter 3 we turn to the objectives we should have for future urban areas. Cities are not inherently bad phenomena; they provide for many social, cultural and economic benefits that come naturally from agglomerations of people (eg the efficient exchange of ideas, social connection and mobility, efficiencies in productivity, opportunities for recreation, access to employment and so on). Cities can also be good for the environment, reducing people’s overall environmental footprint. However, the system needs to support rather than undermine their benefits, while also guarding against the very real adverse impacts cities can have.

Housing needs to be affordable, safe and healthy; infrastructure and services need to be reliable, efficient and future-proofed; communities need to be resilient to economic and environmental shocks; people’s health needs to be safeguarded. Our cities should actively strive not only to reduce negative environmental impacts (waste, carbon emissions, pollution, biodiversity loss), but also to actively enhance the environment. As cities grow and change, there are significant opportunities to do that. For example, the United Kingdom’s Environment Bill looks set to require a net improvement in biodiversity from new greenfields urban development. New subdivisions can be planned to make the most of passive energy, well-designed density and connection to nature, and active or mass transport links. Houses can be built to allow the easy addition of rain harvesting or solar electricity later on. If we wait to do these things after the fact, it may be much harder in order to achieve positive environmental outcomes.

Process objectives are important too; the national interest needs to be reflected, but communities and Māori need to be at the heart of how we shape urban areas. Transparency, timeliness and accountability are, of course, crucial across the board.

Above all of this looms the enormous potential for our towns and cities to achieve synergistic benefits if they are planned strategically towards common goals. For example, greening our cities offers benefits for mental health, infrastructure costs, biodiversity, freshwater and the climate. Social, environmental, economic and social outcomes can often all be improved at the same time if public policy and private incentives for investment and behaviour change are well coordinated. Perhaps the most important thing to remember is that well-planned urban areas are about more than just the provision of affordable and adequate housing and infrastructure.

Overall, we think that the cities of our future should be good for our health and make us happy. They should embrace carbon neutrality and zero waste. One can imagine urban networks of electric vehicle infrastructure for the easy mobility of freight and people; energy neutral and water sensitive buildings and infrastructure; and a resurgence of greenery and indigenous biodiversity. Nature should be brought into the city, as should community food production and hydroponic farming. The principles of the Treaty would be respected, with our cities referencing Māori design and their pre-European roots. We can picture a place where warm and healthy housing is within the reach of all, and where people and buildings are prepared for the impacts of a changing climate. It would be a place where positive social connection is encouraged through a compact urban form with green space, safe streets, rapid mass transit or public transport, walkable neighbourhoods and active transport. Beyond the city we would preserve open space, productive land with easy and affordable access to urban food markets and indigenous forest readily accessible to urbanites.

Hobsonville Point, Auckland
3. Problems and challenges

In Chapter 4 we look at the problems and challenges being faced by our cities. We conclude that, while they are not fundamentally broken, there is a pressing need for better outcomes on many fronts. Urban housing, especially in larger and faster growing centres, is becoming increasingly unaffordable. The performance of our network infrastructure – notably roads and drinking/waste water – leaves much to be desired from health, environmental and service delivery perspectives. And many environmental indicators are going downhill at an alarming rate (both in cities and more widely, partly due to urban activities).

There is a strong feeling among many that both substantive and process outcomes sought by Māori are not being recognised or achieved adequately. Looming over all of this is the prospect of a future that is likely to be very different from the past or the present. Climate change will cause ripples of unpredictable change across the board, which will not just be limited to rising sea levels. Technology, population and demographics will change, too, and we may see growing resource scarcity (eg for water and productive land) and pressure on infrastructure and services. We looked at future changes and challenges in more depth in the Phase 2 report, and all of those will reverberate in our cities.

Of course, a lot of uncertainty and change has been caused by Covid-19 and the ensuing period of lockdown. At the time of writing it is still by no means clear how this will impact on urban reforms even in the short-term. It is dangerous to rely on forecasts to suggest that new problems will emerge or old ones will disappear. However, the new context is important. In Chapter 4 we therefore outline some ways in which the old normal may not be the new normal over the coming months or years.

In particular, Covid-19 may have an effect on housing markets (some drop in prices), population growth (less migration during a period of border restrictions), preferences for house size (eg an extra bedroom to work from home) and location (flexible working arrangements may see some movement away from places like Auckland or Wellington). Falling incomes and unemployment will see a period where councils may struggle to fund or finance services and where housing affordability issues remain strong.

Although a pandemic does not itself affect environmental outcomes, our responses to it present both an opportunity and a threat. Debt financed spending by the government and fast tracked projects to boost employment have the potential to drive a green recovery in our cities. Alternatively they could lock in old ways of thinking and sacrifice environmental wellbeing on the altar of economic recovery. People have experienced improved environmental indicators over the lockdown (largely due to less urban traffic) and there may be a window in which people are more receptive to systemic changes as a result of the pandemic. This may be a catalyst for a conversation about changing the way we live. Alternatively, our successes to date of keeping the virus contained may result in continued complacency.

Ultimately, despite the importance of preparing for alternate futures, the same issues that have plagued our cities prior to Covid-19 (housing unaffordability, congestion, environmental decline) seem likely to recur once a period of disruption is over. Furthermore, some issues will not be mitigated at all (eg ageing infrastructure will continue to age) and new issues may emerge.

With all this as context, in Chapter 4 we diagnose problems with the system. Just because we have undesirable outcomes, it does not mean that the resource management system is responsible, or that it is fundamentally broken. However, some things can be said with a reasonable degree of confidence, including that:

- The existing system has categorically failed to prevent the decline of many aspects of the natural environment in and around cities.
- The existing system does not address climate change mitigation and adaptation strongly enough.
- The system has not done enough to ensure that adequate urban infrastructure is funded and delivered to accommodate growth in a timely way, reliable and safe essential services are provided, or congestion is addressed in a timely way.
- The system has also failed to provide a strong legal or conceptual basis for the strategic outcomes sought by urban planners.

Housing issues are complex and multifaceted. The blame for housing unaffordability is often laid at the door of restrictive planning provisions produced under the RMA (including urban limits, minimum dwelling sizes and nimby – “not in my backyard” – restrictions on density). That is certainly a part of the picture that requires change, especially when it comes to restrictions on density. But improving housing affordability relies on many other measures beyond the scope of resource management reforms, and the RMA (especially the environmental limits it contains) should not be made a scapegoat for a problem caused by a range of other fundamental drivers.

The system also has what can be called “procedural” problems. Māori voices emphasise that they are excluded or marginalised from decision-making processes and that the system does not reflect Treaty principles. Other voices are marginalised too. Disproportionate influence in local politics and council decision-making is wielded by existing landowners who often have vested interests in retaining the status quo. The planning process under the RMA is too slow to produce timely outcomes and respond to change in an adaptive way. And the system has become increasingly complex, fragmented and inaccessible to users. This is especially in recent times when particular issues have been addressed in a piecemeal way by seeking legislative solutions or workarounds. Many moving parts – multiple statutes, plans, processes and institutions – are not well coordinated or universally focused on the future.
4. The future of the RMA

In light of its performance and complexity, there have been calls to “get rid” of the RMA. What this means in practice can vary, but one option is for it to be split up into two separate pieces of legislation. Such a split could be an Environment Act focused on protection of the “natural” environment (eg it would not treat changes to amenity as an adverse environmental effect and it would actively embrace the benefits of urban development and housing). A focused Planning Act could also be better placed to integrate decision making on land use with that for associated infrastructure so that rapid urban growth could occur in a more coordinated way. That is a legitimate concern. In the current system, land use planning under the RMA happens in a separate framework to the planning and funding of infrastructure often needed to make land use change actually happen, especially in and around cities. Land use controls and infrastructure planning could be integrated together into a Planning Act. The outcome might be the more timely provision of housing. Alongside that, an Environment Act would be focused on imposing strict environmental limits that development would need to meet.

However, we see considerable downsides to splitting the RMA. There is a close connection between land and other aspects of the environment, and they need to be managed holistically. The distinction between land use planning and the “environment” is not a sharp enough one to make a legislative split desirable. The frequent use of individually small-scale examples of urban planning restrictions (eg fence heights, minor shading effects, an extension of a suburban home) obscures the fact that bigger picture or cumulative land use decisions about urban form can and do have significant ramifications for environmental wellbeing. For example, dispersed development can have considerable impact on climate change, energy efficiency and the viability of public transport; the location of industrial activities and transport routes has implications for urban water quality that are not easy to mitigate later on; and the absence of urban trees and permeable space can impact on a city’s micro-climates and flooding. Urban land use decisions also have systemic implications over the long term for biodiversity (many of New Zealand’s most threatened terrestrial environments are found within or close to urban centres), soil and food production.

Furthermore, how we manage land is crucial to a precautionary and preventative approach to environmental effects more broadly, because individual uses of the land generate cumulative (and usually poorly monitored) impacts. Decisions about land use have significant long term “environmental” consequences and cannot be divorced from big picture thinking about most environmental issues. It is particularly difficult to reverse urban sprawl once it occurs – we are giving up many alternative land use choices (eg food production, nature conservation) when we concrete over soils and locking in transport modes (eg cars) in our choice of urban form. Of course, equally robust or even identical environmental principles could be built into a Planning Act dealing only with land use. But then, what would be the point of splitting up the RMA in the first place?

There are also important cross-cutting planning and environmental concepts like landscape, energy efficiency, ecosystem-based management and catchment-scale management that require a tightly integrated regime. How would these concepts be meaningfully provided for if land use planning were to be located under a different regime with different decision-makers and processes? It is by no means obvious what kinds of things should be in one statute or another, and how they should relate. That extends to impacts on people and communities, which are part of the holistic “environment” under the RMA. If we had a Planning Act and an Environment Act, where would such impacts be considered? In both?

And how would fragmenting consideration of urban land use fit with te Ao Māori? We leave that question to Māori, but note that the Te Aranga principles stress that the notion of a cultural landscape connects ‘whānau and whenua, flora and fauna, through whakapapa. It does not disconnect urban from rural. It transcends the boundaries of ‘land’scape into other ‘scapes; rivers, lakes, oceans and sky.”

While a Planning Act could be made expressly “subject to” an Environment Act, this tends to assume that there are always hard and fast rules in the latter with which the former could simply “comply” (eg preventing further harm through discharge standards, protected areas etc). For some things, involving clearly defined spatial or performance-based limits, that will be the case (eg acceptable attributes for a waterway). But what is also needed is an integrated approach where development and land use decisions actively pursue environmental goals alongside other aspects of human wellbeing, not just comply with bottom lines (eg how urban form and design can be energy efficient; enhance people’s connection with nature; improve biodiversity; reduce greenhouse gas emissions and improve water quality).

Splitting the RMA could also cause considerable confusion, overlap and inefficiency. There would likely be a need to either duplicate or cross-reference provisions concerning public participation, timeframes for decisions and other procedural matters. Endless questions would arise concerning relationships between different instruments. It would risk extensive litigation to define boundaries. We might end up trading one enormous statute for two statutes that, when combined, would be even larger and more confusing. Rather than making urban development faster, it may simply introduce
another layer of planning and consenting and add to the bureaucratic churn.

Overall, we conclude that the integrative scope of the RMA – combining the management of land, water, air, biodiversity etc – is basically sound. We should not return to the days where we managed inter-connected environmental domains under separate legislative silos; in particular, it would be unwise to think that how we use land is not intimately connected to many other aspects of environmental wellbeing. We see other mechanisms for achieving the coordination of urban land use change with infrastructure provision, notably a layer of strategic spatial planning and the closer alignment of norms and processes (discussed in Chapter 10). And while it would be possible to split the RMA from a purely technical point of view, it would certainly pose challenges, potential overlap and the risk of uncertainty and extensive litigation.

Keeping an integrated approach to the management of land and other environmental domains in one statute does not, however, mean the RMA should remain unchanged. Far from it. In previous work on system reform we have proposed deep changes to the RMA – on which this report builds – but have described this as keeping the existing framework basically intact. However, as our thinking has evolved, the degree of change required (described in subsequent chapters) has convinced us that this really needs to be characterised as something different. It will be imperative to draw upon many good aspects of the current Act – including the concept of integrated management and biophysical bottom lines – rather than throw it all in the bin, but the end result we are envisaging would not be just another suite of amendment acts or legislative tinkering. It would be a new Act, reconstructed from the ground up on quite a different foundation. And it would have a new name: the Environmental Stewardship and Planning Act.

1. An integrated single statute – combining decision-making on land use and other aspects of the environment like water, soil and air – should remain at the heart of a future system managing our cities. Land use and the built environment are too intimately connected to other environmental domains to be considered separately. However, the RMA would be rebuilt in fundamentally different ways, including to address concerns that have led to calls to split the Act. Changes would be significant enough to create something entirely new, not just another RMA amendment: an Environmental Stewardship and Planning Act.
5. Purpose and principles

In Chapter 6 we look at the purpose and principles for an Environmental Stewardship and Planning Act, and the appropriateness of what we already have (Part 2 of the RMA) when looked at through an urban lens. This question leads us deeper into assumptions about why we have a resource management system in the first place, and the (often unspoken) philosophical underpinnings of the RMA.

Most fundamentally, we conclude that it should be made clear that the rationale for having a resource management system, especially in cities, is more than:

1. the internalisation of negative externalities,
2. the provision of public goods and services (eg infrastructure),
3. coordinating public and private activities.

That is too narrow a perspective. The system needs to encompass many other imperatives that are about achieving the public interest, giving effect to the principles of the Treaty of Waitangi and securing the interests of future generations. While economics is a crucial discipline to draw on in urban resource management alongside many others (such as physical sciences, social sciences and planning), and restrictions need to be justified and proportionate, the system as a whole and legitimate reasons for intervention need to be founded on a broader set of values (including local deliberative democracy). There should not be an assumption that the free market is right or that intervention is only justifiable where markets have demonstratively failed.

The need to embrace a broad rationale for the system extends to the need to revisit the ethos of our core legislation. In the late 1980s, the RMA was forged in the dual crucibles of free market economics and the concerns of a budding environmental movement. It has been described as being effects based rather than outcomes based, reactive and market-led, and focused on preventing harm rather than pursuing benefits. And while in practice it has not prevented a lot of good urban planning from happening over the years, it does not provide an ideal foundation. It is overwhelmingly focused on biophysical protections (which are, of course, crucial) but, aside from fleeting reference to enabling people to provide for their own wellbeing, it shies away from recognising that a much wider range of outcomes vital to urban success can and should actively be planned for.

We propose that outcomes based, reactive and market-led, and focused on preventing harm rather than pursuing benefits. And while in practice it has not prevented a lot of good urban planning from happening over the years, it does not provide an ideal foundation. It is overwhelmingly focused on biophysical protections (which are, of course, crucial) but, aside from fleeting reference to enabling people to provide for their own wellbeing, it shies away from recognising that a much wider range of outcomes vital to urban success can and should actively be planned for.

The Act fails to give expression of the fact that there are considerable synergies that should be pursued between social, economic, cultural and environmental wellbeing (for example, those provided by a compact/efficient urban form). It needs to be more strongly about anticipating change and planning for a future we want, not a framework for assessing the negative effects of what market forces make attractive.

The place where this shift needs to be most strongly recognised is in the purpose and principles of a new Environmental Stewardship and Planning Act. In our view, two key things need to change. First, the Act should explicitly embrace a much wider range of principles for good urban planning, including the pursuit of positive outcomes rather than a focus on assessing adverse effects. Why, for example, is Part 2 of the RMA silent as to such crucial urban objectives as liveability, mobility and connection? Or resilience, food and water security, good urban design and cultural landscape? Perhaps most significantly, where is the recognition of the need to drive change (eg towards a zero carbon or zero waste future, or one in which we actively seek to "green" urban areas), not just manage resources or mitigate future harm? By contrast, we can look to more recent strategic instruments that talk about the need for a resilient, low-carbon and healthy food system, the need for decentralised renewable energy, a circular economy, fairness and the need to enhance, connect and work with natural systems. The RMA looks decidedly dated compared to such things.

Secondly, a comprehensive and coherent range of biophysical environmental limits need to be much more clearly defined, required and defended in a new Act’s purpose and principles. Those are just as important in and around cities as they are in rural areas, and all other principles need to be expressly subject to them. Climate change mitigation and a specific link to the targets and budgets of the Climate Change Response Act need to be strongly recognised.

Furthermore, the new Act’s purpose and principles need to be strongly oriented towards pursuing solutions that achieve synergies between social, environmental, cultural and economic wellbeing. For example, increasing indigenous planting in and around urban areas can have a wide range of benefits, yet it is often seen as a grudging concession to environmental “protection” rather than a win-win situation. Similarly, compact/efficient urban form and density done well presents many synergistic outcomes but is often derided in favour of market freedom and residential sprawl. This mindset needs to change and should be reflected by an Environmental Stewardship and Planning Act that presents a green vision for urban development and economic prosperity that better provides for urbanites’ health and wellbeing, not just a list of things we don’t want to happen.

This is reflected in the statute’s name, in several senses: (1) decision-makers will not be dealing with a series of resources but rather a holistic concept of the “environment”; (2) we are not managing the environment, but rather looking after it as stewards, no matter what the spatial context (urban or otherwise); and (3) we are actively planning for change, not just in the traditional sense of managing human activities on land but also driving towards a vision for a future we want and need. A stronger recognition of true biophysical limits should be accompanied by a more nuanced treatment of protections that are not “limits” in the same sense. In particular, the concept of urban amenity should give way to a more nuanced engagement with urban planning principles founded on liveability, connection, dynamism and the importance of both existing and future residents’ interests.

Across both of these shifts – towards stronger environmental limits and recognition of urban planning principles – there needs to be recognition of the principles...
of the Treaty of Waitangi. As is commonplace now, a standalone clause highlighting the importance of these principles will have its place. But this also needs to be accompanied by a real effort to weave Māori concepts into the fabric of the legislation. One option would be for a concept like Te Mana o Te Taiao to be a framing principle for all others (a replacement of the concept of “matters of national importance”), in a similar way that Te Mana o Te Wai is used under the National Policy Statement (NPS) for Freshwater Management.

2. The resource management system in cities should be based on a broad rationale (pursuit of the public interest) rather than a narrow one (the internalisation of externalities).

3. The reactive, market-led ethos of the RMA should be replaced by one that is focused on the proactive pursuit of positive outcomes, including environmental enhancement.

4. A new purpose and principles for an Environmental Stewardship and Planning Act should specifically embrace a range of principles for good urban planning and design that are not just about addressing the adverse effects of proposals.

5. New principles should more clearly encourage solutions that have synergies for social, cultural, economic and environmental wellbeing (including compact urban form).

6. A comprehensive and coherent range of biophysical environmental limits needs to be much more clearly defined, required and defended in a new Act’s purpose and principles. All other principles need to be expressly subject to the achievement of those.

7. Climate change mitigation and a link to the targets and budgets of the Climate Change Response Act need to be strongly recognised within the purpose and principles of an Environmental Stewardship and Planning Act.

6. National direction

The purpose and principles of legislation are important, but they are fairly high level. They guide decisions but they do not contemplate specific situations or provide detailed answers to urban questions. They therefore need to be complemented by more detailed instruments. Central to that is national direction – NPSs and national environmental standards (NESSs). We see a need for a revamped approach to national direction under a new Environmental Stewardship and Planning Act, which we outline in Chapter 7. It is another feature of the Act that would be quite different to the RMA.

Over most of the RMA’s history there has been very little national direction. The Act generally does not compel central government to plan or even intervene, other than in the context of the coastal environment (the New Zealand Coastal Policy Statement is the only mandatory instrument). The RMA does, however, enable government involvement in urban areas in a wide variety of ways. Recently, there has been much more appetite to intervene, including to ensure that cities are allowed to grow (and therefore alleviate upward pressure on house prices). But measures have been reactive and ad hoc, and not well connected to each other.

This standoffish approach by central government should not be allowed to continue. If national level issues are in play, the system should expect a strong, coherent and pre-emptive national level response. We are therefore suggesting a requirement, not just a power, for central government to promulgate national direction that gives effect to a revised purpose and principles of a new Act. This would mean that matters identified as being of national importance have an expectation of at least some national response (which might take the form of policy, regulation or both). Action should not rely on foreseeable problems becoming manifest or on the political appetite of the government of the day. To complement that, there should be a clearer definition of subsidiarity in the Act, outlining the situations when central and local governments are expected or required to act.

This should not see a flurry of new pieces of national direction targeting individual problems. Over recent years, there has been an avalanche of new and proposed NPSs and NESs. Most of these are highly relevant to urban areas, even if they don’t have “urban” in their name. Yet they have been created through quite different lenses. Some have been spatially focused, such as an NPS on Urban Development Capacity or proposed NPS on Highly Productive Land; some are sector-specific, concerning electricity transmission or telecommunications; and others are domain-based, such as a proposed NPS for Indigenous Biodiversity and a constantly changing landscape of freshwater instruments. It is becoming less and less clear how all these are intended to work together as a package and how tensions and synergies between them are to be resolved or pursued. A lot is left to local government to figure out on the ground, at which point legal challenges become almost inevitable.
A single piece of integrated national direction – what we are calling a National Environment Plan – would much better address potential conflicts and uncertainty. It would link together a comprehensive range of national level objectives, policies and regulations, and would be expected to specifically identify the environmental limits required under a new purpose and principles. That would include the imposition of strong environmental bottom lines in urban areas, which may look different to other areas. It would outline ways in which improvements would be achieved where bottom lines are not currently being met. While it would still be a single instrument, a National Environment Plan could include targeted provisions or expectations for particular geographical areas (eg Auckland) that would express how more general provisions were expected to apply.

We also see a strong case for a strengthened Environmental Protection Authority (EPA) (or other independent agency) to have a role in translating ministerially determined policy provisions for environmental limits (ie NPS provisions) to the regulatory rules and standards that bite on the ground (ie NES provisions). The rationale for this is that once the value-based policy has been established by accountable ministers (as long as it complies with the Act’s strengthened purpose and principles), the rules implementing it can more appropriately be left to independent and objective decision making. This role for the EPA (or similar agency) would include, but would not be limited to, provisions regulating drinking water, wastewater and stormwater that are so vital for both human and environmental health in cities across the country.

There also needs to be a strong link between climate change mitigation and adaptation imperatives in the Climate Change Response Act and a National Environment Plan. National level regulatory and policy provisions concerning land use and greenhouse gas emissions will be crucial to ensuring that the lofty ambitions of our flagship climate change legislation are actually realised in practice. At present, there is no clear link and no clear plan for how the RMA will contribute to greenhouse gas targets and budgets. That will need to change under a new Environmental Stewardship and Planning Act.

8. Central government should be required to promulgate a comprehensive range of national direction that gives effect to the purpose and principles of a new Environmental Stewardship and Planning Act, including in cities. This would mean that matters identified as being of national importance then have an expectation of at least some national response (which might take the form of policy, regulation or both).

9. There should be a clearer definition of subsidiarity in a new Act, outlining the reasons for which central and local government are expected (or required) to act.

10. A coherent suite of national direction should be contained within a single instrument: a National Environment Plan. Links and hierarchies between policies should be made clear, including those for environmental protection and enhancement (eg biodiversity targets) and urban development/urban development capacity.
Reflecting the ethos of a new Act, a National Environment Plan would be much more future focused and recognise the need for change, not just management. It would be an action plan – a way for getting from A to B. Thus, mandatory targets – and not just for development capacity – should be embedded in it. That trend is starting to happen already – we can see it in targets for freshwater and proposals for biodiversity in cities through national direction – and it should continue across all areas in need of environmental and social improvement. As discussed in Chapter 12, there would be a robust accountability framework measuring progress towards these targets.

Furthermore, and also reflecting the scope and orientation of a revised purpose and principles, national direction should provide for a much wider set of good urban planning and design principles as well as explicit policy support for synergies between social, economic and environmental wellbeing. The newly gazetted NPS on Urban Development is an improvement on its predecessor NPS on Urban Development Capacity, in that it at least recognises the importance of “well-functioning” urban environments as well as making room for growth. All such principles, however, should be strictly and explicitly subject to the achievement of environmental limits for things like water, air, soil and biodiversity. Such provisions would be specifically flagged.

11. A National Environment Plan should specifically identify the environmental limits required under a revised legislative purpose and principles, including how they are to apply in urban areas. Provisions setting out environmental limits should have different (dominant) status to others.

12. Mandatory targets – and not just for development capacity – should be embedded into national direction to form a consistent and coherent package.

13. Reflecting the scope and orientation of a revised purpose and principles, national direction should provide for a much wider range of good urban planning principles and synergies between social, economic and environmental wellbeing.

14. There needs to be a strong link between national direction and the aspirations for climate change mitigation and adaptation embedded in the Climate Change Response Act.

In Chapter 7 we outline a proposed process for developing (or changing) a National Environment Plan. This looks different to the current process for developing national
direction (see Figure 0.2). A collaborative approach between central government, local government and Māori would be its foundation. There would be a crucial review role for a new independent “Futures Commission” and an associated “Tikanga Commission” (or commissioners). This would be analogous to (and could even eventually subsume) the Climate Change Commission, in that it would be robustly independent and provide future-focused advice on instruments made under the RMA.

But the formal role of central government would not end with the creation of a National Environment Plan. It would also have a mandatory role to support its implementation. This should include funding, advice and operational assistance to councils where necessary. The Plan should flag where the funds for implementation are expected to come from, to ensure its aspirations and methods are effective.

**Figure 0.2: A proposed process for creating and changing a National Environment Plan**
15. The process for developing and changing a National Environment Plan should involve a collaborative approach between central government, local government and Māori.

16. A new institution(s) – a Futures Commission and Tikanga Commission/commissioners – should be created to act as a standing, independent system steward and have a structured review role in the creation of national and local level instruments under the RMA. It should contain urban planning/design expertise or have an “urban” commissioner within it. It would replace the current board of inquiry model used for reviewing national direction.

17. A strengthened EPA (or other independent agency) should have a role in translating policy provisions for environmental limits to regulatory rules and standards in a National Environment Plan.

18. Central government will need to have a mandatory role to support the implementation of a National Environment Plan. This should include funding, advice and operational assistance to councils where necessary. The Plan should flag where the funds for implementation are expected to come from.

While many aspects of national direction are relevant to urban areas, in Chapter 7 we consider specifically those that provide for urban development and growth. Among other things, we conclude that it is important that the release of new land for development is not based solely on economic trigger points (eg the price differential between urban and rural land). Development capacity is important and market indicators are useful information to have, but the planning process is the appropriate means by which such decisions should be made. There should also be triggers set for immediate corrective action in the event of declining environmental indicators, including urban biodiversity. Clear thresholds for corrective measures should not be limited to situations where land is needed for new development; there are equally pressing imperatives for environmental enhancement in and around cities where targets need to be supported by compulsory actions to achieve them.

19. Aspects of national direction providing for urban development and growth should not be based solely on economic trigger points like the price differential between urban and rural land. There should also be triggers set for immediate corrective action in the event of declining environmental indicators, including urban biodiversity.

20. There is an opportunity to transform cities by removing car parking requirements in appropriate places and replacing these with requirements for indigenous planting.

21. Reforms should not go too far in constraining the ability of councils to implement good urban planning, particularly in relation to things like balconies or minimum apartment sizes.
7. Council planning

While central government should have a more active role in urban resource management in a future system, most functions would remain with local government. In Chapter 8, we look at the role of councils under a new Environmental Stewardship and Planning Act.

This is not just about the planning process; there are also deeper questions to consider about local government itself. In particular, we see a case for local government functions around land use and infrastructure to be shifted to a regional level. While local structures (eg boards with statutory functions and secure budgets) would remain important – in that there are many benefits of localism – we think there should be a shift over time to regional unitary authorities for most resource management functions. An integrated approach to cities, especially where functional urban areas (eg labour markets) span multiple districts, would be well served by regionalising local government. Exactly what the boundaries of those entities would look like should be subject to ongoing consultation and debate.

22. A regional lens will be crucial to achieving good urban outcomes in a future system. Local government functions around land use and infrastructure should, over time, be shifted to a regional level. While local structures (eg boards) would remain important, this would mean a shift over time to regional unitary authorities.

The planning process under the RMA also requires revision. A more agile process is needed across the board (and our proposals are not limited to cities), but this is particularly important in the urban context where things can change rapidly. Cities are highly dynamic places in both social and biophysical terms. That said, there need to be robust checks and balances when preparing and making decisions on plans, opportunities for public participation, and a strong independent voice to speak for future generations. In Chapter 8 we put forward two different models for planning. The first would be to “reset” existing regional and district plans at a regional level (to create regional combined plans), in order to give effect to a new purpose and principles and a more comprehensive and coherent National Environment Plan. The second would be to allow for ongoing plan changes.

A variant of the Auckland Unitary Plan model could usefully be adopted to reset existing plans and create regional combined plans (see Figure 0.3). We see a case for more direct central government input (including resourcing assistance) and active collaboration with Māori, in the plan development phase. This should mean that a plan addresses Māori concerns and reflects Māori urban aspirations, and that it is designed from the outset to give effect to national direction. At present, neither of those things is really assured until or unless a plan is appealed. As under a National Environment Plan, the EPA could also have a role in translating policies concerning environmental limits to actual regulatory restrictions (eg for freshwater quality), including where those are needed to give effect to national direction on environmental bottom lines. But plans should not be things that are just imposed from above. Councils should work with communities and neighbourhoods in creative ways to ensure they have ownership of plans and contribute local information and preferences, and mechanisms like citizens’ assemblies could help.

As in the Auckland model, merit appeals to the Environment Court would be constrained by whether councils accepted or rejected independent recommendations on the notified plan (ie to the extent recommendations were rejected, appeals would be allowed). But independent recommendations would be provided not by a bespoke independent hearings...
panel, but rather by the standing, robustly independent Futures Commission and Tikanga Commission (or tikanga commissioners). Among other things (including expertise in environmental matters), a Futures Commission would need to have urban design expertise and play the role of an independent urban design panel. At present, such panels are non-statutory. Formalising this would complement an expansion of the urban objectives explicitly sought by a new Act.

Alongside this, a “Friend of the Commission” could usefully be established to assist lay submitters through what could still be a complex process. There should also be a new, publicly funded, Environmental Defender’s Office established to pursue public interest litigation.

![Diagram](Figure 0.3: A process for “resetting” existing plans at a regional level)
As shown in Figure 0.4, we envisage a different process for plan changes (following regional level “resets” of RMA plans). Decisions on plan changes would generally (unless “called in” by the responsible Minister or the Futures Commission) involve a hybrid decision-making panel chaired by an Environment Court judge and comprised of independent commissioners, representatives from the relevant council(s) and mana whenua. There would be a preponderance of independent members, while central government could have observer status. The Environment Court would therefore remain central in a future planning system – it has a crucial place as a robustly independent, judicial body tasked with providing oversight of council (and others’) plans. The EPA would also be tasked with actively initiating plan changes required to give effect to environmental limits in national direction.

In both of the processes outlined above, there are difficult questions to work through in determining the role of Māori in urban planning. A partnership approach is needed to give effect to the principles of the Treaty of Waitangi. As signalled, this should involve close collaboration in the production of plans alongside councils, the provision of independent advice through tikanga commissioners and the provision of resourcing by the Crown to enable those roles to be effective. There could also be greater clarity around who has authority to speak for Māori, which is particularly important in urban areas where many Māori have interests yet do not have mana whenua status.

**Figure 0.4: A new process for plan changes**
23. Local government planning processes under the RMA need to be more agile and subject to a largely single stage decision-making process.

24. There should be a separate process for “resetting” existing plans to integrate them at the regional level, to reflect the purpose and principles of an Environmental Stewardship and Planning Act, and to give effect to a new National Environment Plan (including environmental limits). This process should also be used where a plan change is “called in” by the government or an independent Futures Commission/Tikanga Commission. It would roughly resemble, in many respects, the process for creating the Auckland Unitary Plan.

25. Ongoing plan changes should be subject to a different process, in which a single “hybrid” institution makes decisions. This institution would be chaired by an Environment Court judge and be comprised of independent commissioners (from a standing national pool), alongside council and mana whenua nominees. There would be a majority of independent members. Central government should have observer status.

26. In all processes, bottom up plan co-creation would be important. There should be greater use of citizens’ assemblies and other creative mechanisms for community involvement.

27. The EPA should have a role in translating policies concerning environmental limits to actual regulatory restrictions in council plans, including where needed to give effect to national direction on environmental limits. The EPA should be tasked with initiating plan changes.

28. A publicly funded Environmental Defender’s Office should be established to pursue public interest litigation and reduce resourcing disparities between developers and community/environmental groups.

29. A partnership approach with Māori is needed to give effect to the principles of the Treaty of Waitangi. This should involve close collaboration in the production of plans alongside councils; the provision of independent advice through a Tikanga Commission/commissioners; and the provision of resourcing by the Crown to enable those roles to be effective.

30. There could usefully be greater clarity around who has legal authority to speak for Māori, particularly in urban areas where many Māori have interests yet do not have mana whenua status. This is a matter for Māori to determine.

31. Urban limits will be a valuable tool in a future system to implement a wider, more strategic spatial planning framework, which would enable and manage urban growth over time and achieve long-term compact/efficient urban form. Limits should not have undue impact on land prices and need to be responsive, but if issues arise that might signal a need to take other measures (such as making density more attractive).

In Chapter 8, we also shine a spotlight on more specific issues associated with local planning, including the concept of urban limits. An urban limit/boundary allows urban development on one side of a line but not the other, preventing (or limiting) a city from expanding past that point. Some have called for such limits to be abolished, given the contribution that it has historically made (particularly in Auckland) to the high price of housing by strangling new land supply. We agree that urban limits must be responsive by changing over time – for example, to implement a coherent and continually reviewed growth strategy in a spatial plan (see Chapter 10) – and they should not unduly contribute to housing unaffordability. One should not impose a limit and see it as fixed.

However, in our view urban limits remain a valuable tool if used in the service of a strategic spatial plan to direct growth into desirable areas or corridors. They provide a number of public benefits and some effect on land price may be worth it when an inter-generational public interest perspective is taken. Such impacts can also be mitigated in other ways (eg allowing/incentivising greater height or density within an urban footprint). In particular, urban limits are useful in supporting an efficient or compact urban form (when combined with an effective plan for urban intensification), which has many synergistic benefits in terms of the efficient use of land and infrastructure, social connection and mobility, and environmental protection (see Chapter 6). To guard against urban sprawl and its adverse environmental and social consequences, we should resist blanket calls to get rid of urban limits entirely, or leave it to markets (or central government discretion) to determine where and how greenfields growth occurs.
8. Consenting

While a revised planning framework will be crucial in a future urban resource management system, consenting will also be important. After all, plans cannot account for every single scenario. We consider consenting in Chapter 8.

Consenting delays for urban development have been the subject of many complaints and the regime has been seen as too complex, uncertain and costly. In our view, it should be more obvious in a plan what development is allowed and not allowed and in which places, providing greater predictability of outcome for developers as well as firm and transparent environmental limits. Over-reliance on a series of site-specific or activity-specific consenting decisions, within a planning landscape defined by general (and sometimes conflicting) policies, has contributed to unacceptable cumulative impacts over many years, as well as extensive complaints from applicants who do not know whether a consent will be granted or not.

There are different ways in which we could move our emphasis away from consenting and towards planning under a new Act. Environmental bottom lines, specifically identified up front in the Act and National Environment Plan, would need to be translated into regulatory limits, associated more strongly with prohibited activity status. In other words, there should be greater clarity about the kinds of things that should not be consented for the life of the plan. We do not see a strong justification for retaining non-complying activity status, as it adds complexity, uncertainty and process.

On the other hand, some urban activities with negligible effects may warrant permitted status (no consent is needed) or controlled status (consent must be granted if applied for) if close attention is paid to prescriptive permitted activity standards and mandatory consent conditions. It may also be helpful to treat what are essentially private disputes under the RMA – common in urban settings – differently from matters that have a public interest. The Environment Court has become adept at directing disputes to private resolution and could potentially act as a kind of sorting house to determine which track consenting disputes go down – private mediation and arbitration or a decision by public authorities.

However, we do not think reforms should travel down the permitted activity or private resolution pathways wholesale. The consenting process, even if non-notified, provides a valuable check and balance, and allows targeted conditions to be imposed. It also allows for monitoring to occur or at least for authorities to be aware of the activity, ensuring a better knowledge base. Cumulative effects of what seem like minor private disputes when viewed in isolation can still be significant for the public interest when magnified across a city and across time.

It would be preferable to focus on making urban policies in regional combined plans more specific, clarifying the relationships and hierarchies between policies and tailoring them towards requirements for particular activities and sectors. Consent would still be required, but it would be more obvious whether it would or would not be granted. Close consideration should also be given to smoothing the consenting pathway for projects that have significant environmental benefits or where there are synergies between social, economic and environmental outcomes (eg green infrastructure or eco-homes).

32. A future system should provide greater predictability of outcome in advance through environmental standards and clear policies in plans, rather than relying on the discretionary weighing of general and potentially conflicting policies through a string of consenting decisions.

33. Environmental limits defined in a revised Act would need to be translated into regulatory limits, associated more strongly with prohibited activity status, moratoria or common mandatory consent conditions.

Some complaints about the consenting process have focused on the existence of appeal rights to the Environment Court. While that step can add delays, we remain unconvinced that the benefits of constraining appeal rights for consent decisions outweigh the risks of doing so. The Environment Court performs a robust, independent oversight function. Instead, first instance consenting functions could usefully be removed from elected councillors and, alongside council staff, be placed with one or more independent commissioners deployed from a nationally accredited pool, or potentially with the EPA for matters relating to nationally significant environmental limits. Appeal rights would remain as a further quality control mechanism. Call in and direct referral to the Environment Court would remain but the board of inquiry avenue would be removed.

In Chapter 8 we explore a number of other aspects of consenting. We suggest that a new, independent, publicly funded Environmental Defender’s Office (a statutory litigator and advocate for the public interest) should have standing to appeal councils’ notification decisions to the Environment Court. Notification tests should also be made simpler and it should be made clearer in plans as to whether applications are to be notified or not. A new notification status could even be introduced whereby applications are publicly notified and submissions are invited, but where hearing and appeal rights do not follow automatically. This should ensure that decision-makers and the public are well informed even where a hearing is not necessary and reduce applicant pressure not to notify proposals.

Furthermore, an integrated permitting process could usefully be implemented (a “project consent”) for complex or nationally significant projects, which would align permitting process under multiple statutes. It would not change the substantive criteria by which decisions were made; it would simply align processes. Consent authorities should also be compelled to make decisions
that are, at minimum, “consistent” with national direction, not simply “have regard” to it.

Recent RMA amendments, which will remove restrictions on councils considering the effects of activities on climate change, is a positive step. This will be particularly important in the urban context, where decisions about urban form and design can leave substantial positive and negative legacy effects for the emission of greenhouse gases. Finally, while some improvements to the designations regime may be possible, issues around coordinating land use planning and multiple infrastructure projects should be resolved through a new framework for spatial planning (see Chapter 10) rather than radically overhauling the current arrangements.

34. Appeal rights to the Environment Court in the consenting context provide valuable independent oversight of first instance decision-making. In our view, the risks of removing appeal rights outweigh the benefits.

35. An independent, publicly funded Environmental Defender’s Office should have standing to appeal councils’ notification decisions to the Environment Court.

36. A new notification status should be introduced whereby applications are notified and submissions invited, but where hearing and appeal rights do not follow automatically.

37. Consenting functions could usefully be removed from elected councillors and placed instead, alongside council staff, with commissioners selected from a nationally accredited pool.

38. There should be a strengthened role for the EPA in consenting where there is a national interest.

39. A future system could usefully provide for an integrated permitting process (a “project consent”) for complex or nationally significant projects, which would align permitting process under multiple statutes.

40. Reforms should be made to compliance monitoring and enforcement settings (as outlined in the EDS Phase 2 report).

41. Consent authorities should be compelled to make decisions that are, at minimum, “consistent” with national direction.

42. While some improvements to the regime for designations may be possible (such as removing default lapse periods) we see most merit in pursuing a regional spatial planning framework to address complaints about poor coordination of land use and infrastructure decision-making.

9. Infrastructure and construction

The RMA is central to resource management in urban areas, in terms of planning land use as well as protecting and enhancing elements of the natural environment like water, air and soil. Its successor – an Environmental Stewardship and Planning Act – would make much needed improvements. But separate legislation – notably the Local Government Act and the Land Transport Management Act – provides the framework through which much essential public urban infrastructure and services, like transport and water, are planned and funded.

The timely provision of good quality infrastructure is vital to enable land (eg newly zoned residential land) to actually be used for its intended purpose; a house is not much use if a person cannot access transport links or have water connections. Well-functioning infrastructure is also essential to the broader economic and social wellbeing of urban dwellers and in some cases to address environmental impacts (eg wastewater).

In Chapter 9 we look at the legal frameworks for planning, funding and delivering public infrastructure for transport and three waters (drinking water, wastewater and stormwater). A future system needs to have the ability to raise sufficient money, as well as the incentive to spend it in a timely way. At present, infrastructure outcomes are not ideal on a variety of fronts.

- New infrastructure supporting urban growth is extremely expensive, and there can be funding and financing constraints for councils in some places. There can also be difficulties with the incentives facing councils to make adequate investment in a timely way. A lack of infrastructure is contributing to delays in the supply of new residential land, contributing to higher housing prices.

- There are also problems with the adequacy of existing infrastructure. A lot of it is growing old – notably three waters infrastructure – and in some cases it is at risk of failure. This causes risks to both people’s health and to the environment (eg wastewater overflows). A pattern of underinvestment has emerged over the years and there is now a considerable deficit.

- Urban communities face substantial costs to move, replace or create/modify infrastructure to adapt to or protect communities from the effects of climate change (eg rising sea levels, storm events, droughts).

- The construction and ongoing use of infrastructure, and its design characteristics, can have significant impacts on the environment and climate. Infrastructure choices made today can lock in risks for decades to come.

- Transport infrastructure (notably roads) is under significant pressure from congestion in some urban centres, particularly Auckland. This impacts on social wellbeing, environmental and human health, and economic productivity.
There are a number of reform measures that can and should be taken to improve our infrastructure frameworks. In terms of legislative design, it would be desirable for infrastructure-oriented legislation to remain separate from an Environmental Stewardship and Planning Act, to better ringfence environmental bottom lines in a focused regime. However, alongside that Act we see merit in a simpler, more integrated statute dealing with both local government and infrastructure, which would subsume the Local Government Act, the Land Transport Management Act and potentially other statutes (e.g., for three waters services). This would form a new Local Government and Infrastructure Act.

The purpose and principles of this legislation should retain the four wellbeings that are at the heart of the existing Local Government Act (social, environmental, cultural, and economic). However, they should also more clearly embrace the need to meet clearly defined environmental and climate change targets, the need to make choices that achieve synergistic outcomes (providing services and enhancing environmental wellbeing), and a vision that aligns with the revamped purpose and principles of the RMA’s successor (including principles of good urban design).

In particular, we can no longer afford to view infrastructure as just concrete and steel. Cities and their built components need to be designed to work with the natural world and improve our resilience, particularly to climate change. Clear environmental criteria should drive our future urban infrastructure funding choices. This point has been thrust into the spotlight by the massive, debt-fuelled government spending planned for infrastructure. We shine a spotlight on the importance of a green economic recovery from Covid-19 and the synergistic benefits that investment in things like electric vehicle infrastructure can have.

43. The Local Government Act, Land Transport Management Act and other infrastructure-focused legislation should be merged into a single Local Government and Infrastructure Act.

44. The purpose and principles of a new Local Government and Infrastructure Act should retain the four wellbeings that are at the heart of the existing Local Government Act. However, they should also more clearly embrace the need to meet environmental and climate change targets, the need to make choices that achieve synergistic outcomes and a vision that aligns with a revamped purpose and principles of a new Environmental Stewardship and Planning Act (including principles of good urban design).
Alongside legislative integration and revised decision-making principles for infrastructure, we see merit in substantial institutional change that builds upon models we already have. As well as the local government structural reform mentioned earlier (a move to regional unitary authorities to provide economies of scale and other benefits), we envisage a stronger and more formal partnership between different levels of government in the planning and delivery of core infrastructure. We already have this to some extent for land transport (through regional transport committees and the National Land Transport Fund), but a more proactive role for central government in the provision and funding of three water services would also be desirable.

We therefore propose the use of jointly owned council controlled organisations (CCO) at a regional level for the planning, funding and delivery of drinking water and wastewater infrastructure and services. A “regional” CCO would not necessarily have to mirror the catchment-based boundaries of regional councils or new regional unitary authorities (although that would be simplest); boundaries should instead reflect what makes most sense for the operation of water services. This CCO model should be adjusted by allowing for or requiring the Crown to be a partner in these organisations alongside local government. At the time of writing, the government has signalled that significant central funding of water infrastructure projects will, essentially, be conditional on councils accepting the need for substantial institutional reform to water providers (a shift to publicly-owned, regional or cross-regional entities).

At the same time, we recommend the establishment of a powerful economic regulator (or conferring new powers on an existing entity like the Commerce Commission). An economic regulator would have responsibility for ensuring that investment levels and pricing for three waters are both adequate (for the level of service required) and fair, and that a long-term and public-interest perspective on water services is being taken. An independent environmental and health regulator for water services would be important, too. Taumata Arowai has now been established to fulfil this role under recently enacted bespoke legislation, although we note that to simplify the institutional landscape this could in the future be folded into a strengthened EPA (especially if it were to take on a stronger role with respect to environmental standards for wastewater and stormwater as well as drinking water).

A future system should also see the continuation of a partnership approach to land transport between central government (particularly the New Zealand Transport Agency (NZTA)) and councils (as new regional unitary authorities). The arm’s length decision-making of the NZTA, already well established at the national level, could usefully be mirrored by a move towards arm’s length CCOs for transport at the regional level (as is the case for Auckland Transport already). It would be worth further investigating whether a greater proportion of funding levers should be channelled towards direct regional control, rather than filling the coffers of the Land Transport Fund for distribution by the NZTA.

45. Central government should have a stronger role in the planning, funding and provision of essential intergenerational urban infrastructure beyond just transport. This includes three waters infrastructure.

46. Jointly owned CCOs should be deployed at a regional level for the planning, funding and delivery of drinking water and wastewater infrastructure and services.

47. A CCO model should be adjusted by allowing for/requiring the Crown to be a partner in these organisations alongside local government, with a corresponding degree of capital investment (and control).

48. A dedicated, independent regulator for water services is a good idea, and Taumata Arowai has recently been established by specific legislation to fulfil this function. This could be folded into a strengthened EPA to avoid adding complexity to the system, especially if Taumata Arowai were to take on a stronger role with respect to environmental standards for wastewater and stormwater as well as drinking water.

49. An economic regulator for water services should be established, with responsibility to ensure that investment levels and pricing are both sufficient and fair, and that a long-term and public-interest perspective is being taken.

50. A future system should see a continuation of a partnership approach to land transport between central government (particularly the NZTA) and councils (to be regional unitary authorities).

51. The arm’s length decision-making of the NZTA could usefully be mirrored by a move towards CCOs for land transport at the regional level (as is the case for Auckland Transport already).

52. It would be worth further investigating whether a greater proportion of funding levers (eg those currently going into the Land Transport Fund) should be directed towards regional rather than national control.

Aside from institutional change, it is worth revisiting how water infrastructure and services are funded. Funding and institutional design settings are closely linked. The economies of scale and ability to socialise costs across larger populations and geographical areas produced by regionalising councils and infrastructure providers (through regional CCOs) should help address some funding challenges at the margins. But more needs to be done.

In particular, we see a compelling case for further enabling and encouraging the use of user-charging (including volumetric charging for drinking water and wastewater, and proxy measures for stormwater);
targeted rates (where those in places that benefit from investment pay for it through rates); and value uplift capture (where infrastructure can be paid for by levying a portion of the increased value of properties benefiting from that investment). That said, it is essential that such mechanisms carefully consider how impacts on the poor or vulnerable are to be addressed, including through the use of separate distributional policies and subsidies, and user charging should not be absolute.

There is also a need for predictable, need-based central government funding contributions where required. This is particularly to overcome the significant investment deficits in water infrastructure that have built up over the years, but also to contribute on an ongoing basis to services that have strong national interest implications (eg no New Zealander should get sick from drinking water simply by virtue of the region in which they live). The need for central government to open its purse has also been reinforced by the Covid-19 crisis, due to the additional funding constraints it has caused for local government (especially smaller councils) and the unique ability of central government to borrow for large-scale spending that has intergenerational effect.

That said, because councils would remain primarily or partly responsible for the operation of CCOs (alongside the Crown) and may be required to fund them, there is also a need to revisit how new regional unitary authorities would be funded. We need to target the underlying problems with the existing local government funding and financing system, not just fill the gaps through ad hoc handouts from the Crown.

First and foremost, councils need to be able to raise sufficient money to meet the needs of communities. We agree with the Productivity Commission that more needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure. Again, this could involve greater user-charging, value uplift capture, targeted rates, enabling the use of special purpose vehicles to lift debt off council balance sheets, and relaxing borrowing constraints.

The right incentives also need to be in place to both raise and spend core revenue appropriately. An alarming history of underinvestment in three waters infrastructure should, following a large capital injection from central government, be addressed through institutional reforms (regionalised CCOs and an economic regulator).

53. Incentives to underinvest in three waters infrastructure should, following a large capital injection from central government, be addressed through institutional reforms (regionalised CCOs and an economic regulator).

54. The economies of scale generated by regionalising infrastructure providers through CCOs should help address some funding challenges faced by councils for transport and three waters infrastructure. However, that will not be enough.

55. For three waters infrastructure, there should be predictable, ongoing and need-based central government contributions where required to meet adequate levels of service delivery and environmental and health standards. That would likely come with a corresponding level of control through representation in regional CCOs.

56. Funding and financing constraints on local government and residents in the wake of Covid-19 reinforces the need for a greater central government role in financing intergenerational urban infrastructure.

57. Councils would remain primarily or partly responsible for the operation of regional level CCOs (alongside the Crown) so may be required to fund them in part (alongside cost recovery measures by a CCO itself). Thus there is a need to revisit how local government itself is funded.

58. More needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure.

In the more specific context where cities are growing rapidly, infrastructure funding incentives require more systemic correction. There are significant practical constraints on raising and spending money for growth. In the current system, there can be strong political pressures on councils not to increase rates (their core funding tool), especially if rates are being used to service new development and the benefits are not apparent to existing residents who are paying for it (and who are the ones voting in local elections). In fact, where that growth is accommodated through increased density, residents may...
actually feel they are paying for a form of growth that, for
them, has undesirable impacts on amenity values. There
can also be resistance among residents to increasing
debt levels to finance rapid growth, and there are practical
and legal constraints on councils in raising debt finance
despite the fact it is a fair way to spread costs over long
periods of time (and across existing and new residents).
Furthermore, councils bear the potential risks of
overestimating future growth and therefore oversupplying
infrastructure that must still be paid for by existing
ratepayers. All of this can lead to an institutional bias in
councils against rapid growth and therefore resistance
to the timely and proactive provision of serviced land for
new residential development. Pipes, roads and the like
can thus be provided on a “just in time” basis (or, indeed,
a “too late” basis), holding up appropriate development
(and housing supply) even where land has been rezoned
under the RMA. Where demand to live in an urban area is
high, that can send land prices spiralling up, exacerbating
problems with housing affordability.

According to Infrastructure New Zealand, the same
basic problem underpins all of these phenomena: there
is misalignment as to where the benefits and costs of
investment in growth infrastructure fall. In other words, it is
understandable that councils are reluctant to pay for rapid
urban growth, because its presumed benefits (in the form
of increased economic activity) accrue mainly to central
government via income tax and goods and services tax
(GST), whereas its costs and risks (supplying infrastructure)
fall to existing local communities. The other side of this coin
is that the costs of constraining growth (eg the significant
social impacts of housing unaffordability) fall on central
government to remedy through the welfare system and
other means, whereas its benefits accrue to councils that
are politically accountable to existing residents (eg lower
rates for communities, lower debt levels).

Some targeted measures should help to ensure that
adequate infrastructure investments to service growth
are made in a timely way. These measures would shift the
costs of infrastructure onto those who benefit (including
actual users), making for a fairer system and dampening
down political opposition to growth from ratepayers. As
described above, these could include authorising the use
of value uplift capture, encouraging the use of targeted
rates and providing for greater user-charging for water
and transport infrastructure (eg allowing for volumetric
charges for wastewater and congestion charging for
roads, the latter of which would have the added advantage
of reducing demand and therefore pressure on transport
infrastructure). Because central government benefits
from growth through its tax take and other means, this is
another reason that it would be appropriate for some of
the corresponding costs of growth infrastructure to be
borne by the Crown through predictable performance or
demand-based grants.

That said, we also see merit in allowing councils
themselves to levy a local form of GST. This would
provide councils with positive economic incentives to
fund infrastructure (which would at least be perceived to
result in greater economic activity and therefore tax take).
In contrast to just relying on central government grants,
this would give local communities more control over their
own destiny and reflect that councils are closer to the
communities that elect them; it would shift some of the
benefits of growth to councils rather than just shifting the
costs of growth to central government.

The ability to levy a regional GST may also encourage
the funding of broader social and economic development
measures that more narrow grants from the government
may not. Some have pointed out, for example, that
“without a revenue stream linked to value creation,
councils are … disincentivised from investing in
[ economically productive activities” more generally.13

We emphasise that a regional GST could not be a complete
replacement for council rates. This is because rates provide
predictability of revenue based on community need, and
core services like water and transport need to be provided
irrespective of any fluctuations in economic activity that
would impact on GST revenue. That is especially important
where a region may be declining in economic terms (eg
falling median incomes), since that should not be allowed
to imperil the basic services required for the health and
wellbeing of such communities. However, regional GST
would be a useful addition to the toolbox to use where
cities are growing rapidly.

More bespoke cooperative funding arrangements between
local and central government may also be required for
particular “one off” projects over time. A framework could
even be established whereby formal agreements are
made between central government and councils through bespoke "city deals", as has occurred in the United Kingdom. However, what these projects look like should emerge through a regional strategic spatial planning process to ensure that they are well integrated into a broader vision for urban change (see Chapter 10 on spatial planning), rather than being ad hoc grants for pet projects.

59. Some degree of cost recovery from those who use, or benefit from, urban growth infrastructure would be appropriate. In particular, a future system should facilitate value uplift capture to help fund large projects.

60. The incentives provided by the current system of funding infrastructure in the context of urban growth and renewal require correction. Targeted measures should be taken to shift the costs of infrastructure onto those who benefit. In particular, the Crown should be responsible for a much larger burden of the costs (and control) of drinking water and wastewater infrastructure.

61. We also see merit in allowing councils to levy a local form of GST, which would provide added incentives to proactively fund growth while allowing communities more control than Crown contributions. That cannot be a complete replacement for rates, but would be a useful addition to the toolbox.

62. More bespoke cooperative funding arrangements between local and central government may be required for particular "one off" projects over time, but this should be guided by a vision in a regional spatial plan (see Chapter 10).

63. User-charging should be deployed more in a future system both to provide a fair way to fund related services and to incentivise the efficient use of resources. This should include volumetric charging for drinking water and wastewater (and a proxy measure for stormwater) and congestion charging for land transport.

64. User charging and other forms of demand-based tools cannot be absolute and must carefully consider how impacts on the poor or vulnerable are to be addressed.

65. The system should not allow substantial new investment in urban infrastructure in locations or contexts vulnerable to failure in light of climate change.

66. There needs to be a clear link between a national adaptation plan, urban land use controls and infrastructure funding frameworks.

67. To facilitate urban adaptation to climate change we need a new funding mechanism in the form of a national adaptation fund, to be deployed according to clear and transparent principles and through collaboration between central and local government. There are different options for how that could operate and be capitalised.

Alongside land and infrastructure, buildings themselves form a core part of the urban environment. We conclude Chapter 9 by looking at the Building Act and how it could better complement and link to the urban sustainability objectives of a revamped Environmental Stewardship and Planning Act and Local Government and Infrastructure Act. While it should remain a standalone piece of legislation, construction standards and legislative principles under the Building Act should be strengthened to recognise the essential contribution that “green” construction will make to environmental outcomes in a future system. There are different ways in which this could be achieved, and we are pleased that the government has recently announced that the framework will be reviewed for such reasons.

68. An Environmental Stewardship and Planning Act and the Building Act should not be merged. However, the statutes should be more closely aligned to coordinate permitting processes, achieve common urban objectives and pursue synergies in the built environment.

69. Construction and infrastructure standards should be strengthened to recognise the essential contribution that “green” construction will make to environmental outcomes in a future system. There are different ways in which this could be achieved, including through performance-based subsidies, stronger certification programmes, charging, and incentives.
10. Coordinating land use, infrastructure and other aspects of the system

Chapters 5 to 9 are concerned primarily with how the RMA and infrastructure/building legislation should be reformed to improve urban outcomes. In Chapter 10 we look at how these could be better aligned with each other. This is particularly important in areas of high urban growth, where the pressing need to deliver more housing cannot happen without both land use change (eg rezoning) and the services required for people to live there (eg roads and taps). Those things must occur together, or at least in a reasonably timely way; there should be a reasonable degree of certainty that land use change will be facilitated through the funding of supporting infrastructure and that infrastructure expenditure will not be wasted or under/overestimated by failing to provide for complementary land use change. For example, a dense urban neighbourhood with few carparks may function well only with a light rail connection, whereas a light rail connection may only be worth it if it services the many users provided by a dense community. Improving separate statutory frameworks in isolation will not be enough to achieve outcomes that rely on them working well together.

Alignment between statutes is important for other reasons too, including to ensure that possible synergies between development and environmental objectives are not overlooked and that our frameworks work towards common aims. We conclude that the current system is not well aligned in the urban context and needs reform. Timeframes for planning under the RMA, Local Government Act and Land Transport Management Act vary wildly.

Alignment between these statutes (and successors) does not require all processes to be merged into one. In fact, funding and regulatory processes will always look quite different, due to the fundamentally different nature of the decisions being made. But improvements could be made by having different statutory processes that proceed along similar timeframes, and which speak to each other or cross-reference more clearly than at present. A more agile process for land use planning (eg rezoning a neighbourhood through a regional combined plan) should assist, as this is often where delays are most noticeable. Institutional change – a move towards regional unitary authorities responsible for both land use and local infrastructure – should help too.

Alignment can be further supported by having similar or compatible legislative principles for decision-making across statutes – such as criteria that support green infrastructure, which can provide services while furthering the climate and environmental objectives of an Environmental Stewardship and Planning Act. At present, there are some normative disconnects between frameworks dealing with land use, infrastructure and other aspects of the environment. They should be oriented towards the same kinds of big picture strategic goals. For example, land transport funding decisions should be explicitly oriented towards furthering the climate and environmental aims of other legislation by promoting electrification, mass transit and public transport.

Beachlands, Auckland
11. Spatial planning

Most important to achieve alignment in a future system, however, would be the introduction of a completely new legal framework for spatial planning. Aligning different statutory processes at a project by project level will not be enough without a strategic vision for what we want our urban areas to look like in the long-term. This would see the collaborative development of regional or cross-regional strategic instruments – spatial plans – that would outline a vision for the growth or change of urban (and other) areas over time. Spatial plans would outline where and when things like housing, infrastructure, public services, protected ecosystems and productive land would be envisaged to go (and not go), and why: a clear spatial skeleton in light of which other more specific decisions are made. Managing rapid urban growth would be a big part of that, but it would not just be about ensuring cities provided sufficient development capacity. A spatial plan would be equally concerned with things like the protection and enhancement of ecologically valuable areas, versatile soils, climate change and community wellbeing.

72. A new legislative framework should be established to provide for mandatory regional and cross-regional spatial plans to be created. These plans would outline a vision for how urban areas would grow, contract or change over time.

Spatial plans would have real (although not absolute) legal influence over decision-making under other frameworks, including combined regional plans under an Environmental Stewardship and Planning Act and funding plans under infrastructure legislation. For this reason, the process for creating them would need to be inclusive and robust. An independent Futures Commission/Tikanga Commission would need to have a strong review role, and mana whenua and central government (and its agencies) would need to be intimately involved in its co-creation and sign off. That is partly because strategic plans are unlikely to be achieved in practice if there is no associated funding commitment (especially where outcomes rely on expensive and timely investment in supporting infrastructure), so it would be important for them to be accompanied by indicative sources of funding and for both local and central government to be obliged – at least to some degree – to follow through. And while spatial plans may be regional in focus, many branches of central government would control crucial funding levers and are therefore vital to success. A strong partnership approach is needed, and in Chapter 10 we shine spotlights on the context of special housing legislation where a top down approach has undermined this. In short, a spatial plan would be a mechanism to ensure all decision-makers and funders (and private sector actors) are working towards a common vision for an urban area.

73. Regional spatial plans would not be directly binding in a regulatory sense. However, they should have real legal influence on decision making under more targeted frameworks (e.g., for land use and infrastructure). It would not be feasible for them to be given effect to in these other statutes but a reasonably strong legal direction should be put in place to ensure strategic planning is worth doing.

A number of different planning instruments in the current system can be described as “spatial” and “strategic”. District plans under the RMA are inherently spatial. Infrastructure strategies under the Local Government Act and future development strategies required under RMA national direction, are forward looking. And there are many instruments specifically described as “spatial plans” that have been created by local government and others with the express intention of coordinating the decisions needed to ensure effective urban growth over decades (and the Auckland Plan is even mandated by statute).

However, there are a number of ways in which these efforts fall short of what is needed in the future. In particular, there are currently no mandatory triggers for spatial planning to occur; where spatial plans do exist they do not have the legal influence to ensure decisions under multiple other statutory frameworks follow through with them; and there is no formal place in which multiple tiers of government, Māori and others come together early on to make strategic decisions in partnership. Future development strategies required in some places under the RMA, and voluntary spatial planning done under the Local Government Act, lack legal weight and the ability to coordinate decision-making under other laws.

Generally speaking, the current system has also lacked strong, overarching urban strategy. It is not firmly focused on the future or the need for change to pre-empt or prevent issues. Some have characterised this as a system that is reactive or (adverse) effects based, rather than one that is geared towards positive change and is outcomes focused. We require a formal framework for spatial planning that addresses these shortcomings.

A future system could also be simplified, by integrating the various fragmented strategic instruments we have now (such as infrastructure strategies and future development strategies) within a regional spatial plan. The place of regional policy statements will need to be thought through carefully. Conceivably they could form part of a spatial plan, but they could equally remain part of an RMA style regional combined plan. In the event of the latter, which we would lean towards, their development should be closely aligned with spatial plans to prevent duplication, inconsistency or overlap.
74. On balance, we think that regional policy statements should be included within regional combined plans under an Environmental Stewardship and Planning Act. They should be reviewed alongside regional spatial plans.

75. Other existing instruments could be subsumed within regional spatial plans (eg council infrastructure strategies) or removed entirely (eg future development strategies required under the NPS on Urban Development).

76. There would need to be a robust process for the creation of spatial plans. Central government and Māori involvement in co-creation, alongside councils, infrastructure providers and communities, would be important.

77. Spatial plans would contain considerable value-based judgements and should not be subject to appeal. However, independent review by a Futures Commission and Tikanga Commission/commissioners would be important to ensure an inter-generational view is taken.

78. Final sign off should be by councils and mana whenua, and it would be important for an ongoing Crown commitment to implementation to be reflected in formal ministerial sign off as well.

79. Spatial plans should be accompanied by a description of anticipated costs, and should signal where funding is envisaged to come from.

12. An urban development authority model

In Chapter 11 we explore the concept of an urban development authority. The basic idea is that a publicly owned entity can come in and master plan, fund and deliver a large-scale urban development or renewal project – a whole suburb or neighbourhood – using special powers, after which the area reverts to “normal” settings. A bespoke piece of legislation – the Urban Development Act – has recently been enacted. It endows an existing government entity (Kāinga Ora, established in 2019) with such powers, including powers to alter the operation of the RMA (and instruments made under it) when planning and delivering new development areas.

We see a place for an urban development authority model in a future resource management system, and the legislation has a number of positive aspects. In particular, it is good that central government, through Kāinga Ora, will have an active role in actual development activities – shovels in the ground – to provide housing and catalyse urban renewal in places that need it most and where the private sector might not have capacity or interest. It could also provide for more integrated development, at least in the sense that the same entity would be responsible for planning and funding land use, development activities and associated infrastructure within a particular project area. That could address some of the issues about timing and coordination of decisions and enable urban growth and housing supply to be achieved in a more timely way. And while robust safeguards are needed to protect people’s property interests, there is a case for providing land aggregation powers to regenerate complex and fragmented existing urban areas at scale.
80. We see a place for an urban development authority model in a future system. In particular, central government should have an active role in development activities to provide housing and act as a catalyst for urban renewal.

81. Powers to compulsorily acquire land will be intensely controversial (especially without offer back rights) and will require robust safeguards. But some powers will be useful for the regeneration of complex brownfields sites at scale.

However, in Chapter 11 we note a number of concerning aspects of the legislation, mainly around its potential to weaken environmental protections in and around cities. In its drive for development and housing outcomes it is not strong enough on biophysical protections. Central to this is how the RMA’s environmentally focused purpose and principles apply, notably the bottom lines contemplated by sections 5 and 6. In short, although it appears that the legislation is intended to apply Part 2 of the RMA largely unchanged, that is not well reflected in a number of its provisions. This has the potential not only to undermine environmental safeguards, but also to create considerable complexity and uncertainty through a complicated web of cross-references, confusing drafting and novel terminology that is likely to require extensive litigation to resolve.

We therefore conclude that all other principles in the legislation – including its purpose – should be made expressly subject to the purpose and principles of the RMA (with the exception of a more relaxed approach to urban amenity and strengthened Treaty provisions). In the longer-term, it would need to be firmly subject to the purpose and principles of the new Environmental Stewardship and Planning Act proposed in this report, which would itself be much better than the RMA at recognising the value of housing, urban renewal and urban design. The rationale to override such an Act would be much weaker.

The pre-eminence of environmental legislation – the RMA and its more fit for purpose successor – would also need to flow through to decision-making on development plans and consents provided for under the Urban Development Act, not just a general statement in its purpose. It is particularly concerning that Part 2 has been explicitly demoted in the context of consenting. In our view, it has not been adequately established that the purpose and principles of the RMA as a whole – and the wide range of crucial environmental protections they embody – are barriers to good urban outcomes that somehow need to be overcome.

There is a real risk that the new legislation will be interpreted as allowing an approach that "balances" the development objectives of the legislation with the environmental bottom lines established under the RMA, in an alarming revival of the “overall broad judgement” approach that was put to bed so deftly by the Supreme Court in the King Salmon jurisprudence years ago. While we wait for more systemic changes by replacing the RMA with a new Environmental Stewardship and Planning Act, special powers under the Urban Development Act should be targeted at core problems like overcoming nimby objections to urban change and density. Its scope should not extend to undermining, demoting or otherwise causing confusion about the wider environmental principles of the RMA.

82. The RMA’s (and, in the longer-term, Environmental Stewardship and Planning Act’s) purpose and principles will need to remain pre-eminent in all types of decision-making under the Urban Development Act, aside from targeted changes to aspects like urban amenity. The relationship between the statutes needs to be made clearer and less complex.

Furthermore, we do not see any compelling rationale for downgrading the RMA’s existing direction to “give effect” to national instruments like NPSs and NESs, including the New Zealand Coastal Policy Statement and NPSs specifically concerned with managing population growth and good urban planning. The Urban Development Act includes a weaker instruction that development plans produced under it need to be “consistent” with national direction. This is despite the potential for a development plan to effectively function as a replacement for an RMA plan, which would otherwise actively have to give effect to national direction.

At the same time, there is a much stronger obligation in the Act to “give effect” to the government policy statement on housing and urban development which, as the name suggests, is development rather than environmentally oriented. At the very least, one can imagine the uncertainty and arguments that would arise as to whether a development plan would be able to override the provisions in a regional plan that have been specifically designed to give effect to something quite directive, like the NPS for Freshwater Management.

83. The position of national direction under the Urban Development Act is not strong enough. We do not see any compelling reason to change the direction to “give effect” to it, as is the case under the RMA, particularly in light of the development-oriented purpose of the Bill and Kāinga Ora’s stronger obligation to give effect to the government’s policy statement on housing and urban development.

Moreover, while we see a strong case for being able to override aspects of existing district plans, the same cannot be said for regional plans. These contain crucial urban environmental protections relating to air, water and soil. The real point of including powers to override the RMA should in our view be much more targeted – to address nimby barriers to densification, amenity and changes to land use patterns in district plans in order to regenerate brownfields sites and provide housing, not to undermine biophysical environmental bottom lines in
regional instruments or ride roughshod over established environmental objectives and policies. Such concerns are exacerbated by the fact that regional council involvement in establishing a project and making decisions on development plans is, under the Act, marginalised compared to territorial authorities. This is despite the inclusion of sweeping powers to override the regional instruments for which those councils are responsible.

84. We see no compelling reason why powers under the Urban Development Act should extend to the ability to override regional functions. Regional councils (prior to local government structural reform proposed earlier) should have a stronger role under the legislation.

All of the above is made even more concerning by the prospect that projects, and the powers to override the RMA that come with them, are proposed to be allowed almost anywhere and for a wide range of purposes. The Urban Development Act is not just about housing; it is equally about commercial, industrial and other development. The need for a project to be “urban” is a constraint without clear boundaries. The legislation is also not just about regenerating run down areas of cities or de-risking development of former industrial sites; it could also conceivably be used to master plan entirely new urban settlements, or sprawling suburbs, that go against a carefully planned growth strategy or spatial plan years in the making (including future development strategies mandated by the government’s own national direction on urban development).

Ultimately, the urban development authority model is not a proper alternative to the more holistic, strategic framework for regional level spatial planning outlined in Chapter 10. The Urban Development Act should be seen as a tool for government to actively implement a spatial plan, not an opportunity to override it. Much stronger constraints are needed regarding where and why projects can be established in the first place if the Act is not to become a subtler reincarnation of the much maligned National Development Act (which was part of the landscape that led to the creation of the RMA in the first place).

There is even a considerable risk that the entire system for large scale, locally-led strategic urban planning could be effectively replaced by allowing the liberal use of a centralised, fast-tracked process for ad hoc development. It is not fanciful to imagine that large chunks of a city like Auckland would simply be re-developed under the new legislation by circumventing RMA processes completely. In light of the long-term system reform work being progressed by the government’s independent panel – and the recommendations in this report – this is putting the cart well before the horse.

85. The urban development authority model is not a proper alternative to a framework for regional level spatial planning. The legislation should be used as a way to implement a spatial plan rather than override it.

86. Stronger safeguards are required around where and why project areas can be established.

In short, the Urban Development Act should categorically not be seen not as a way to weaken environmental protections or “get around” other parts of the system. Instead, it should be seen as a way for government-led housing and urban renewal projects to be done faster and in a more integrated fashion, but in ways that safeguard and actively improve environmental outcomes. One would hope that the powers it confers would not actually be needed very often if more fundamental issues with the existing system were resolved.
13.  Wider systemic change

At the core of our proposed future system for urban resource management would be a new Environmental Stewardship and Planning Act, which would be closely linked to legislative frameworks for local government, infrastructure, climate change and urban development. All of this would be presided over by an integrated framework for spatial planning at a regional and cross-regional scale. Such reforms should see marked improvements in social and environmental outcomes. While it is beyond the scope of this report, which is about framework level reforms, we would also expect officials to look closely at all provisions in the existing frameworks and take opportunities to simplify and improve the accessibility of our legislation. The RMA in particular has grown too long, unwieldy and legalistic, and its replacement should be more streamlined.

Yet overhauling these particular legal frameworks will still not be enough. We also need to consider a wider context of reform that spans different spaces, domains, sectors and aspects of human activity. In many respects, here it does not make sense to speak of “urban” reforms at all; most resource management issues are systemic and require a holistic view of our society and environment. In Chapter 12, we touch upon a number of ways in which the fabric of our governance, social and economic models need to be rethought more fundamentally over the coming years.

A new statute – a Future Generations Act – should be enacted in a future system. This would be the legislation under which strategic spatial planning occurred (discussed in Chapter 10), but it would also have a much wider role. It would be a sort of resource management constitution. At its heart would be a legislated recognition that all human activity and policy, including in the urban setting, must occur within strict biophysical boundaries and that the natural world has “the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes”. It would redraw fundamental aspects of our governance arrangements, including by creating the Futures Commission mentioned earlier, which would inject strong independence across a wide spectrum of public decision-making. This could reflect a similar “Future Generations Commissioner” as established in Wales. The Act would also:

- Provide a set of high-level inter-generational objectives that would be mandatory considerations for all public decision-making (including proposals for legislative change and discretionary funding decisions), not just decisions taken under specific statutory frameworks like an Environmental Stewardship and Planning Act or infrastructure legislation. Carbon neutrality, resilience to harmful change, environmental security and zero waste should be prominent. We can look overseas for inspiration on this front, including to countries like Sweden, Canada and Wales. The Public Finance Act (governing the government’s budget process) should be strengthened through reference to such principles. The enormous amount of intergenerational debt being amassed in the response to Covid-19, particularly in and around cities, makes this even more important.
- Outline, at a high level, the nature of the Treaty relationship in relation to the use and protection of natural resources and the environment, including in cities. Some have suggested that national direction under the RMA or its successor (an NPS on the Treaty relationship) could fulfil this function, but we consider that it should be embedded into a higher level, constitutionally significant framework that guides all others.
- Provide for the creation of an integrated national resource management strategy (a “Futures Strategy”), outlining a vision for our country’s future and methods for creating synergies and addressing risks using multiple statutory and non-statutory levers. Climate change should be front and centre. For example, the Productivity Commission has called for a low emissions strategy that specifically outlines what the government will do to meet emissions budgets and targets, and which could be embedded in a wider Futures Strategy.
- Require a Futures Commission to produce and table in Parliament periodic “futures scanning” reports that look across New Zealand and the world to proactively identify emerging issues, threats and opportunities (environmental, social, health and economic) and recommend measures to pre-empt them. The government would be required to respond to the reports. Looking ahead is particularly important in cities, where markets, demographics, technology and societal expectations can change rapidly.
- Provide for the Futures Commission to issue periodic report cards to the government (or specific public authorities, like local government) assessing its performance against clear statutory principles and targets (eg for environmental enhancement, housing etc). This would align with electoral cycles to ensure that New Zealanders went to the polls with the assessment in mind. Strong independent oversight of strategic and inter-generational urban and environmental matters is an emerging theme in many countries.
- Provide for the establishment of a single “Futures Group” within government, comprised of senior officials from all departments relevant to the resource management system (chaired by the Department of the Prime Minister and Cabinet) and advising a special Cabinet committee (rather than a specific minister). This would be a meaningful whole of system steward. A Futures Group would respond to complaints that there is a lack of clear leadership across the system (particularly in cities) and that institutional fragmentation affects the ability to deliver cross-cutting outcomes. It could be a formally established as an example of an “interdepartmental executive board” already contemplated under proposals for a new Public Service Act.
• Provide for a more integrated and comprehensive system of environmental monitoring and reporting, including on how land is being used in and around urban areas and the state of housing and infrastructure. The Act could incorporate, strengthen and expand on the existing Environmental Reporting Act.

It would be possible to put the content of a Future Generations Act, including spatial planning, within a new Environmental Stewardship and Planning Act (ie a considerably expanded RMA-style piece of legislation). However, on balance we think that it would be more appropriate as a standalone statute. It would need to set up an institutional and normative architecture that is high level, of constitutional significance and would span many other pieces of legislation. In that sense it would be more conceptually akin to the cross-cutting Climate Change Response Act.

87. A new statute – a Future Generations Act – should be enacted in a future system. This would be the legislation under which strategic spatial planning occurred but it would also have a much wider role.

88. This Act should provide a set of high-level objectives to guide the exercise of all public powers; including outlining a consistent approach to Treaty issues relevant to resource management.

89. The Act should provide for the creation of an integrated national level resource management strategy.

90. An independent Futures Commission should be established under this Act. It would be charged with creating futures scanning reports to which government would need to respond.

91. A Futures Commission should be required to issue a report card for public authorities based on their progress towards achieving inter-generational targets established under this Act or others like a new Environmental Stewardship and Planning Act.

92. The Act should establish a whole of system steward (a Futures Group) within government, being a forum where different agencies and departments came together to speak with one voice.

93. The Act should provide for a more comprehensive system of monitoring, reporting and evaluation, building on the Environmental Reporting Act.

Cross-cutting principles and strengthened institutional arrangements will be crucial. But they need to be complemented by strengthened tools to actually transform people’s behaviour on the ground. Regulatory and funding tools have their limits here; urban objectives – particularly environmental ones – can often be realised more effectively by engaging with people’s incentives. This is particularly the case where the imperative is to improve things rather than just prevent further harm (it is harder to make people do things than to stop them doing things).

We need to think hard about changing underlying economic and social pressures, not just strengthening the regulatory system that needs to respond to them. The ultimate aim must be to transform our cultural practices and social expectations so that people naturally defend and enhance the environment and improve wellbeing, and do not constantly push up against regulatory barriers. We do not, for example, care for our children or our neighbours because there is a threat of regulatory action; our approach to the environment should be the same. That is an ongoing project, but in the meantime more tangible measures to encourage changes in behaviour should include:

• Greater use of “green” taxes to influence people’s behaviours (eg feebate schemes, congestion charging, pollution taxes). Green taxes can be used to raise revenue too, supporting the imperative to fund complementary measures to improve environmental wellbeing in cities, or addressing the shortfall in funding for environmentally sustainable urban infrastructure. The Tax Working Group shared this sentiment, calling for a “profound change to existing patterns of economic activity” through the tax system.

• A strengthening of the regulatory, funding and other tools under the Waste Minimisation Act to accelerate progress towards a circular economy. This is particularly important in the urban context, where a lot of industrial, commercial and household waste is generated.

• More positive financial incentives, such as making urban environmental restoration activities tax deductable, providing tax exemptions for public transport, and tax/rates rebates for the inclusion or retrofitting of green building measures. Government subsidies could also be deployed in a more systemic fashion for activities that enhance the urban environment (eg for ecosystem services), including through independently managed funds that are capitalised through green tax revenue and through competitive processes where funding is provided to those who cause most improvement per dollar.

• A gradual shift in our underlying tax base towards an environmental footprint tax, which would tax people according to their impacts on the environment. This would incentivise urban residents to actively enhance environmental outcomes on their own property to minimise their tax burden, through (for example) indigenous planting, roof, rain or vertical gardens, and green building design features. At present, tax settings encourage the depletion of natural capital, so regulatory responses are forced to fight a rearguard action against overwhelming private incentives or are simply left to mitigate the fallout. And while many details of an environmental footprint tax are difficult and would need to be
worked through carefully, to some extent this could shift tax away from productive activities (through reductions in income tax).

- Making it easier for people to do positive things that they may wish to do already, but where they lack capacity, information, resources or coordination. For example, some local authorities have provided native plants at no cost for people to plant in urban road reserves. The development of a coherent network of community conservation hubs shows real promise in marrying up volunteer effort and passion with public coordination, resourcing and expertise. There is no reason why that would be of less value in cities, where there are many more people and resources available to coordinate. And people may change their spending and investment preferences if they have more information about companies’ environmental/climate performance or risk exposure, which can be achieved through including these things in mandatory financial disclosures.

- Nudging people’s behaviours towards positive urban outcomes (eg providing visual cues that influence people subconsciously. For example, painting footprints leading to recycling bins; making positive activities more enjoyable, like less congested lanes for electric vehicles or wider cycle paths; appealing to people’s morality and desire not to be worse than others in their community or peer group; and giving real time feedback so that the negative consequences of one’s actions are readily apparent).

- Strengthening directors’ duties under the Companies Act so that they extend to public interest matters like environmental wellbeing, not just the financial interests of shareholders.

- Strengthening government involvement in the certification of green products, services and businesses to prevent greenwashing.

- Reforms to the education system, to inject sustainability and climate concerns (“eco-literacy”) into the heart of the school curriculum, as well as reviewing the core content of vocational training
courses vital to future sustainability (eg planning and engineering). There is considerable potential to align environmental education with an understanding of mātauranga Māori. Education is not just formal, either. Urbanites of all ages need to see it and feel it in their neighbourhoods, in which case they will learn to value what it provides.

- Strengthening public messaging around environmental enhancement. For example, a citizen’s assembly in France has proposed a public advertising campaign against excessive consumption, as well as measures to restrict private advertising for polluting or carbon intensive products. The Covid-19 response has shown that an active public messaging service can be effective in transmitting important information, causing people to rally around a common cause and changing people’s behaviours.

Aside from specific reforms that will take us where we want to go, as a country we also need to have a robust conversation about what our future should look like – both urban and otherwise. For example, it is far from ideal that the desirability of urban population growth is a topic that is often brushed under the carpet. How big do we really want Auckland to get? Would we have to choose between productive land and housing if we stopped growing so fast? Do we want to see the continued decline of rural communities? Would we want a New Zealand of 10 or 20 million people, most of them in ever-expanding cities?

There is often an underlying assumption that as a nation we have little ability to control or direct demand through the resource management system and that we simply have to somehow accommodate population pressures. Any suggestions to the contrary can easily descend into heated arguments around migration, xenophobia and the almost heretical idea that we can live prosperous and happy lives without endless economic growth (often seen to be fuelled by population growth). Is it time to have an open conversation about such things?

We cannot, obviously, tell people where to live or how many children to have. We are, and will continue to be, a liberal democracy. Yet over half of Auckland’s projected population growth over the next few decades is anticipated to come from internal migration and birth rate, and this will cause significant costs and risks. Discussions about demography and density, and our ability as a nation to be self-sustaining in terms of food supply and other essentials, are now much more at the forefront of policy questions in light of Covid-19. How can we expect to make sensible decisions about protecting elite soils when we have no real plan for the population that it may be required to support, especially in light of the uncertainties created by climate change and the potential for pandemics that may render ourselves more isolated from the rest of the world? Such conversations could be carefully framed within the development of a population policy by an independent Futures Commission.

Conversations about consumerism and perpetual economic growth may prove even harder to have. Cities – especially large and growing ones – use vast amounts of resources. But we live in a society that constantly tells us to want more. We often remain sceptical of environmental warnings until it is too late to prevent them (at which point we tend to search for technological solutions). The desirability of growth is instilled into our daily lives, as if endless increases in resource exploitation and consumption are both possible and necessary if we are to avoid collapse. The reality is that more people, and constant expectations for higher standards of living, is putting increasing strain both on the resources we use and the environment that must receive our waste. We need a different way of thinking: to reject the notion that endless growth in GDP terms, population, or urban expansion is possible or desirable, or that anything else is considered to be failure.

There is also the much broader, but even more significant, question of how we become a fairer society by shrinking the difference between the haves and the have nots. Recognising that there are ecological limits to economic growth forces us to confront this question. Nowhere is this more obvious than in large cities, where those with fewer means will be increasingly forced out of gentrifying areas, out of home ownership, or even out of housing altogether. We can tinker endlessly with interest rates, subsidies for first home buyers, loosening land use restrictions, reducing construction costs and so on, but for many this will still not be enough. There is an underlying gulf developing between those who are growing richer and those who are growing poorer.

94. A future resource management system needs to travel much faster towards an aim of a circular economy and zero waste, including in cities.

95. Economic and behavioural incentives need to be embraced much more strongly in a future system. This includes, but is not limited to, tax settings.

96. Wider system reforms will need to occur in parallel with the range of matters outlined in the Phase 2 report (including in relation to conservation, marine issues and questions of allocation), recognising that urban matters cannot be treated in isolation of their broader context.
14. Concluding comments

The conversations described above are ongoing, longer term projects, and will not be addressed overnight. Yet there are many measures that we can take in the shorter term to improve how our resource management system operates in urban areas. In this report we have outlined what we see as core reforms at the framework level.

We can transform the RMA to make our legislation better at defending environmental limits and promoting urban outcomes. We can integrate and revamp infrastructure and local government legislation alongside institutional and funding reforms. We can create a level of regional spatial planning and align norms and processes across legislation to ensure that we achieve timely development of housing, as well as promoting synergies with environmental wellbeing. We can ensure that construction standards and bespoke urban development legislation reinforces rather than undermines broader urban objectives. And we can pursue a range of measures encouraging wider societal change.

Of course, we should not hope for utopia. We need to accept that visions change with the times, as will the context in which they are implemented and the society that creates them. All our urban areas are different, with their own unique identities and histories to be reflected. They are, in many ways, inherently messy places, and that is part of their attraction. But we are of the view that our future cities will need to look quite different to the cities we have today, and will need to be designed to serve the needs of generations of people and nature well into the future.
ENDNOTES

1 This is not to downplay the importance of the “informal” mechanisms by which people manage resources and interact with the environment on a day to day basis. It is simply to say that the point of this project is to look at reforms to the formal system of laws, institutions and tools – public interventions – that can influence how they do so.

2 This has not really been felt yet at the time of writing, although it is still predicted by some.

3 Again, this has not yet been felt strongly due to countervailing forces of more New Zealanders returning home from overseas.


5 Including, for example, a clearer distinction between matters that require strict limits (e.g. freshwater quality) and those where balance and trade offs are appropriate (e.g. urban amenity); principles that embrace the value of good urban design and affordable housing, not just the prevention of adverse effects; more agile planning processes; and a potential distinction in the consenting context between private disputes and public interest questions.

6 The terms “stewardship” and “planning” are not, therefore, intended to reflect distinctions between “environment” and “land use”, or “natural” and “built”, but rather to reflect the importance of both tending what we have and having a proactive plan to improve it.

7 Under the NPS for Freshwater Management and the proposed NPS for Indigenous Biodiversity.

8 The recently gazetted NPS on Urban Development relaxes the requirements for carparking in new developments, but it does not treat this as an opportunity to seek biodiversity benefits.

9 In which case the “reset” process would apply.

10 Which is a risk under the newly enacted Urban Development Act: see Chapter 11.

11 See G Severinsen Reform of the resource management system: A model for the future (EDS, 2019), from 138. We note that it is positive that the EPA has taken on a stronger compliance and enforcement role under the RMA by virtue of the Resource Management Amendment Act 2020.

12 Again, at the time of writing, there is a proposal for central government funding of water infrastructure to essentially be conditional on councils accepting the need for institutional reform in water providers.


14 Compare Ecuadorian Constitution, art 71.

1. INTRODUCTION

1.1 The resource management system reform project

Over the last three years, EDS has undertaken a project looking at the future of New Zealand’s resource management system. The system is the formal means through which New Zealand protects, uses and manages its environment and resources in a way that produces the best outcomes for the environment, society and the economy. It is much wider than just the RMA, and includes dozens of statutes, institutions, funding mechanisms, tools and processes which apply across many topics (eg waste, climate, freshwater), spaces (eg marine, urban, rural) and sectors (eg forestry, agriculture, construction).

The resource management system is not categorically defined in any one place, and it has edges that are both fuzzy and that overlap with other “systems” (eg the “property” or “housing” systems). But it has become increasingly clear that we need to look at it in a holistic way. Its parts are closely interconnected and influence each other – that is what makes it a single system – and need to be aligned. Thus questions around environmental protection in a traditional sense (eg preventing pollution and protecting conservation areas and species) go hand in glove with questions around climate change, food production, energy generation, water security, housing, transport and many other topics. Very few legal frameworks dealing with human interaction with their physical surroundings can now be considered in silos, even though that is how they have largely developed over the years.

Over two phases and three years, the EDS project has explored how first principles system reform might look. Phase 1 was completed at the end of 2018, culminating in an extensive synthesis report. This defined and analysed the system, and put forward various options for change. It also sketched out three overall models that could be pursued. Phase 2 of the project was completed at the end of 2019, and saw the release of a further synthesis report which put forward a single preferred model for reform and offered steps for how to get there.

Towards the end of Phase 2 of the project, and with the support of EDS and its business partners in the Resource Reform NZ coalition, the government established an...
The system is there to mediate between people, so because people in close proximity will have disagreements. This always be inherently problematic by some standards, productive land and the climate. To manage cities' impacts on freshwater, biodiversity, how we ensure urban houses are affordable, and how we relate to each other and our environment. A pandemic may be a catalyst for a major shakeup of long-held perceptions about our economy, our society and our environment.

EDS is of the view that transformational change to our resource management system is required. We need something deeper than just another round of legislative tinkering or procedural change. There have been stirrings of this in recent times. The Treaty relationship, in particular, has driven innovative approaches, such as the use of legal personhood for Te Urewera and Te Awa Tupua. Commentators have increasingly questioned the economics of perpetual growth that has in practice led to considerable environmental degradation while all but ignoring the perils of climate change. And there is growing cross-party momentum to fundamentally rethink the RMA.

1.2 The urban context

Having laid down a broader framework for resource management reform in Phases 1 and 2 of the project – including various spotlights and chapters on urban issues – we considered that our towns and cities warranted a dedicated focus. Urban areas are where the vast majority – around 85 percent – of New Zealanders live and work. And despite our vast conservation estate and famous rural vistas, we are among the most highly urbanised societies in the world. In recent times, almost all our population growth has been seen in towns and cities.

Dense agglomerations of people can have significant social, environmental and health effects. Trade-offs are often required in ways that are not needed in less intensively populated parts of the country. For example, rural houses do not usually cut off each other's sunlight or views, or generate disputes over fence heights or noise. There are much bigger picture questions to face too – like how fast our cities should expand and in which directions, how we ensure urban houses are affordable, and how to manage cities' impacts on freshwater, biodiversity, productive land and the climate.

There are not many obvious "answers" here. Cities will always be inherently problematic by some standards, because people in close proximity will have disagreements. The system is there to mediate between people, so disaffection does not always signal that something fundamental is broken. However, some problems our cities are facing go beyond the acceptable give and take of urban life. We have witnessed disturbing trends relating to freshwater quality, housing affordability, infrastructure failures, restricted mobility, constrained productivity, biodiversity decline, and many other outcomes.

On the other hand, cities offer many opportunities for improving social and economic wellbeing. They are dynamic places, where social connections are formed, where innovation and imagination are fostered, and where economically productive activities occur. Overall, we can conclude that we are better off for being urban creatures; but we can also be assured that we are far from optimising the potential of urban areas or minimising their harm.

The purpose of this report is to outline how we see broader resource management reforms operating in the context of the urban environment. We do not provide a detailed account of urban planning or theory. Instead, we are concerned with the formal framework of laws, institutions and tools that will allow our cities to flourish. Of course, within that, a lot will depend on decision-making culture and capacity and the behaviours of people on the ground.

A significant body of work has been done over the past decade or so on urban issues by government, think tanks, academics and others, largely driven by pressing concerns with urban growth management and housing affordability. We offer a perspective that may in some ways be more transformational. Cities are not just a place for people to live, thrive, cooperate and make money. They must also be a cradle for nature and a beacon for sustainability. And we might find that synergies between social, cultural, economic and environment wellbeing are well within our reach – development does not have to come at the expense of the environment, or vice versa. For example:

Many approaches that make our cities more liveable (for example, more public transport, more walking and cycling opportunities, more green spaces, housing closer to services and amenities) can also help reduce our carbon footprint, increase resilience to the effects of climate change and protect ecosystems.

Many other synergies are possible. But to achieve them we need to think differently about the frameworks under which our cities operate. Simply abandoning or relaxing environmental “constraints” or “red tape” in the face of pressure to build more, build faster is an overly simplistic narrative that will not serve us well over timeframes longer than three yearly political cycles. It is worrying that some rhetoric is heading in this direction. Tinkering with the RMA and piling on new national direction as new problems emerge may help in some ways, but it will also not be enough. Such things are ultimately band aids. Instead, we must rebuild from the ground up. The need for soul searching spans statutes, institutions, processes, economics, and norms.
1.3 The report

We begin the report by outlining its scope, and looking at the concepts of the “urban” and “built” environments. What makes something an “urban” issue as opposed to a “non-urban” issue? Is there really such a thing as a “built” environment? Do we need to move away from the assumption that urban questions are mainly about managing growth and development? We also briefly outline (1) the context in which reforms would occur, including the uncertainties introduced by a global pandemic; (2) the objectives we have for our cities of the future; (3) the problems and challenges we face; and (4) the array of reform measures currently being taken by the government to address urban issues.

In Chapter 5 we then turn our attention to the core of the system requiring reform – the RMA. Should we get rid of it? If so, what does that mean in practice? We consider the case for reorganising our legislation along fundamentally different lines, into a Planning Act and an Environment Act. Ultimately, we do not think that is a good idea, and conclude that the concept of integrated management is something we should retain. In Chapter 6 we look at the purpose and principles of the RMA, and the adequacy of its underlying philosophy; in Chapter 7 we explore the role of national direction; and in Chapter 8 we turn to local government planning processes as well as institutional settings for councils. We propose a different approach for all of those things. But the key message across all these chapters is that the RMA is no longer fit for purpose. The depth and breadth of change required means that a reformed statute should really be seen as something new, drawing on the good parts of what we already have but building on quite different foundations. The RMA would be replaced by an Environmental Stewardship and Planning Act.

But the RMA is not everything. In particular, how we manage land in cities is intimately connected to how and when we provide the infrastructure required to make land use changes actually happen in practice. We look at that connection in Chapter 9. We need to think about why we provide infrastructure, what challenges it needs to overcome, how it is funded, by whom decisions are made and – perhaps most importantly – how it can be better aligned with other parts of the system to achieve common goals.

Yet public infrastructure for land transport and the three waters (drinking water, wastewater and stormwater) does not exist in isolation. It is intimately connected to the people and communities it serves, including private buildings. If we are to think about our cities in a holistic and visionary way, we need to consider not just land and infrastructure, but also how our regulatory settings for buildings help or hinder our goals for urban spaces. The Building Act is key to that, and we explore this in Chapter 9.

A significant theme of the report is the fragmented nature of our existing system. This applies across the board – many policy topics and statutory frameworks are still treated as silos. But nowhere is fragmentation more obvious than in an urban setting. In cities, people and activities are highly concentrated, change is a fact of life, and coordinated spatial management (what goes where, and when) is crucial to success. In Chapter 10 we look at how the system’s processes, objectives, funding and institutional mandates could be aligned better. Most importantly, we explore the need for a new spatial planning framework to bring different institutions, legislation, and processes together to outline a strategic vision for our cities.

In Chapter 11 we provide some thoughts on the concept of an urban development authority, encapsulated in the newly enacted Urban Development Act. It has benefits, but a lot needs to change. And we conclude the report in Chapter 12 by returning to a birds’ eye view, to highlight the kinds of systemic changes that are needed not only to transform our cities, but to transform our society. There are deep questions to ponder about population growth and distribution, an economic system obsessed with growth, and a growing divide between the haves and the have nots.
ENDNOTES


2 Ibid.


4 Comprising EDS, Infrastructure New Zealand, Property Council New Zealand, Employers and Manufacturers Association (Northern), and Business NZ.

5 This is not to suggest that all economic theory disregards environmental degradation – even free market economics recognises that environmental harm should be internalised. Yet the reality is that this has not happened, and economic theory tends to see things in instrumental terms.

6 See Chapter 4. See also Ministry for the Environment and Statistics New Zealand New Zealand’s environmental reporting series: Environment Aotearoa 2019 (2019); New Zealand Productivity Commission Better urban planning (2017); Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019); M Brown and others Evaluating the environmental outcomes of the RMA (EDS, 2016); M Brown Last line of defence: Compliance, monitoring and enforcement of New Zealand’s environmental law (EDS, 2017).

7 For example: New Zealand Productivity Commission Better urban planning (2017); Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019); New Zealand Council for Infrastructure Development Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand (2015); Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010); A Dormer and others Report of the Urban Technical Advisory Group (July 2010); M Foster and others Report of the Minister for the Environment’s Infrastructure Technical Advisory Group (2010).


9 Others include: energy security through localised power generation (eg solar and electric vehicle/home batteries); natural hazard management, pollution mitigation, biodiversity gains and amenity value generated from restoring urban wetlands; water security and flood prevention through building standards focusing on rainwater retention; housing affordability, increased social connection, and efficient mobility via the densification of urban areas.

10 This is not just about pipes and gutters. Three waters infrastructure includes a wide range of things, including pumping stations, water treatment plants, outfall structures, and “green” infrastructure like wetlands.
2. SCOPE OF THE REPORT

In this report we are concerned with the urban environment in the context of wider resource management reform. The resource management system is not formally defined anywhere, but we offered our own definition in the Phase 1 report (see Figure 2.1 below). The key point is that it is much wider than just the RMA, and does not adhere to legislative boundaries. We cannot just list a series of existing statutes and say that this encompasses the whole system in need of reform.

However, the resource management system is still concerned primarily with the management of natural and physical resources. For example, while they may be mentioned in passing, we are not directly concerned with reform of the financial sector, construction industry, interest rates, immigration policy, and various other government initiatives that can influence outcomes in cities (like housing affordability). The welfare system, broader government fiscal settings and criminal law also have significant influence on how cities look and feel, but are not looked at here.

Furthermore, we are concerned with the formal system by which public interventions occur. This is not at all intended to diminish the importance of private action or people's morals. It simply recognises that the point here is to target those areas where public authorities can have an influence. That includes interventions that may change people's private actions, such as economic instruments and behavioural incentives.

Much ink has been spilled on issues relating to the "urban" or "built" environment over the last decade or so. The core (although not the only) driver for this has been rapid urban growth and its impact on housing affordability, as well as a general sense that the RMA is not doing a good enough job when it comes to supporting good or fast decision-making in urbanised places like Auckland, Hamilton, Christchurch or Queenstown.
But what do we mean by the "urban" and "built" components of the resource management system? And how do those things relate to terms like "non-urban" and "natural"? The words are by no means interchangeable, amenable to sharp distinctions, or easy to define at all (see Figure 2.2 below). Yet they are often used in the literature in quite vague ways to describe the same or similar things. That is fine if the intention is to use a loose label to give readers a sense of the types of issues being defined more specifically later on (eg using land for urban growth, funding infrastructure, or providing housing). But if these concepts are being used to define a narrow field of inquiry – and exclude others – it can present the risk that one aspect of the resource management system is being looked at in isolation of others to which it has close connections.

Precise definitions become particularly important if, as explored in Chapter 5, we were to radically alter our legislative arrangements by splitting the RMA. Could we realistically have separate “urban” and “non-urban” statutes? How would we distinguish between things subject to one or the other? Can we have different principles within a reformed RMA applying only to the “built” and “natural” environments? What kinds of decisions would they apply to in practice?

Thus, suggestions that “any future planning system must ensure… the urban environment is not divorced nor managed independently from its surrounding natural environment” still beg tricky questions. “Urban” is not the opposite of “natural”, or the same as “built”. It simply describes an area in which a critical mass of people live in close proximity to each other. The densest cities still contain “natural” elements like air, freshwater, soil, flora and fauna. Even inside an office building, we still breathe air and drink water. And we should not deny the potential for biodiversity to flourish in urban areas as much as it does in rural areas. Nature does not just surround cities; it is inside them and permeates them. Even urban “infrastructure” can be natural – one might think of a wetland purpose-built to filter contaminants and manage flooding risks as an alternative to pipes and outfall.
structures. Ultimately, a city is a spatial category – you can locate one on a map – while elements of the natural environment exist across all spaces.

Similarly, a non-urban area is not necessarily a natural one. What do we mean by “natural”? Urban surroundings are often farmland (being one reason cities were located in such areas to start with), which can be heavily modified settings that contain many built elements. Farms, market gardens or lifestyle blocks are arguably no more natural than an urban botanical garden. Even national parks have tracks, huts, and toilets. In short, there are both natural and built elements within and outside cities, even if their concentrations might be different. Cities can, however, generally be described as “built up” areas, in which there is a high proportion of built elements compared to elsewhere.

A natural environment is not the opposite of an urban environment. Nature does, and should, permeate cities. Furthermore, areas outside cities, such as farmland, are not necessarily more “natural” than areas within cities.

It can also be challenging to clearly distinguish an urban space from a non-urban one. Some legal definitions simply recognise that an urban area is one that is zoned as such, rather than one that meets particular criteria or a physical reality. For example, national direction concerning plantation forestry points to an area primarily zoned for residential, industrial or commercial use, but not rural use. But there are several different definitions, depending on context. For example, the NPS on Urban Development Capacity, made under the RMA, states that the urban environment means “an area of land containing, or intended to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries.”

Even within the boundaries of an existing urban area, there are spaces that are arguably not “urban” in character, and should not be subject to any presumption that commercial or residential development is appropriate. Protected or significant cultural, ecological or recreational spaces abound. Furthermore, what is farmland today might be tomorrow’s greenfield residential development, especially if it is located on the fringes of an existing urban area that is growing rapidly in population. The concept of an urban environment for the purposes of strategic planning therefore needs to encompass future urban environments (even if not specifically zoned as future urban), and requires a range of matters (eg food security, landscape protection, nature conservation, rural policies) to be considered in a holistic way, not just development pressures.

Cities can also have significant adverse effects well beyond their spatial footprint (eg on freshwater and marine environments, and the climate). And there are many built elements essential to cities that extend beyond an urban area, such as water, electricity and transport infrastructure. We cannot meaningfully think about urban spaces without thinking about what surrounds and supports them, both in terms of their “built” and “natural” components. As one commentator has said:

an artificial distinction between urban and rural environments misunderstands the importance of peri-urban areas around almost all cities, as well as natural areas within city boundaries. Peri-urban areas offer important uses and ecosystem services including the provision of food and water for urban areas, valuable recreation services and in a few cases, critical areas for urban expansion (although there are usually more sustainable alternatives).

It can be difficult to draw clear distinctions between “urban” and “non-urban” environments.
The RMA itself shies away from the challenge of all of these distinctions by defining the “environment” as including the broad concepts of “natural and physical resources”. These terms are not defined individually, and they overlap with each other. Some have seen this, with some justification given the philosophical underpinnings of the Act, as being a failure to specifically recognise the importance of the “built” environment in decision-making. In particular, it fails to treat disputes over constantly evolving things like urban amenity – how a place looks, feels and is experienced – in a different way to strict biophysical limits for things like water or air quality. But it is also a recognition that the concepts of built and natural are not easy to separate precisely in legal terms, and points to the need to take an integrated view where related impacts are considered at the same time. A holistic view is also more consistent with Te Ao Māori.8

Finally, we note that there are many issues that apply across New Zealand, and while they are intimately associated with cities and built elements they are not easily categorised under those headings. For example, tax settings (which encourage the depletion of natural capital),9 or the generation of waste (which remains a far cry from a circular economy model), are not specifically “urban” or “built” environment problems. But it would be remiss not to consider the role that cities play in both contributing to and responding to such challenges. For example, urban construction generates enormous amounts of waste to landfill, and there is little financial or tax incentive to maintain and enhance biodiversity in residential or commercial developments. Cities are part of a much broader system, and they are not easily disentangled from it. For example, we should not speak of housing and development solutions without considering the role of the city in climate change, or its potential to enhance New Zealand’s freshwater and biodiversity outcomes. Urban issues are not just about providing for development or development capacity; they are equally about the quality of that development and how it improves people’s and nature’s wellbeing.10

Of course, the need to plan for and accommodate growth, development and built elements like infrastructure are specific lenses that need to be considered. Quality and timely development is one the basic points of cities – they contain houses, businesses, roads, and so forth – and this generates some unique issues like traffic congestion, amenity issues and housing unaffordability that tend to be less marked elsewhere. Urban areas are also not uniform, and management responses need to be targeted. We need to treat some parts different to others. For example, cities can contain remnant areas of indigenous bush and fragmented green space that require strict protection. This is quite a different mindset to thinking about a whole city as an integrated system, addressing the impacts of urban activities on surrounding areas (eg farmland), ensuring adequate funding for infrastructure, or thinking specifically about more subjective issues like amenity and urban character.

Figure 2.2: Difficulties in distinguishing between built, natural, urban and non-urban environments

The RMA itself shies away from the challenge of all of these distinctions by defining the “environment” as including the broad concepts of “natural and physical resources”. These terms are not defined individually, and they overlap with each other. Some have seen this, with some justification given the philosophical underpinnings of the Act, as being a failure to specifically recognise the importance of the “built” environment in decision-making. In particular, it fails to treat disputes over constantly evolving things like urban amenity – how a place looks, feels and is experienced – in a different way to strict biophysical limits for things like water or air quality. But it is also a recognition that the concepts of built and natural are not easy to separate precisely in legal terms, and points to the need to take an integrated view where related impacts are considered at the same time. A holistic view is also more consistent with Te Ao Māori.8

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So while the focus of this report is the “urban” environment, we err on the side of a more expansive approach and do not angst over specific definitions of what is urban or built and what is not. Those things tend to dissolve on close inspection. Instead, we are thinking about how a future system could optimise the benefits of towns and cities and address their negative effects on people and the environment, within the context of a bigger picture reform exercise with wide ranging goals.

It is not straightforward to distinguish between concepts like “urban” and “non-urban”, or “natural” and “built”. Cities and buildings have complex connections with people, communities, freshwater, air, land, biodiversity and climate, and they need to be thought about in the much wider context of system reform that spans artificial spatial categories and that changes over time. This report looks at the place of urban areas in a future system, but it is a fluid concept that we do not define specifically.
ENDNOTES

2 A “city” (such as Palmerston North City) can contain large areas of rural and other land, and a contiguous urban area can technically span multiple “cities” (eg Greater Wellington).
3 See National Environmental Standards for Plantation Forestry, cl 3.
4 See National Policy Statement on Urban Development Capacity at 8.
5 Some of these are protected through reserve status under the Reserves Act.
6 Although not necessarily – some have proposed an almost entirely new, non-contiguous “satellite city” to relieve growth pressures around the periphery of Auckland; see Infrastructure New Zealand Meeting Auckland’s growth challenge: The innovation city (2017).
7 R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘opportunities for change’ (2019) at 7.
3. OBJECTIVES

In the Phase 1 and 2 reports, we explored various worldviews, ethics and principles that should underpin a future system. These included ecocentrism, Te Ao Māori, anthropocentrism, sustainability, the principles of the Treaty of Waitangi, resilience, kaitiakitanga, precaution, non-regression, environmental justice, inter-generational equity, the polluter-pays principle, subsidiarity, efficiency and a number of others.1 In the Phase 2 report, we then formulated high level objectives/criteria for system reform, and identified the relationships and hierarchies between them. Central to that was the need to establish clear environmental limits to create a safe space within which all human activity must operate.2 We refer readers to those reports for more detail.

But what should the resource management system be aiming for in the specific context of our urban environments? In some ways that is a much more difficult question. Cities are heavily shaped by people, who can impact on each other more directly. For example, the look and feel of public space, or the dimensions of a house, are much less of an issue in rural than in urban settings. Rather than prescribing detailed outcomes the system must, to some extent, provide an arena within which urban objectives can be established and changed, given the inherent dynamism of cities. We may not want the same things tomorrow as we did today; societies are not as static as they used to be. Objectives also need to be sensitive to place; New Zealand’s urban areas have very different histories, identities and communities. We cannot just roll out plans for urban areas off the books. That is particularly important in places where Māori urban identity or history is strong, and where our spaces must reflect that.

Yet there are bigger picture urban objectives and imperatives that, in our view, need to be adopted more explicitly across New Zealand than they have been. We need to be working towards something – a vision that will serve us well in the future – not just managing what we have. And it is worth stressing that urban objectives are not just about accommodating population growth and physical/economic development, or minimising market distortions. Cities are much more rounded than that. They are habitats for humans, and places where we express who we are. They must be “productive, inclusive, and sustainable”.4
The most fundamental question here is whether cities are inherently good or bad things in the first place. We are already a highly urbanised society; but is that a good thing? Should our overriding objective instead be de-urbanise? That is to some extent an academic question, not a practical one. Cities exist, and will continue to do so, despite those who might want to return to a rural idyllic society. However, there are legitimate questions to ask about whether we should be trying harder to shift population pressures around the country, including to regional centres, and whether we can or should influence demand for urban growth. Although it is often viewed as a proxy for economic success, we do not think that endless urban growth should be actively sought (just as the mentality of endless economic growth is ultimately unsustainable). We touch on such questions in Chapter 12.

On balance, however, we see cities as positive things. And many urban objectives do not require artificial creation by a resource management system. They are central to what a city is, and the reasons that people invented them in the first place by living and working in close proximity to each other. Cities provide for the efficient exchange of ideas and innovation as well as goods and services (both public and private), access to employment and labour markets by bringing together people with a range of skills and experience, opportunities for recreation, the generation of productive activity, social connection, art and culture, a sense of pride in the human condition, and potential for enhanced understanding and inclusion of other cultures and people.

Some have pointed to goals like “enhancing the performance of labour markets in the spatial context of a city, making a city more liveable and an attractive place for high-skilled workers to live.” We also need to keep in mind, however, that a city is not just a vehicle for economic activity, and people are not just workers or participants in markets. Cities can be places of positive social change, a place where people live their lives, and ultimately a place to be happy. The Local Government Act 2002 recognises the importance of the “four wellbeings” – social, cultural, environmental, economic – and this is a good umbrella for what our cities should be achieving too.

While the above objectives are often innate features of agglomerations of people and do not need to be regulated into existence, urban planning can enhance or diminish their effect. Strong urban design can create common
spaces where people want to go to socialise and connect in ways the market may not always achieve; it can create efficient private and public transportation networks to enhance mobility and connection (including for the disabled) and reduce costs; it can recognise the identity and history of people, including Māori, in the creation of new built forms and the preservation and integration of existing ones; it can facilitate and encourage active transport and exercise options to improve physical health. It is also arguable that the overall impact that humans have on the environment is (or at least can be) reduced by concentrating people in cities.

Poor urban planning – or a lack of urban planning – can have the opposite effect. The resource management system must keep in mind the need to foster, not stymie, the things that make cities truly worth having. That might seem obvious, but history is littered with examples of well-meaning officials pumping funds into large prestige projects to attract residents rather than addressing the things that make urban areas tick – as one has put it, “mistaking the built city for the real city”. Urban objectives need to be targeted at people and nature, not the buildings that merely serve them.

While cities have many good features that need to be enabled and enhanced, they also have potential for significant downsides that need to be minimised and managed. There is no such thing as a free lunch. Some negative effects are unavoidable. For example, cities are often noisy and crowded places (to some that is not a bad thing, admittedly), and tensions are inevitable when people live just metres from each other and have different perspectives on what is acceptable or beautiful. The best a system can hope for is to resolve such tensions in ways that are efficient, predictable, timely and fair. Expectations of urban dwellers need to be realistic.

Other potential downsides need not be inevitable. Urban housing should be affordable and healthy. Infrastructure and essential services should be reliable, efficient, safe and future-proofed. Buildings, settlement patterns and communities should be resilient to (and pre-empt, where possible) negative change, be it from a changing climate, economic shocks, natural hazards or environmental change (eg water shortages).

In particular, human health should not be compromised by virtue of urban living, including from air pollution, drinking water and wastewater quality issues, or soil health. There are now serious questions to mull over about how cities can be made more resilient to the spread of disease. And mental health can be improved not just through the social connection cities provide, but also through planned connections with nature.

Environmental wellbeing is not just important from a human health perspective, either. Our cities should be environmentally sustainable, and actively strive not only to reduce negative impacts, but also to enhance the environment for ourselves and future generations. Ireland’s national planning framework has aptly described rejuvenated urban areas as “environmental assets”.

They should minimise or eliminate their carbon footprint and their waste to landfill; they should embrace access to green and open public space and the enhancement of indigenous biodiversity; and they should be energy efficient and water sensitive. Land should be used efficiently, not just from a market perspective but also from the perspective of the long-term public interest.

As one commentator has noted, system-level goals are “more than just individual goals aggregated”, especially if those individual goals are the wishes of those who have the money to pay for them (as revealed by the “market”). Urgent pressures for urban development, for example, should not compromise New Zealand’s inter-generational resource base (such as the potential to grow food in proximity to where it is consumed) or encroach upon culturally sensitive sites. The interests of current and future generations can be achieved if we plan our cities with the future in mind.

Admittedly, none of this is straightforward when applied in practice. Some negative “environmental” impacts of cities may be unavoidable (eg shading, noise and less open space). Taking a bigger picture view, it may also make sense for some impacts to be concentrated (eg density to prevent urban sprawl) rather than dispersed. However, we do not think that designating an area with an “urban” label means that the natural environment should be sacrificed. Why should we accept that water quality in a city will be more polluted than outside it? Why should our native birds and plants not find a home next to urban dwellers? And why would we assume that creating buildings and infrastructure needs to create waste or generate a net increase in carbon emissions?

The literature is full of urban objectives, and we provide a selection of the most eloquent below.
Well-functioning cities, with effective design and a strong sense of place, should improve physical and mental health, well-being and social functioning

Cities need to enhance safety, reduce crime and fear of crime and enhance energy efficiency

Urban design is concerned not just with appearances and built form but with the environmental, economic, social and cultural consequences of design. Quality urban design also increases economic value with higher returns on investment, reduced management and maintenance costs, more productive workplaces

Urban design also has a strong cultural component for Māori... Māori have developed the Te Aranga principles, which articulate “a physical and metaphysical understanding of cultural landscape

Successful cities are about maintaining and sometimes recreating natural networks throughout their urban areas, and by designing new buildings, transport services and infrastructure that meet the highest standards of sustainable design and construction... [they] minimise waste production, energy and water use, and maximise the efficiency of land use and infrastructure
Cities provide inherent economic and social benefits that come naturally with agglomerations of people. But urban planning objectives are not just about accommodating population growth or economic productivity. Cities are places where people must be able to live happy, healthy and full lives in a way that is ethical and sustainable for future generations. The resource management system can support, or diminish, those benefits.

Urban objectives are not just about what we want a city to look or feel like. They must embrace how decisions are made, not just the visible outcomes they generate. In particular, urban areas should reflect the principles of the Treaty of Waitangi and Māori perspectives, including a partnership approach to decision-making. Decisions should be transparent, equitable, and consistent with the rule of law. Communities should have a strong voice in shaping the places in which they live, work and identify with. They need ownership. At the same time, we must recognise that cities impact on nationally significant social, economic and environmental outcomes, and that the interests of those who live elsewhere or who may live there in the future (including those not yet born) are as important as those of current residents. Urban change is not necessarily undesirable change when a big picture view is taken.

All our urban objectives should also be approached in a more integrated and coordinated way than they have been in the past. Above all, cities should embrace synergistic solutions that achieve multiple objectives at the same time. Many such synergies exist, if we think creatively and in a joined up way (see Chapter 6).

However, it is also important to be clear about hierarchies and priorities. In particular, cities must operate within inter-generational environmental bottom lines, with robust precautionary buffers built in. While not all decisions in cities may have implications for the natural environment (e.g. the extension of a deck or suburban bedroom), many do (e.g. protections for urban trees). Some of these effects seem minor in isolation, but can be significant when looked at cumulatively over long periods of time. That is how most environmental problems appear.

From a broader perspective, economist Kate Raworth has talked about the need for a social ceiling as well as an environmental floor, and the space in between as being not just a safe space for humanity but also a just one. By recognising firm limits we are also recognising that we cannot simply keep growing the pie by growing our impacts; we need to think carefully about how we fairly distribute costs and benefits between this environmental floor and social ceiling.

Urban objectives are not just about achieving individual outcomes. Synergies need to be pursued. However, even in highly modified environments, all human activity must operate within the constraints of firm environmental limits. Objectives are also about how decisions are made, and the ability for communities and Māori to have a strong role in shaping their surroundings alongside a voice for government that reflects the national interest.

Setting our aspirations for urban areas is one thing. What we expect or allow our formal system of laws, institutions and plans to actually do in order to achieve them is a completely different question. Laws and plans cannot just spirit different outcomes into existence or remove people’s freedom (or inclination) to choose, and the resource management system may have limited potential to achieve some objectives. Describing a vision in a plan does not make it happen.

In fact, new problems may arise precisely because a city is successful in some ways. For example, the gentrification of some areas may occur as it becomes more desirable and expensive, and congestion and crowding can come in the wake of rapid growth. Cities are messy and dynamic – that is part of their charm and a source of their benefit – and there must be flexibility and adaptability in a system for guiding how they operate. Population and demographic change, shifting international markets, and movement in cultural/social expectations demand it. Urban perfection – even if we could define it in an objective way – is a chimera. But there are still a range of objectives we can, and must, pursue in a future system. Crucial to achieving those is an understanding of the existing and future context in which reform would occur.
ENDNOTES


6 See generally E Glaeser Triumph of the city (Pan, 2011); C Montgomery Happy city (Penguin, 2013).


9 New Zealand urban design protocol (Ministry for the Environment, 2005) at 7.

10 E Glaeser Triumph of the city (Pan, 2011) at 61.


12 Government of Ireland Project Ireland 2040: National planning framework at 160.


15 New Zealand urban design protocol (Ministry for the Environment, 2005) at 5.

16 Ibid at 7.

17 Ibid at 7.


19 New Zealand urban design protocol (Ministry for the Environment, 2005) at 14.

20 Compare New Zealand urban design protocol (Ministry for the Environment, 2005).


4.1 Problems

Our cities are not fundamentally broken. They are still attractive places for people to live, work and play. By international comparison, New Zealand's cities are wonderful places in many ways. However, they do not fully reflect our objectives for them. Significant problems exist that need to be fixed, and there are substantial challenges that need to be overcome in the future. It is far from certain that our cities are well placed to do these things.

It is hard to generalise problems across urban areas – all cities are different, and areas within cities are very different too. And urban problems are not just those that are both generated and felt in cities. Cities create problems that have ripple effects well beyond their boundaries that need to be addressed. However, there are recurring themes across the country.

4.2 Housing affordability

One of the most prominent problems facing urban New Zealand is housing unaffordability. This has been the focus of many reports recommending reform. The Productivity Commission has noted that housing affordability (the portion of a community paying more than 30 percent of disposable income on housing) has grown substantially worse over the past 25 years. Since the 1980s housing costs for low income New Zealanders have doubled as a proportion of their income. Part of this has been driven by rapid population growth in some areas like Auckland, but causes are complex and multifaceted. Yet it is clear that unaffordable housing means a proliferation of social ills like a reduction in disposable income (due to a higher proportion of income being used on housing), poorer quality of housing (and related health and wellbeing outcomes), overcrowding within households, homelessness and consequent poor health outcomes, the exacerbation of wealth inequality, and generational inequality (lower home ownership rates creating “generation rent”).

That said, and without detracting from the seriousness of the overall problem, it is interesting to note the pervasive assumption that renting is inherently a bad thing. If there is sufficient security of tenure, affordable prices, and quality housing stock, renting can be a legitimate choice. In some places, notably parts of Europe, a significant proportion of the population rents long-term without perceiving it as something negative.

Infrastructure New Zealand has noted that housing affordability is poor across New Zealand, and not just in large or rapidly growing areas, pointing to a report that concludes New Zealand is second only to Hong Kong in being the least affordable place to buy a house. That is primarily an urban phenomenon. Of course, overall affordability of housing depends on many things, not just house prices and incomes (including the cost and time of commuting to work – so paying more and living closer may be preferable to paying less and travelling further). But it is still clear we have a significant housing affordability problem, and it is of increasing urgency. In some places, that is about an undersupply of land and housing stock, but many other factors play a part (see further below).

Housing unaffordability is a big problem in New Zealand’s cities, especially those that are large and/or rapidly growing. It has been getting worse in recent times.
4.3 Infrastructure performance

Another problem facing our cities can be described generally as poor infrastructure performance. Some have expressed disappointment with economic and productivity outcomes more broadly, partly driven by issues with infrastructure.\(^9\) Traffic congestion is one example, as anyone who has tried to drive during rush hour in Auckland or Wellington will know. Without viable alternatives (eg effective and safe walking and cycling infrastructure, public transport and mass transit with residential densities to support it), traffic congestion from private motor vehicles impedes the movement of both people and freight. It is expected to get much worse without enormous investment in mass transit or demand management.\(^10\)

Perhaps more concerning is the performance of the three waters sector, including (but not limited to) urban water infrastructure. The Havelock North incident in 2017, in which an outbreak of campylobacter made thousands ill and was linked to the deaths of several people, highlighted the significant and immediate risks of poor management of drinking water sources.\(^11\) It also raised serious questions about the performance of the sector as a whole, including the maintenance of inter-generational infrastructure, the delivery of services, and impacts on freshwater and coastal environments. Our sewerage systems have been compared unfavourably against international benchmarks,\(^12\) and sewage leaks and (often consented) overflows can have devastating impacts on freshwater and coastal environments as well as on human health, amenity, cultural wellbeing (eg the mauri of a waterway) and access to recreation (eg swimming beaches).

A government review has revealed that people’s health has been severely impacted and put at risk from poor drinking water supplies, evidenced by outbreaks of disease and frequent boil water notices.\(^13\) Major upgrades of water infrastructure have been identified as urgent and long overdue across the country, and they come with a hefty price tag which may be hard for fiscally responsible local governments to meet given their constrained funding base.\(^14\) One-quarter of wastewater assets are more than 50 years old,\(^15\) and much of their condition is not well known until they fail.

Urban infrastructure could be performing much better. Failures and underperformance in transport and water infrastructure and services have been of particular concern from an economic, social, cultural and environmental perspective. The cost of fixing and building infrastructure is huge.
4.4 Environmental degradation

Some have summed up urban specific problems as including “rising urban land prices, unaffordable housing, increasing homelessness, worsening traffic congestion, lack of transport choice and flattening productivity.”14 But we re-emphasise that “urban” problems are not just “urban development” problems. And many issues span New Zealand as a whole but originate in, or manifest partly in and around, cities. They are equally important to consider.

Cities are putting considerable pressure on what we might loosely call the “natural” environment.15 This is part of a much wider phenomenon across New Zealand. Despite some areas of improvement,16 a concerning number of environmental indicators are poor and continue to decline (notably in relation to biodiversity, freshwater, soil, coastal and marine, and climate change).17 New Zealand is among the highest emitters of greenhouse gases per dollar of GDP;20 nearly three-quarters of native forests have been cleared; nearly 4,000 native species are threatened or at risk of extinction; and almost one-third of our waterways are not swimmable.21 These are as much urban problems as non-urban, because they either affect cities or are caused or contributed to by urban activities, and cities have the potential to mitigate or improve such statistics.

Some of our most degraded waterways and marine areas owe a lot of their problems to the impacts of urban land uses, including heavy metals leaching from rooftops and cars, sewage leaks,22 stormwater runoff from roads, and sediment from construction activities.23 Paving land and compacting soil exacerbate issues with runoff.24 One indicator of the ecological health of waterways – the macroinvertebrate community index, or MCI – has been shown to be 31 percent worse in urban areas than in areas with indigenous cover, while nitrate levels are over 19 times higher.25 Heavy metals are particularly toxic to aquatic life.

Our biodiversity continues to be at threat, and in recent years indigenous cover has been removed by (among other things) the expansion of urban areas.26 While it is a much broader issue, enormous amounts of waste are generated in cities, including construction waste from development and packaging from high levels of consumption. A significant amount of New Zealand’s greenhouse gases come from urban activities, including from industry and transport.27 Air quality is generally good, although not universally so across different urban areas (due to their topography) and times of the year.28

None of this means that cities are bad things. If we had more dispersed, non-urban population many such problems might be even more pronounced. However, they are still significant issues that require correction.

Environmental degradation is an enormous issue in and around New Zealand’s cities, on many fronts. Environmental impacts are both caused by, and felt within, our urban areas.

4.5 Māori perspectives

Across all of these things, there is a strong feeling among many that outcomes sought by Māori are not being recognised or achieved adequately, including those relating to a tikanga or mātauranga based approach to achieving environmental quality, economic wellbeing and parity, and recognition of cultural identity. There are very real questions as to whether the Treaty relationship is being adequately reflected in our system outside the confines of specific Treaty settlement legislation.29 In particular, many urban sites of significance to Māori are not recognised, protected or even signposted. Furthermore, environmental degradation is inextricably linked to cultural and spiritual health, including “values like the condition of mahinga kai and kaimoana (traditional foods), recreation (swimming, waka ama), and oranga (health and well-being).”30

Māori interests and perspectives are not being adequately safeguarded or reflected in and around our cities.

4.6 Future challenges

As well as current problems, the future will also hold many challenges for our cities. Some of these are foreseeable and need to be pre-empted. Climate change is a prime example. Rising sea levels and more extreme weather events pose enormous risks for coastal cities, including residents, buildings and infrastructure. The effects of climate change on housing and infrastructure are already being felt in some places, including urbanised parts of Otago and Hawkes Bay.31 Cities will be particularly vulnerable to heat stress caused by a warming climate.32 The costs of adaptation will be huge – and councils are unlikely to be well placed to deal with them. One report has estimated that over $2.7 billion of council infrastructure alone will be put at risk of a sea level rise of half a metre, which is a realistic prospect within as little as 50 years.33 The costs of doing nothing will be catastrophic.34

At the same time, our cities are likely to keep growing in terms of population numbers, and immigration policy can create uncertainties for planning. A staggering 99 percent of population growth is now accounted for by new arrivals, especially where growth is rapid.35 This will continue to create enormous pressures, especially where growth is rapid.36 New people will need to be accommodated in affordable housing and serviced by reliable and effective infrastructure, and increasing density will need to be carefully managed to avoid the social and environmental pitfalls of more people living in close proximity. Smart design will be vital, and we will need a broader focus than just the economic value of urban development.37

Demographics are changing too, and cities will need to reflect the shifting aspirations, needs and values of new residents while managing the expectations and interests of existing ones (eg around density and the nature of public services, including for the elderly). Mai Chen
and others have spoken of the increasing importance of recognising “superdiversity” in New Zealand, and nowhere is that more obvious than in our cities. In some places, population decline will generate different challenges, such as the need to maintain effective levels of service for essential but expensive things like water and transport infrastructure when there is a declining ability for shrinking communities to fund it. 39

Auckland’s drought issues, and the city’s proposals to significantly increase an urban water supply take from the Waikato River, highlight the importance of water security for urban households (which may be exacerbated by climate change). 40 But this also raises equally important issues about environmental health and equity.

Similarly, urban expansion over productive soils gives rise to questions about the security of, ready access to, and affordability of the urban food supply. It has been reported that, between 2002 and 2016, New Zealand’s area of land previously used for vegetable growing decreased by 29 percent. 41 In Auckland, 35 percent of the most versatile land is occupied by rural lifestyle properties. 42 Almost one third of new urban areas were located on versatile soils between 1990 and 2008. 43 Alarming international comparisons estimate that local vegetable production around rapidly growing Melbourne is set to change from servicing over 80 percent of the city’s needs to just over 20 percent by 2050. 44

Paving over elite soils has, effectively, irreversible impacts on its productive capacity. Fragmenting productive peri-urban land into lifestyle blocks, in most cases, reduces its productivity substantially (because its use frequently changes, and there is a loss of economies of scale). 45 In particular, we have a limited amount of land suitable for market gardening, and much of it is close to cities (which is a good thing for urban food supply, but poses a risk where growth pressures are high). Reducing productive capacity may eventually affect our strength as a global food exporter, and result in potentially higher domestic prices for fresh vegetables (which will impact disproportionately on the financial wellbeing and health of the poor). Pushing production further from cities reduces energy and transport efficiency, and exacerbates greenhouse gas emissions from getting produce to market. If we do not address the issue, the food security of New Zealand’s growing population may even be at risk if global supply chains are disrupted – a real possibility in an uncertain world that is seeing countries looking increasingly inwards and being more acutely aware of the risks their borders pose. A century on from now, letting market forces place greater value on irreversible urban sprawl than the ability to produce food may look distinctly unwise, given we had good alternatives.

The context in which urban challenges are faced is likely to change in the future too. In the Phase 1 report, we outlined key ways in which New Zealand might look quite different. 46 Some with particular relevance for urban matters include:

- The increasing political and economic expectations of Māori 47
- Various manifestations of environmental change, which may be unpredictable
- Technological change, including its implications (both positive and negative) for environmental, social and economic disruption (eg autonomous vehicles)
- Unpredictable global political and economic dynamics
- The continued ageing of existing infrastructure.

The future holds many challenges for our cities, including the need to adapt to climate change, accommodate or direct growth, be sensitive to demographic and technological change, upgrade infrastructure, protect productive land, and be resilient to domestic and international shocks.

### 4.7 Disruption in the wake of Covid-19

At the time of writing, a great deal of disruption has been generated by the global pandemic caused by the novel coronavirus. How this threat, and public health and economic measures taken to contain and recover from it, will affect the future of urban areas and broader system reform remains highly uncertain. Some negative outcomes seem inevitable in the short-term. Others will depend on how we respond. But there may also be opportunities, too, to do things differently where the appetite for change did not previously exist, or where things were moving more slowly. 48

It is clear that we will not go back to a pre-COVID-19 normality, but instead will inhabit a new normal. Issues that might have taken years to consider, may now have to be considered over a much shorter time frame. New Zealand must take the opportunity from this pervasive and hugely disruptive crisis to shape its future in an informed and inclusive way.

It is far too soon to determine how Covid-19 will affect our cities, and there are risks in public policy and law reform trying to pre-empt what remains a highly uncertain landscape at home and abroad. Responses will need to be agile, and the recommendations in this report do not seek to tackle Covid-related impacts directly. In our view, the systemic issues prior to Covid-19 remain as relevant and important as ever. However, urban reforms cannot be blind to the new context that the pandemic has created, and the possible futures we might face. Below, we outline some perspectives that are worth at least keeping in mind.

#### 1. Housing affordability 49

- Ongoing border restrictions could lead to a slowdown in urban population growth fuelled by reduced international migration (and foreign students), 50 and a reduction in demand for housing and other services in previously rapidly growing urban areas. This might be partially or fully offset by demand from New Zealanders returning home,
especially if containment measures in New Zealand continue to be successful relative to the rest of the world. This has been observed in recent months.

- People may desire to live outside of cities, or in lower density areas, if they perceive crowded environments (e.g., apartment buildings) as being risky from a health perspective. One account has emerged from China about a single person who led to a cluster of infections by using a communal elevator, despite having no direct contact with other people.\textsuperscript{51} There could also be increased demand for a more dispersed urban form. However, this may depend on how people perceive ongoing risk and the benefits of density, including greater physical access to employment opportunities in cities.

- In some places, weak demand for holiday rentals (e.g., AirBNB properties) may see them repurposed as long-term rentals or sold as owner-occupied dwellings, increasing supply and potentially softening prices. The effect of this remains unclear, and recent indications are that it has not materially increased supply.

- International supply chains for materials for new builds may be constrained.

- Lower confidence overall in the housing market may lead to a reduction in prices (although the impacts may take a while to manifest and will likely be different from region to region).\textsuperscript{52} At the time of writing, the predicted downturn has yet to manifest in a significant way.

- Economic stimulus (through fiscal and monetary policy) may stabilise house prices and maintain demand by enticing more first home buyers into the market. However, that may be tempered by increased unemployment\textsuperscript{53} which is likely to impact disproportionately on lower-paid workers who do not yet own real estate and will become more apparent after wage subsidies end. Lower house prices do not necessarily mean more affordable housing, because affordability is also linked to income.

Overall, in the short-term there may be downward pressure on house prices in some parts of the country, including in previously high growth areas. However, it is by no means clear that issues with housing affordability will disappear even in the medium term. The market is uncertain, and considerable political incentives exist to protect property values from falling too much if that can be prevented. We do not have an oversupply of housing stock, and demand will return.

In future, the system needs to be positioned to deal with the same housing affordability and other problems it has faced in recent times. Such problems will remain and may even be exacerbated for the most vulnerable in the coming months and years. Furthermore, housing issues are not just about unaffordable home ownership. Job losses will see more people homeless and unable to afford even rent, and could drive massive government investment in modern state housing alongside subsidies for improvement of the national housing stock. Some have highlighted this as an opportunity for the government to invest heavily in residential development,\textsuperscript{54} for which it already has a vehicle in Kāinga Ora (see Chapter 11).
2. Infrastructure
- A downturn in the housing market – if it eventuates – might reduce pressure on infrastructure for new urban growth, but it does not relieve pressure on already ageing or failing infrastructure. It will continue to age and fail.
- However, the new context does raise significant questions about how to pay for infrastructure (especially water infrastructure for which councils are responsible). Substantial rates rises are unlikely to be tolerated in a post-Covid context and many councils have lost substantial income through their other income sources.
- There is a strong imperative for central government to play an increased role through large scale debt finance (not just narrower mechanisms like the Provincial Growth Fund), which aligns with its mandate to increase employment and stimulate the economy around the country.

3. An environmental perspective
- Lockdown around the country and the world led to economic hardship, but also showed the environmental benefits of reducing human activities and the ability of nature to rebound, particularly in urban areas. In Venice, marine life returned to the lagoon as sediment stirred up by boats reduced. People in India saw the Himalayas for the first time in many years as air pollution disappeared. In New Zealand, we saw urban air quality improve markedly with fewer cars on the road, and native birds made their presence heard in our cities. We were out walking and biking more. Climate impacts were reduced.
- This first-hand experience may lead to a changed mindset of what is possible if we change how we do business. We saw a better environment, and we may have higher expectations. Thus “trade-offs that may have seemed impossible prior to this crisis may now be seen in a more credible light” and:

   The post-pandemic reset should allow environmental and green economy projects to flourish – rather than a hasty build-back of business models that were essentially ticking time bombs in the face of climate change and ecological limits.
- There is also an enormous opportunity to improve environmental outcomes through the massive, debt-financed economic stimulus package embedded in the 2020 Budget. Some of this “new green deal” has been outlined already (eg funding for pest management and indigenous planting).
- Alternatively, there is a risk that a drive for greater economic activity to “catch up” with lost productivity and boost employment in the short-term could see the health of the environment and climate downgraded in the ongoing Covid recovery.

   Crises can lead to either visionary change or an entrenchment of the status quo. For example, the government is fast tracking some employment-rich projects through consenting processes via special legislation, as well as funding them. The door has been left open for a wide range of potential projects to be consented through the legislation.
- The Climate Change Commission has rightly pointed out that the interests of future generations in a healthy climate should not be sacrificed on the altar of short-term recovery, especially where there are better paths to go down. The interests of future generations are particularly important at this juncture, because they will be the ones responsible for paying back the debt that will finance recovery measures. That means they should see the benefits of this expenditure, and at the very least they should not bear another cost.

4. A natural resources perspective
- Global lockdowns as a result of Covid-19 put the issue of food security in the spotlight. Even forced requisitioning was not ruled out at one stage. Fortunately, authorities were able to give reassurances: New Zealand is a net exporter of food and that is unlikely to change. Globally, supply chains have held up reasonably well.
- However, the experience reinforces the important fact that borders cannot be taken for granted, and that our finite amount of productive land, especially highly versatile soils for growing fresh vegetables around our cities, is important not just to maximise economic benefit on the global stage but also to feed a growing population.
- We need to think carefully about what needs to be protected for future generations to be self-sufficient in the face of future pandemics and growing risks like climate change. It gives us pause for thought, too, when considering what the best use is for other resources like freshwater and coastal space, including in cities; there is much to be considered other than market economics.

5. Appetite for risk, and changes in the way we live
- People may be inclined to change their behaviour in the coming months or years.
- Different ways of travelling, working and meeting arising from lockdown may persist due to habit, health concerns and economic impacts (working from home, e-commerce, travelling less, spending less, changing patterns of social interaction), especially if the threat remains high from overseas and is in the public consciousness.
- Among other things, that may change how pressures on infrastructure are felt (eg less demand for transport infrastructure if people work remotely, or the reduced uptake of mass transit if it is perceived as risky). The immediate
post-lockdown period indicates that the use of private vehicles may not see too much change without other incentives to drive it.

- There could also be impacts on the types of dwellings sought. As working from home becomes more normal, people may require an extra room to use as an office. Already that demand is being felt in “satellite” towns like those in the Wairarapa.

- Location may become important, too; an exodus from main centres to the regions may occur if people choose to take advantage of working from home, pursue cheaper properties, feel that living in the middle of a large city poses health risks, or desire the open space (e.g., gardening opportunity) that smaller towns allow. Demand for housing in parts of Auckland and Wellington might reduce. There are potential tensions to be resolved between the public policy benefits that compact urban form (and density) provide on the one hand (see Chapter 6), and market pressure for the supply of peri-urban land on the other. Again, however, there is much uncertainty here – it is entirely possible that an economic downturn might actually see more people drawn to the in-person employment opportunities that cities provide.

- Future cities may also need to be designed with disease transmission and physical distancing in mind, in terms of overall urban form (more self-sufficient residential neighbourhoods, multi-nodal cities, space for pedestrian movement), transport as a vector for disease (mitigation of risks on mass transit, including spacing and ability to contact trace), and the design of apartment buildings (e.g., risks posed by communal spaces and surfaces, access to fresh air and open space).

A recent report has summed up the urban implications of the pandemic well, in that:

The pause brought about by COVID-19 may allow a broader rethink of the sector, and a more holistic approach to housing, transport and cities that better considers the transition to carbon neutrality. The image of a 1960s nuclear family home ... with a quarter-acre section close to all amenities is no longer tenable. What have the pandemic and...
lockdown revealed to us regarding people’s housing situations? As a society, New Zealand is more diverse, more urbanised and living longer than ever before, and the housing sector needs to evolve to meet these needs.

It is unclear whether there may be a political appetite for more structural changes, too. For example, has the pandemic shown the value of a more centralised or at least centrally coordinated system? Will there be less opposition to fundamentally rethinking the structure of local government from a resource management, not just health, perspective? Will a more fiscally interventionist government go hand in glove with a government that is more interventionist in a regulatory and policy sense for issues that have traditionally been seen as “local”? Arguably that trend has been going on for a while anyway (eg in the conversation around the institutional arrangements for the three waters sector, and the role of Kāinga Ora as a government urban developer) and may gain further momentum.

Overall, a future system will need to address current urban problems and pre-empt future challenges, as well as be sensitive to the challenges presented by Covid-19. But we must also see our system as more than that: an opportunity to actively make things better. For example, we should consider not just how to reduce further urban biodiversity loss, but also how cities can become havens for nature as well as people.

Covid-19 and the consequent lockdown has changed the near-term context in which resource management reforms would occur, on many fronts, including an economic downturn, potential implications for housing prices, and issues with paying for infrastructure. Longer-term there is great uncertainty about economic, social and environmental impacts. Yet it has also presented opportunities to do things differently, and to put people, the environment and future generations at the heart of recovery efforts. While we should not assume anything, it is a context that policy makers should be cognisant of.

4.8 What is wrong with the resource management system?

Above, we have canvassed some problematic outcomes and challenges that are being felt or may be felt in cities. The key question is then: what is wrong with the system that is allowing (or, in some cases, causing) those outcomes to happen? And what aspects of the system will not be adequate to meet future urban challenges?

We refer readers to the Phase 2 report for an overview of the current system, which forms the starting point from which reforms would occur. In Figure 4.1 below, we sketch out what is often regarded as the core of the current system in the urban context (comprised of the RMA, Local Government Act and Land Transport Management Act).
Figure 4.1: Core parts of the current "urban" resource management system: instruments under the RMA, Local Government Act and Land Transport Management Act

KEY
- Red arrows denote strong directions (e.g., give effect to)
- Blue arrows denote medium-strength directions (e.g., be consistent with)
- Green arrows denote weak directions (e.g., have regard to)
The RMA and its array of subordinate instruments are at the heart of the existing urban resource management system, and take an integrated approach to the management of the environment (including land). Urban infrastructure is planned and funded under the Local Government Act and Land Transport Management Act, with roles for local and central government. The Building Act is also important, and sets standards for construction, while the Climate Change Response Act sets national targets, budgets and an accountability framework for climate change. Arrangements in Auckland are slightly different due to targeted reforms over the last decade.66

We need to proceed with caution when talking about problems with the existing resource management system, rather than just the problematic outcomes that we are witnessing. Undesirable outcomes do not necessarily mean that the system itself is fundamentally broken, for two main reasons. First, in addressing one issue, the system may legitimately cause or exacerbate a different undesirable outcome. In other words, the system can impose costs, but to some extent they might still be worth imposing. For example, imposing urban limits and minimum floor size can have some impact on the price of housing,67 but they can also offer a number of public benefits.68 Other restrictions can also exist for very good, long-term reasons not necessarily reflected in market forces (eg protecting productive soils for food security).69 Their negative impacts can be mitigated by other means70 or even through other systems. This is not to say that all negative impacts of planning restrictions are worth it (eg preventing densification to protect existing urban amenity), or that they should not be recalibrated (eg making urban limits more responsive).

Secondly, the resource management system may not be well placed to “fix” some urban problem in their entirety, and it may be unreasonable to expect it to. They are not always “resource management” problems. A broader package of solutions may need to come from elsewhere, and we need to be particularly wary of attempts to turn legitimate environmental restrictions into a scapegoat for much more systemic problems with, for example, the housing market. We need to temper our seemingly insatiable appetite for tinkering with statutory frameworks like the RMA in the future,71 or only blaming regulatory insatiable appetite for tinkering with statutory frameworks the housing market. We need to temper our seemingly insatiable appetite for tinkering with statutory frameworks like the RMA in the future,71 or only blaming regulatory

4.9 The natural environment

That said, the system has clearly failed in a number of areas. Most significantly, it has failed to achieve what it was always clearly meant to: establishing and defending environmental bottom lines and associated limits on human activities, let alone enhancing key environmental outcomes. Some of those outcomes have been described earlier. Environmental issues are either manifesting in the urban context or will have impacts on cities and their communities.72 The resource management system – in particular, the RMA – is squarely responsible for imposing strict regulatory limits on the use of and impacts on the natural elements of the environment, both in and beyond urban areas, but has not done so (or is only just beginning to do so for some things).

A lot of this is down to a lack of national leadership (including logistical support and resourcing) as well as historically sparing use of tools like NPSs and NESs to address issues of national significance, and a lack of legal requirement to do so until it becomes politically expedient. Furthermore, vested interests in local government have limited the effectiveness of some councils in implementing the protective intent of the RMA.73 One risk, for example, is that preventing increased density in growing urban centres puts pressure on cities to grow outwards, creating a range of environmental issues associated with (often car dependent) urban sprawl.74

While RMA case law (the King Salmon jurisprudence)75 has strengthened the legal obligation to keep environmental bottom lines firm where they do exist in national direction, this has many weaknesses and potential loopholes (especially when applied to the urban context) as we discuss in Chapter 6. Monitoring, evaluation and enforcement has been weak, too.76 For some things, we simply do not have up to date data or know the extent of the problem.77 For example, the most recent round of official environmental reporting has noted that:78

> The land cover upstream from coastal monitoring sites has not been categorised, so the proportion of nutrients, pathogens, and sediment delivered from urban areas, as opposed to other land uses such as farming, is not known...

Although the types of [soil] contamination that occur in New Zealand are known, there is not enough data to report on their extent or magnitude here.

A solid information base, compliance with regulatory requirements and the ability to make rapid changes where required are all vital for making decisions that will actually protect environmental wellbeing.

Planning practice is also important. Some have defended the RMA as a legal framework, instead pointing to failings in implementation, a politicisation of issues, limited resourcing and poor plans made under it. Yet while it is not solely responsible, the RMA as a framework has a lot to answer for in its failings to protect the natural environment in and around cities. It has presided over a time of worsening environmental outcomes and needs to do better.
The existing system has categorically failed to prevent the decline of many aspects of the natural environment in and around cities.

4.10 Climate change

Cities face enormous costs and risks from climate change, but a system squarely responsible for the resilience of our land use choices, the mitigation of hazards and the funding of public interest measures has done little to lower risks or to proactively plan for or adapt to change. Despite some small-scale efforts, local opposition and funding constraints can make such measures politically and practically challenging. Yet central government has not yet stepped into the breach in a meaningful way (see Chapters 7-9).

Cities also contribute to climate change. But aside from an emissions trading scheme that has at best been patchy and weak, there has been little effort to mitigate urban impacts on the climate. "Zero carbon" amendments to the Climate Change Response Act have taken positive steps recently, but there is vast gap between the setting of strong targets/accountability frameworks under this legislation and the regulatory and funding settings to realise it in practice under other frameworks. The RMA, governing most regulatory decisions for land use, even explicitly prohibits the consideration of greenhouse gas emissions (although that will change once the latest round of RMA amendments come into force). And there are only weak connections between the climate imperatives of the Climate Change Response Act and frameworks dealing with land transport funding and strategic planning.

The existing system does not address climate change mitigation and adaptation strongly enough.

4.11 Infrastructure

The resource management system is also directly responsible for the planning, funding and provision of essential public infrastructure and services in urban areas. It has not done a good enough job here. Institutional and funding arrangements and incentives at the local level have led, in some places, to chronic underinvestment in crucial inter-generational infrastructure and services (eg water). That failure is important not just for the quality of service people experience, but also for the human health and environmental impacts from drinking supply and wastewater failures.

The response to increased congestion in urban areas has also generally been to build more roads. It has not worked, and is not likely to work in the future. Without an efficient transport network to move workers and goods, urban agglomeration benefits like social connection and access to labour markets can be reduced. More broadly, there has been a failure to fund and deliver infrastructure to support urban growth in a timely way.

Some have also pointed out that the current system is oriented towards mitigating adverse effects of activities on the natural environment (albeit far from successfully), and has not had a sufficient focus on positive urban planning and design to create spaces where people and communities can thrive. This is not a universal opinion; good urban planning practice has occurred under the RMA.

Yet it is valid to ask whether the system can do better. Problems like obesity, crime and mental health are not problems with the resource management system per se, and certainly cannot be solved by reforms to it. But many such statistics are worsening, and the system can contribute to solutions by, for example, providing for the mental health benefits of nature in cities; providing safe and accessible transport infrastructure and urban design.
that encourages active mobility; and providing for busy and vibrant town centres that seek to minimise crime. These things should not be dismissed by those overseeing the system as “not my problem” or “objective overload”.

The system has not done enough to ensure that adequate urban infrastructure is funded and delivered to accommodate growth, to provide reliable and safe essential services, or to address congestion and access. It has also failed to provide a strong legal or conceptual basis for the wide outcomes sought by urban planners.

4.12 Housing affordability

The performance of the resource management system in relation to the cost of private development is complex. The costs of planning and consenting are very real. They should not be excessive; bureaucratic churn is not desirable for its own sake. Some have bemoaned that “overly prescriptive planning rules have been introduced, with insufficient consideration of their costs and benefits.” That may be true in some cases (although much depends on context, and there are risks in cherry picking examples).

But a sweeping diagnosis of regulatory overreach belies the fact that much depends on one’s view of why we have such rules, and whether the costs they impose are worth it when a public-interest or inter-generational perspective is taken. For example, someone who thought mandatory provision for apartment balconies and minimum apartment sizes was inefficient might now, in the wake of the Covid-19 lockdown, see them as important for helping the mental wellbeing of those confined to their houses. Is that a public good outcome to be secured rather than something to be left entirely to private choice?

It is also not clear the extent to which different aspects of the resource management system are to blame for, or should contribute to resolving, issues of housing affordability. The area is complex. Yet there are several ways in which the system is not performing well for housing. Constraints in the supply of residential land, especially in places where growth is rapid and demand high, have been identified as a significant factor in driving up the price of land. This is simple market economics. Supply can be constrained in three key ways: limiting the ability of a city to expand outwards, preventing densification within existing urban areas, and imposing restrictions/prescriptions that make development in an area an unattractive prospect for private developers in practice (eg limits on building heights).

There are strong arguments that the system is skewed against increasing density in existing urban areas. Existing homeowners can exert considerable local political pressure (they are more likely to vote and be engaged in consultation processes), and the RMA itself also entrenches many existing use rights. Of course, existing homeowners opposed to change are not bad people. But for social and economic reasons they can actively seek to retain density restrictions, either to enhance the value of their land or to maintain what they perceive to be a higher quality of urban life or amenity in a lower density environment (in fact, this may be exactly why they chose to buy a property in a particular area). This is one expression of what is known as “Nimbyism” (a view that density or other changes like more public housing may be good in principle, but “not in my backyard”).

The existence of high value plots of land combined with density restrictions also leads to the provision of higher value detached houses to match the underlying land value (the McMansion phenomenon). This exacerbates the main issue (high underlying land price), and the overall supply of affordable housing is constrained.
Local political imperatives, dominated by existing landowners, can therefore devalue the equally important interests of renters struggling to purchase a property, future residents, and future generations. It is a phenomenon that unduly impacts on the poor, locking them out of enjoying the benefits of urban living (eg access to jobs, social connection, and amenities). To some extent this has been overcome in Auckland through a Unitary Plan that took a holistic view of the city and now provides for considerable added density.86

A broader range of political incentives can also constrain the ability of urban areas to grow outwards. While there are natural constraints in some areas – such as the need to protect landscapes around Queenstown and the natural geographical barriers around Wellington – there is evidence that strictly preventing outwards growth through planning provisions can increase the price of developable land (especially when coupled with restrictions on densification).

Furthermore, existing residents may perceive that they are subsidising the interests of future residents by funding expensive growth infrastructure through rates, or perceive that financing through high council debt levels threatens their future position.87 Councillors frequently campaign on platforms of keeping rates low and being debt prudent. There are also legal and practical constraints on the extent to which growth can be financed by debt.88

The result is that infrastructure expenditure is carefully rationed where growth is high, and cannot always keep up with rapidly increasing demand for serviced greenfield land. A residentially zoned section is not much use without connections to transport or water services. Outwards expansion is therefore constrained, and the price of existing properties goes up (which also encourages land banking and speculation, with landowner expectations of high capital gains). This is not at all to suggest that well-considered and responsive urban limits are an inherently undesirable thing – quite the opposite (see Chapter 6). It is simply to note that existing incentives from our infrastructure funding and financing system are not working as they should to allow growth where it is appropriate.

When combined, planning and practical restrictions on both outwards and upwards growth, and demand that outstrips supply, mean that prices for residential land increase. The resource management system needs to be responsive to that. Some have gone so far as to estimate that increasing land supply could reduce the cost of housing by 31 to 47 percent.89

Yet rather than just increasing supply, we also need to think about what is driving demand. Of course, strong population growth in cities has been the underlying factor, and is not easily able to be controlled. If a city is popular or has available jobs, more people will want to go there. Growth is a sign of success. But that does not capture the full picture. Some have therefore pointed to, for example, “tax settings that have encouraged a generation of investors to see rental properties as a uniquely desirable asset class” due to the potential for tax-free high capital gains in fast growth areas90 and, perhaps, a cultural attachment to investment in land. People are not just bidding up properties for the purposes of living in them. In fact, some properties in Auckland are not inhabited at all (or even built on), and exist only as speculative land investments. Others have pointed to the perceived risks of investing in high density dwellings like apartment blocks, where a higher proportion of value is tied to a building that may fail (as opposed to land, which is much less risky).91 Changing tax settings alone may not increase actual physical housing stock (and is therefore not a substitute for resource management reform where supply needs to increase), but it could reduce the impact of bidding wars between investors and first home buyers and encourage investment in more productive assets.92

As we have seen, though, there is enormous entrenched political opposition to such tax changes.

Other factors also have a bearing on housing supply and affordability. Some have pointed to the way the construction sector is set up and struggles to realise economies of scale; roadblocks to large-scale development of high or medium density housing presented by fragmented land (Newtown in Wellington is often given as an example); interest rates and credit availability; incomes; the cost of other essential goods and services; subsidies for home ownership; overseas investment settings; land banking and a lack of competition in the market; direct government involvement in the development sector; and immigration policy.93

This report does not stray into such questions. However, the key point is that contributors to housing affordability are complex. Land supply needs to be increased (particularly by allowing for greater density) to overcome the powerful underlying cause of scarcity, but it is disingenuous to claim that the RMA as a whole, including Part 2, a range of environmental protections, urban boundaries and “red tape”, is responsible and needs to be chucked in the bin.94 The Resource Management Law Association has even said that “there is no credible evidence base that the RMA [itself] is the sole (or even a predominant) cause of such issues”,95 and a 2010 urban technical advisory group report stressed that:

- house and section prices are a product of many influences, including planning decisions and the regulatory regime of the RMA. In addition to construction costs, interest rates and the availability of credit are at least of equal or greater significance.

Furthermore, increasing the supply of land through the planning system does not always work without other supporting measures. Even under special housing area legislation (overriding aspects of the RMA),96 actual houses were slow to be provided due to infrastructure funding issues and construction costs.97

That is not to say that the resource management system should do nothing, only that an overall package of solutions should not focus only on removing planning restrictions. For example, if a compact urban form and
some form of urban limit has inter-generational and non-monetisable benefits, then could some of the consequent impact on land price be mitigated through the use of things like inclusionary housing conditions (eg requirements for a proportion of modest/affordable dwellings) for new developments, or allowing (and providing practical incentives for) well-designed density; or creating a strong role for a government developer to take on the risks of developing complex brownfields sites? A recent report from the Auckland Council suggests that we need to think broadly about the benefits, not just the costs, of a compact urban form.

The blame for housing unaffordability is often laid at the door of restrictive planning provisions produced under the RMA, which constrain the supply of land. That is certainly a big part of the picture, particularly constraints on density in inner suburbs. But improving housing affordability relies on many other measures beyond the scope of resource management reforms, and is not an immediate justification for removing urban planning tools (eg urban limits, minimum floor sizes) or throwing out the RMA. That said, as explored in the following chapters, there is much about the RMA and other frameworks that will need to change to address housing affordability problems.

4.13 Procedural problems

There is another way to look at problems with the system. Even if our urban outcomes were perfect – affordable housing for all, reliable and future-proofed infrastructure, a healthy environment – the system can still be in need of improvement. This is because how the system operates is just as important as the tangible outcomes it creates or allows. We can think of these things as “process” problems.

- Māori voices are saying they feel excluded or marginalised from decision-making processes and that the system does not reflect Treaty principles. The government’s resource management system review panel has pointed out, for example, that “much remains to be done to ensure that the principle of partnership inherent in the Treaty moves towards an everyday reality.”

- Other voices are marginalised, too. Disproportionate influence in local politics and council decision-making – which is important in shaping urban areas through land use and funding choices – is wielded by existing landowners who often have vested interests in retaining the status quo. Aside from the tangible outcomes this can cause (eg resistance to densification of wealthy areas and consequent impacts on land prices), this is arguably unfair in a procedural sense because it weakens the voices of future residents, future generations, and those parts of urban society who do not have the time or resources to engage in political or decision-making processes. Ironically, despite strong powers to intervene, the national interest is also underrepresented in local decisions.

- The planning process under the RMA is too slow to produce timely outcomes and respond to change in an adaptive way (eg the provision of development-ready land in the right places, the protection of urban waterways). This, in our view, requires the system to be reformed to speed up decision-making.

- The system has become increasingly complex, fragmented, and inaccessible to users. Former Chief Justice Sian Elias put it well when she said that the RMA is “meant to engage communities, not alienate them” and bemoaned the “impenetrability” of the Act. Multiple carve-outs exist, frameworks seek different things, and there has been a proliferation of alternative processes. Ad hoc legislative and planning changes have, over time, resulted in an excessively complicated and fragmented system (eg carve-outs for special housing areas, a new Urban Development Act, and a proliferation of different planning processes under the RMA). A lot of complexity has come about because urban problems and pressures have driven amendments to or workarounds of the RMA. As the New Zealand Planning Institute has said, we are operating in “an increasingly complex environment, with new pieces of interrelated legislation (quite apart from amendments to the RMA itself), new tools and processes, and additional stakeholders and institutions.” Others have said that the system is “regarded by many as complicated, burdensome and slow to respond to changing circumstances.”

- Alongside its increased complexity, the system is not coordinated enough. Its statutory frameworks, regulatory and policy instruments and processes do not align in a normative sense (eg their principles pull in different directions), and procedural links are either not clear or do not intersect in timely ways. This is particularly apparent when we look at the lack of coordination and links between instruments made under the RMA, Local Government Act, Land Transport Management Act, Building Act and Climate Change Response Act. It plays out strongly in the context of urban growth and renewal. For example, the relationship between emissions reduction plans and RMA instruments remains unclear, as does the relationship between RMA plans and a government policy statement on housing and urban development.

Coordination issues are also apparent in the lack of clear links between instruments made under a single statutory framework, such as the increasing number of NPSs under the RMA (concerning things such as development capacity, protection of elite soils, safeguarding freshwater, and protecting biodiversity). Aside from the potentially poor and unpredictable outcomes all this generates, it creates unnecessary tensions,
duplications and uncertainty in how outcomes are reached, and exacerbates issues with public understanding and accessibility. Coordination is vital: “managing the effects of individual activities is not enough on its own, we also need to manage urban systems and their interconnections.”

The system lacks effective oversight and holistic stewardship.

- While the system is not devoid of strategy, it does not provide an overall vision of what it wants to achieve in the future or the steps that need to be taken under multiple legal frameworks to get there. The RMA itself has been said to lack a future focus, and assumes an environment that is for the most part stable. That is unlikely to hold true in the future, not least because of climate change and the recognition that we need to actively make things better rather than just mitigate harm.

Above, we have identified a number of ways in which the current system is failing or underperforming in the urban context, or ways in which it might struggle in the future to cope with new challenges. In the Phase 1 work we also put these into a number of categories.

The most obvious is that the system has failed in a number of areas to do what it was always intended to do, including (especially with regard to the RMA) protecting the environment and enabling urbanites to provide for their wellbeing. Other issues are not “problems” per se, but require a careful balancing of competing interests that may change over time and need to be recalibrated under new circumstances (eg how and the extent to which the public can participate in planning processes). Still other problems are arguably a result of things that the system was not clearly designed to do in the first place, such as coordinate between land use and infrastructure provision in contexts of rapid urban growth, provide for explicit recognition of specifically-urban outcomes like urban design and housing affordability, address climate change, and drive environmental improvements. The system needs to expand its scope to deal with such things in a meaningful way.

Many issues have arisen from how the system has been implemented (through plans and other decisions), rather than being a problem with a particular statute. For example, someone looking at the RMA for the first time would be quite convinced that it imposes effective environmental bottom lines. Quite a few commentators have, with good reason, therefore defended the RMA itself, and pointed to the need to improve planning practice, strengthen national
leadership, and provide for adequate resourcing. That conclusion is compelling, but we also consider that systemic reforms – including to the RMA – must be responsible for setting up the architecture to ensure implementation is effective in the future.

Problems with the existing system arise for several underlying reasons: some are tensions that need to be recalibrated given challenges we are facing; some arise because the system was not really designed to perform some functions; and others exist because the system has failed to achieve what it said it would. Many failures are down to how frameworks are implemented rather than specific statutes or particular legal provisions, but a future system must be responsible for ensuring effective implementation. Failures of implementation still require systemic reform.

4.14 Measures taken to address urban problems and challenges

Many of the problems and challenges described above have been well recognised for a long time, and various measures to address them have been, and continue to be, taken by the government. In recent times we have seen:

- a further round of RMA amendments
- new national direction under the RMA
- revised planning settings for Auckland (including requirements for a spatial plan, a Unitary Plan, and changed governance arrangements)
- zero carbon legislation
- the establishment of an Infrastructure Commission
- see-sawing amendments to the Local Government Act

Most recently, bespoke legislation (the Urban Development Act 2020) has been enacted. This gives various development and planning powers to Kāinga Ora – Homes and Communities (see Chapter 11). The Infrastructure Funding and Financing Act 2020, designed to free up money for infrastructure to support rapid urban growth, has also been recently been passed (see Chapter 9). So too has legislation establishing an independent water regulator.

A number of other measures are still underway and at various stages. Some are specifically targeted at managing urban areas or issues. In particular, an NPS on Urban Development has recently been gazetted and is set to come into force in late August 2020, replacing a narrower NPS on Urban Development Capacity. But many more ongoing measures have relevance to cities and built components, including:

- a review into service delivery arrangements for the three waters sector
- proposed legislation outlining a new framework for regulation of the three waters sector
- the development of national emissions reduction and adaptation plans under the Climate Change Response Act
- new national direction under the RMA for protecting elite soils, freshwater and biodiversity.

Responses to Covid-19 also intersect with measures to address urban resource management issues. Bespoke legislation has been enacted to fast track “shovel ready” projects through the RMA consenting process. And there has also been an indication that the Building Act is up for review in light of sustainability and climate imperatives.

All of these need to be taken into account as moving parts when thinking about wider system reform, and many represent positive steps to be incorporated into deeper
There is an active reform programme being pursued by the current government. Wider system reform will need to be cognisant of such measures. Of particular importance is the work of the government’s independent review group to rethink the resource management system as a whole, which includes a mandate to explore urban-focused reforms.

The impact of some of these measures remains unclear, although some (particularly Auckland’s Unitary Plan and a more ambitious set of national direction) show promise. However, in our view there are still underlying, systemic issues with the current system that require a fundamental rethink. 135

In particular, a lot of the measures being taken are constrained by the existing legislative silos through which they are created and will not be able to achieve the integration or coordination we require. For example, a new NPS on Urban Development speaks rather hopefully of integrating land use and infrastructure, but as an RMA policy it has little legal influence over frameworks under which infrastructure is actually funded (see Chapter 10). Bespoke or workaround measures are also being pursued through new legislation and new institutions – as under the Urban Development Act – but while such things have positive features, their relationship with existing frameworks like the RMA tends to exacerbate the complexity and fragmentation we already have (see Chapter 11). 136

The overriding lesson is that more systemic fixes are required, and that these need to reduce the complexity that has grown up in recent times.

Over the remainder of the report, we present a vision for framework level reforms that in our view would better achieve a wide range of urban objectives. Central to that is reform of the RMA, and we begin by looking at a key question of legislative design: should we split up the Act?
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REFORM OF THE RESOURCE MANAGEMENT SYSTEM: THE URBAN CONTEXT

ENDNOTES

1 New Zealand Productivity Commission Better urban planning (2017); New Zealand Productivity Commission Housing affordability inquiry (2012).


5 This perception of renting as being inherently less desirable is being challenged in developments in Auckland; see, for example, <www.stuff.co.nz/life-style/homed/real-estate/121843665/new-careless-apartments-for-renters-now-up-for-grabs>.


7 See A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 22: “A highly dispersed city may have comparatively low direct housing costs, but residents on the outskirts may nevertheless have high combined (housing plus transport) costs that equal to those of residents in a more compact city with low travel costs but higher house prices”.

8 The Productivity Commission has laid much blame at the door of restrictive planning restrictions: see New Zealand Productivity Commission Housing affordability inquiry (2012).


10 See for example Funding Auckland’s transport future (2014).


12 See New Zealand Productivity Commission Better urban planning (2017).

13 See Strengthening the regulation of drinking water wastewater and stormwater (Cabinet minute CAB-19-MIN-0332, 1 July 2019); New Zealand Productivity Commission Local Government Insights (2020) at 11.

14 Beca Cost estimates for upgrading water treatment plants to meet potential changes to the New Zealand drinking water standards (2018); GHO and Boffa Miskell Cost estimates for upgrading wastewater treatment plants to meet objectives of the NPS freshwater final report (September 2018).


17 This is not to say that cities are worse for the environment than other areas. Indeed, agglomerating people densely together can produce less per capita impact than if people and activities were more dispersed, in terms of efficiency of land use as well as pollution. However, this does not detract from the point that cities still are the source of considerable environmental impacts.

18 For example, air quality and some aspects of freshwater – see Ministry for the Environment and Statistics New Zealand New Zealand’s environmental reporting series: Environment Aotearoa 2019 (2019) at 41.


21 Ibid.

22 Even when treated and disposed of as intended, sewage can still contain many pollutants like pesticides, pharmaceuticals, and other novel substances: see Ministry for the Environment and Statistics New Zealand New Zealand’s environmental reporting series: Environment Aotearoa 2019 (2019) at 65.


25 Ibid. at 18, 65-66.


28 Ibid. at 64.


37 New Zealand urban design protocol (Ministry for the Environment, 2005) at 9.

38 See <www.superdiversity.org>.

39 On the challenges and opportunities of urban decline and shrinking, see E. Glasner Triumph of the city (Pan, 2011) at 64-66.


42 Ibid at 25.


45 See generally Ministry for the Environment and Statistics New Zealand New Zealand’s environmental reporting series: Environment Aotearoa 2019 (2019) at 41. Not all small peri-urban lots are unproductive, although many are.

46 G. Severinson and R. Peart Reform of the resource management system: The next generation (EEO, 2019), ch.3.

47 A specifically Māori economy is thought to currently be around $50 billion. See Chapman Tripp Te As Māori: Trends and insights (June 2017); <www.chapmantripp.com>; Treasury He tirohanga mokopuna: 2016 statement in the long-term fiscal position, New Zealand (2016).

48 P. Gluckman and A. Bardlsey The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 2.

49 <www.newroom.co.nz/2020/04/16/1129745/houses-of-gain-if-you-need-to-get-out&utm_source=Facebook&utm_campaign=a01080ebc3-Daily%26%238211%3B+Briefing%26%238211%3B+&utm_medium=email&utm_term=0_71d6c4b3-4d10-1d006bce3-978781797>.

50 <www.newroom.co.nz/2020/04/16/1129745/houses-of-gain-if-you-need-to-get-out&utm_source=Facebook&utm_campaign=a01080ebc3-Daily%26%238211%3B+Briefing%26%238211%3B+&utm_medium=email&utm_term=0_71d6c4b3-4d10-1d006bce3-978781797>.


52 P. Gluckman and A. Bardlsey The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 11.


54 P. Gluckman and A. Bardlsey The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 2.


57 P. Gluckman and A. Bardlsey The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 9.


61 Some have said that debt could rise to around 40 percent of GDP, or possibly higher.

62 P Gluckman and A Bardyse The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 11.

63 Technological solutions have been floated, such as self-sanitising elevators and bathrooms.

64 P Gluckman and A Bardyse The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 11.


68 See Chapter 8 on the concept of urban limits.


70 For example, through housing policies requiring a certain proportion of homes to be provided below a particular price point or floor area, or through well planned medium or high density housing areas.


73 See M Brown and others Evaluating the environmental outcomes of the RMA (EDS, 2016).

74 For example, higher greenhouse gas emissions, encroachment on ecologically sensitive areas and paving over productive soils.


79 See Resource Management Amendment Act, ss 2(3)-(4); ss 19-20; ss 35-36.


81 New Zealand Productivity Commission Local government insights (2020) at 11.


84 Wide ranging density restrictions can increase the value of land in some cases (by restricting supply), but in other cases restrictions can decrease land value (because the ability to subdivide and develop would be profitable).


86 Although much will depend on the extent to which permitted density is actually taken up in practice.


89 New Zealand Productivity Commission Local government funding and financing (2019); Local Government (Financial Reporting and Prudence) Regulations 2014. Some borrowing restrictions have recently been relaxed for a short period by the Local Government Funding Agency, to allow councils with a high credit rating to borrow up to 300 percent of their revenue (up from 250 percent) to respond to the Covid-19 fallout.


92 If land supply were increased (or additional supply were more responsive), there would no longer be a realistic expectation among investors for the rapid capital gains that have occurred in recent years; even so, however, it is not clear that housing would become less attractive than other assets or that tax settings would not have a distortionary effect.


94 For example, hyperbolic calls to get rid of the RMA in a “bonfire” of regulation: www.nzherald.co.nz.nz/news/article.cfm?c_id=1&objectid=12315020.

95 Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [18].

96 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 1.

97 Housing Accords and Special Housing Areas Act 2013.


99 Inclusionary zoning is not a complete solution, and debate continues as to its effectiveness. Some have pointed to it making market-priced homes more expensive, operating essentially as a tax on development, and actually reducing overall supply of new housing. It is therefore not a replacement for mechanisms to increase supply of houses, including by increasing density and allowing mixed use neighbourhoods. However, others have supported its use as part of the picture in creating more affordable, socially integrated and economically diverse communities, particularly in high priced areas where affordable units would otherwise not be built.

100 SL Martin and DS Norman An evidence-based approach: Does the rural urban boundary impose a price premium on land inside it? (Auckland Council, Chief Economist Unit, February 2020).

101 See New Zealand Productivity Commission Better urban planning (2017); Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010).


107 For example, in the use of special housing areas under bespoke legislation (altering the application of Part 2 of the RMA), and in the removal of local government consideration of climate change mitigation.

108 For example, the idea of a development-oriented Government Policy Statement on Housing and Urban Development could jar with protective instruments under the RMA.

109 For example, in the streamlined and collaborative processes available as alternatives to the normal planning process.


New Zealand urban design protocol (Ministry for the Environment, 2005) at 9.

Compare M Brown and others Evaluating the environmental outcomes of the RMA (EDS, 2016).

Ibid.

Additional planning instruments (eg NPSs and NESs) are desirable, but as explored in Chapter 7 they lack coherence as a package.

Resource Management Amendment Act 2020. Some of this Act has come into force already, and other provisions will come into force over the coming two years. This amendment act introduces a bespoke freshwater planning process, a greater enforcement role for the EPA, and the repeal of several previous RMA amendments.


Most recently in the Local Government (Community Well-being) Amendment Act 2019.


See New Zealand Government Planning for successful cities: A discussion document on a proposed National Policy Statement on Urban Development (2019). Elements of the NPS take immediate effect; for example, it must be had regard to in consenting decisions.

See <www.dia.govt.nz/Three-Waters-Review>

A proposed Water Services Act, planned for introduction shortly at the time of writing; see <www.dia.govt.nz/Three-waters-review>


See the proposed NPS for Freshwater Management 2020, which will come into force later in 2020 (<www.mfe.govt.nz/fresh-water/national-policy-statement/about-nps>)


See <www.mfe.govt.nz/rma/improving-our-resource-management-system>

The group has released an issues and options paper: Resource Management Review Panel Transforming the resource management system: Opportunities for change – Issues and options paper (2019). Its final report is pending at the time of publication.


Compare the National Party view expressed in the report of Environment Select Committee on the Urban Development Bill.

5.1 Introduction

There have been calls to "get rid" of the RMA. A lot of them have been motivated by dissatisfaction with how the Act applies to urban issues, and many complaints are legitimate. There is an understandable desire to clear the decks and start again. But if we got rid of the Act, we would need something fit for purpose to fill that void. We cannot just repeal the RMA and hope for the best.

In previous work we have explored a number of fundamental changes that are needed to the RMA but we concluded that the basic framework could remain. On reflection, though, it has become increasingly obvious that the extent of the change required – explored over the coming chapters – really means there needs to be something new, not just a deep round of amendments. We need to rebuild our core legislation from the ground up, on a new set of foundations.

But what should a replacement for the RMA look like? The biggest question here is one of legislative design. Should we arrange our legislation in fundamentally different ways? Should we, for example, split the RMA into two: an Environment Act and a Planning Act?

There are legitimate questions about what the RMA should deal with and what should, instead, be done under other, more targeted, statutory frameworks. In fact, our current resource management system is comprised of much targeted legislation already. For example, biosecurity, hazardous substances and the management of the conservation estate are already managed outside the RMA. It would be unwieldy and confusing to have a single, enormous, statute that deals with all aspects of the resource management system.

So should an integrated statute like the RMA continue to be the place in which we manage our built or urban environments? Or do we need something more targeted for such things – like an Urban Planning Act? We devote a whole chapter to this question, given that it is a prominent and growing issue. Infrastructure New Zealand has proposed a separate act for planning, and the National Party has recently said that it intends, if elected to government, to carve out "planning" in a similar way.

Let us first revisit what we mean by urban, built and natural environments. As described in Chapter 2, these concepts, and therefore options for splitting the Act, are not easily disentangled in precise legal terms. The RMA protects what many think of as the "natural" environment (in the sense of common pool "resources" like water, air and flora and fauna) from a wide range of human activities. Because urban areas are by no means devoid of natural features, environmental legislation like the RMA is equally important in cities. If anything, the need to protect the environment in and around cities is more important, given the huge environmental pressures that come from dense agglomerations of people and activities.

But despite the fact it looks like an "environmental protection" statute in the traditional sense, the RMA is also the place in which the historically distinct concept of town and country planning occurs. It guides urban development, how cities grow or contract, and how urban neighbourhoods look and feel. This is often referred to as "urban planning", although that is not a term that has a formal meaning under New Zealand’s system. To
this end the RMA regulates how land can be used (and subdivided) for reasons going well beyond managing pollution or other impacts on water, biodiversity, air quality and so on. It is equally about shaping communities and people. Effects on the "environment" are therefore defined extremely widely to encompass positive and negative effects on people and communities (including what some have described as subjective or value-based questions of amenity and urban design).

Much has been written about this "integrated management" approach of the RMA, where environmental protections and urban planning occur within a single framework. Some see it as a positive thing. But others have stressed its drawbacks. Overseas, it is more common for legislation to be much more targeted. For example, separate statutes in other countries often deal with water, land, and "nature" conservation, rather than dealing with the sustainable management of all natural and physical/ built resources.

The RMA deals with the planning of land and the protection of the environment in a single, integrated act. Some have called for the Act to be split into separate laws for environment and planning.

In our view, returning to separate statutes for every "natural" domain like freshwater, biodiversity, air and so forth would clearly be a retrograde step. Different aspects of the natural environment are too interconnected – whether within or outside of cities – for decisions to be made in silos. We came to this realisation in the 1980s, and should not go backwards.

However, we recognise that close attention needs to be paid to whether the RMA should be split or otherwise reorganised to target urban or built issues more specifically. In the Phase 1 report, we looked at principles of legislative design, and investigated various options for splitting the RMA by looking through different "lenses". For example, we could create a split in the following ways.

- A spatial distinction: one act for "urban" areas and another for "non-urban" areas. This is, in a sense, what the recently enacted Urban Development Act does (see Chapter 11), by describing a particular development area as "urban" and then managing it under different legislation for the duration of a development project. The risk here is that statutes treat cities, or parts of cities, as lines on a map rather than a part of a wider, more integrated "environment".

- A distinction between the "built" environment (rather than "built up" urban environment) and "natural" environment. This begs the question of how one meaningfully describes a "built" environment; in particular, does it include land? Where would cross-cutting concepts like urban form/design fit in?

- A distinction between the type of "resource" or "domain" on which restrictions are imposed: one statute for the management of land and another for management of other resources (eg water and air). This could see a return to a "Town and Country Planning Act" – although here we would be concerned mainly with the "town" component.

- A distinction based on the "reasons" for which restrictions can be imposed on the use of a resource (eg "environmental" impacts like pollution or biodiversity loss versus "social" impacts like amenity or traffic congestion). For example, currently regional councils and territorial authorities can both impose restrictions on the use of the same resource (land), but for different reasons. There may be difficulties in distinguishing between the concepts of environmental impacts and social/ human impacts, however.

- A distinction based on the extent or status of effects: one act dealing with minor impacts (eg from small-scale residential activities like deck extensions) and another for significant impacts (eg biodiversity loss from land clearance). This would be possible, but it begs the question: why not just try to achieve the same thing through proportionate processes in a single statute?

Integrated environmental management is a good thing. We should not return to the days where we managed inter-connected environmental domains under separate legislative silos. However, it is worth paying close attention to whether the RMA could or should be split to better address "urban" issues. There are different ways in which this could be done.

5.2 A Planning Act and Environment Act

When people speak of "splitting" the RMA, often it is in general terms and it is not entirely clear what the specific basis for a distinction would be (what each statute would actually do). For example, one review posed a question about separating legislation for "environmental" issues, but went on to focus on the workability of distinguishing "urban" from "non-urban" contexts. Terms like "planning", "environment", "urban", "built", "natural" and "non-urban" can be used in overlapping or confusing ways.

One persistent idea has been for "planning" to be done under a separate statute to that for environmental management. It is useful to unpick further what this Planning Act would do vis a vis other legislation. This model would not just be about splitting the RMA. It would also be about integrating or rearranging a wider suite of legislation in various ways.
A spotlight on a Planning Act

Infrastructure New Zealand and others have proposed a radical rethinking of what resource management legislation could look like in the future. There would be a separate “Development Act” alongside a specific statute designed to protect the biophysical environment: an “Environment Act”. Three core statutes – the RMA, Local Government Act and Land Transport Management Act (and potentially others) – would be rearranged along different lines to morph into these two new acts. The Development Act would be concerned with what is described as “planning”, and might alternatively be called a Planning Act. A new Environment Act, instead, would be concerned with environmental “sustainability”.

There would be a cascade of plans created under a Development/Planning Act at a national and regional level (including regional unitary plans, regional spatial plans, long-term plans, various targeted investment plans, infrastructure strategies, asset management plans and transport plans), which would be subject to national and regional environmental policies and regulations made under an Environment Act. Legislative redesign would address the fact that the existing planning framework (the Land Transport Management Act, Local Government Act and RMA), requires separate plans without strong linkages between them. Where linkages do exist, these have different weightings and are often inconsistent between the statutes.

This results in a “complex maze of approvals” for development and a situation where there is “a lack of common purposes and goals across the planning framework and the hierarchy between the ... plans is unclear”. There is also temporal misalignment to be fixed – plans under the different acts are made according to different timeframes and processes. The overall thrust is that land use and infrastructure planning and funding are not well aligned, and that this leads to confusion, complexity, and a lack of timely outcomes for development, particularly in fast-growing greenfield areas. Misalignment has serious implications for the supply of developable land, which in turn affects housing affordability.

There are two main concerns with the current urban system that this kind of proposal seeks to address: (1) the environmentally focused RMA itself is deficient as a statute for the quite different imperatives of urban planning, including housing supply; and (2) there is a lack of coordination or alignment between land use planning under the RMA and infrastructure provision under other legislation. Both are valid concerns and have led to very real problems (see Chapters 6 and 10).

5.3 The potential benefits of splitting the RMA

Arguments have been made for splitting the RMA into separate statutes related to environmental protection and planning, and for infrastructure planning and funding legislation to be merged into a new Planning Act. This is designed to address a number of urban issues.

Is splitting the RMA the right way forward? The question certainly requires close attention. In particular, the mechanics of separating the concepts of “environment” and “planning” need to be picked apart.

First, the positives. From an environmental perspective, there is a lot to be said for having this kind of split applying to cities, as long as planning/development legislation was firmly subordinate to “natural environment” legislation (in other words, “the Environment Act would put the environment first”). We have heard from some environmentalists, not just the development community, that such a strict separation could help to enshrine a clear hierarchy (one act trumps another) under firm and distinct environmental principles. It would therefore avoid the balancing approach that has for most of its history proved so damaging under an integrated RMA (or recurring efforts to create carve outs from it), where the temptation is always to make trade-offs between protection and use.

It could also enable urban development decisions that do not really involve consideration of the natural environment to be subject to a less detailed and expensive assessment process, based on more “anthropocentric” concerns in a setting that is highly modified already. For example, a subdivision may only have effects that relate to traffic safety and capacity, and the extension of a residential deck might have negligible impact on things like freshwater quality or native fauna.

In short, the idea is that an Environment Act would outline a biophysical envelope within which development can occur, and planning legislation would then facilitate (and, indeed, encourage) quality and timely development within it. Conceptually, it would not be too different to the context of minerals: the environmental effects of mining are subject to the RMA, but mining itself has been explicitly encouraged in separate legislation within those restrictions.

Furthermore, the idea of splitting the RMA is not necessarily inconsistent with integrated management. A common reaction is to think that legislative fragmentation is bad and to be resisted, and integrated management is a good thing to be retained. But the crucial question is more nuanced and finely weighted: what should we integrate? And what should we fragment? Targeted frameworks, with focused purposes and separate institutions, can be useful and more workable than an Act that tries to do too much.
In particular, the idea behind a separate Planning Act is that the current system is actually quite fragmented in one important way. Laws relating to the planning of how land is used (or not used) are found in a completely different framework (the RMA), and operate under different processes and principles, to laws relating to planning and funding the infrastructure needed to make changes in urban land use actually happen (largely the Local Government Act and Land Transport Management Act). There is no point rezoning land from, for example, farmland to residential purposes if there is no plan (or money) for roads to get people there, or for water to come out of taps.27 Similarly, roads and pipes are useless if a plan doesn’t allow for houses to be built on the land they are meant to service.28 If we were to put land use and infrastructure planning in a single “Planning Act”, achieving urban land use change could become more timely and effective. There would be one statutory process by which it all happened at the same time.

Integrating the resource management system in one way can cause fragmentation in another. In the current system, land use planning under the RMA happens in a separate framework to the planning and funding of infrastructure often needed to make land use change actually happen, especially in and around cities. These things – land use controls and infrastructure planning – could be integrated together into a Planning Act. The outcome might be the more integrated and therefore timely provision of housing.

5.4 The mechanics of splitting the RMA

A Planning Act would be primarily about managing the uses to which land is put, including in and around cities. But what specifically would be removed from the RMA and placed in this Act, and what would remain in the statute focused on the natural environment? People may have different ideas here.

The most obvious starting point may be to carve out existing territorial authority functions (control of land and subdivision) in a Planning Act. Roughly speaking, this reflects the traditional concept of “town planning”, and would encompass:

1. a set of tools: regulatory restrictions on land use and subdivision under sections 9 and 10 of the RMA; for
2. a particular set of reasons: the functions of a territorial authority under section 31 of the RMA (including the integrated management of land and associated natural and physical resources of a district).

The “environment” managed under a separate Environment Act would then be focused on protecting or enhancing resources like water, soil and air. As a generalisation, that encompasses most human actions restricted under the RMA other than the spatial aspect of land use and subdivision (eg coastal occupation, discharges to water and air, the taking of freshwater). These are primarily regional council functions in the current system.29 Some have therefore hinted (albeit without endorsement) that a workable split is already in our laws.30

the administration by regional councils of broad regional policies, and active administration of water permits and discharge permits and coastal marine consents, primarily focuses on the natural environment. The functions of territorial authorities to deal with land use consents and noise control, and subdivisions, focus on the built environment.
However, this is far from clear cut. For one, the land use functions of territorial authorities are by no means limited to the built or urban environment. They span all land in a district, and involve many protective “environmental” considerations as well as development ones (such as biodiversity protection). Furthermore, regional councils have a variety of functions relating to land use, including land use in urban and built settings. Those are not just related to “natural” things like soil erosion, flood control or freshwater protection, but extend to decisions about regionally significant strategic land uses (e.g. the imposition of urban limits in regional policy statements).

More specific regional and district functions overlap, too (e.g. in terms of biodiversity maintenance, and the provision of development capacity).

Perhaps most significantly, there is no normative distinction recognised in the RMA. In other words, there is no clear distinction in the concept of sustainable management between the principles that apply to land and the principles that apply to other domains, or between those that apply to built-up and other areas. This is for very good reason: sustainable management principles are often all relevant to some degree, irrespective of where an activity is taking place. Everything is connected.

A decision would also need to be made as to whether a Planning Act would be about land use only in urban areas (“town” planning) or everywhere (“town and country” planning). Making a firm legal distinction between laws applying only to urban areas or rural areas could be problematic; towns can expand and contract, and urban growth needs to be managed in an integrated and strategic way with surrounding land uses (e.g. productive land, landscapes, significant natural areas).31

From a purely technical standpoint, it would be possible to split the RMA into separate acts for planning and the environment. However, it would raise many complex questions, boundary issues and potential overlap.

5.5 The risks of splitting the RMA

There are also substantive risks to a Planning Act-Environment Act split. The crucial question, in our minds, is where the stronger (i.e. intra-statutory)32 connections are needed when making decisions in and around cities. Presently, both land and other natural resources are managed under a single Act with a single purpose and principles, while the funding and planning of infrastructure is managed under the Local Government Act and Land Transport Management Act. These have quite different purposes from the RMA.

A Planning Act-Environment Act split would bring land use and infrastructure planning closer together, but at the same time it could create a separation between land use and other aspects of the environment like water, air and soil. As we noted in the Phase 1 report:33

The strength of connection needed … between land and other domains under the RMA may mean that legislative separation between the RMA [and infrastructure legislation] remains desirable in a future system. Connections can [instead] be made through aligning planning processes under each. Some may, however, see the connection between infrastructure planning and land use as more significant. That could see the integration of the infrastructure and land use components of the … acts within a single statute (such as a Planning or Development Act).
Below, we outline four key reasons for why we might want urban planning (in the sense of land use planning) to be managed under a different statute. We also question whether any one of those reasons really outweighs the risks of doing so.

1. **To better coordinate decision-making on land use with associated planning and funding of infrastructure**

   This is a legitimate concern, driven primarily by issues brought about by rapid urban growth (especially land supply for housing). Infrastructure is needed to support residential rezoning, and rezoning is generally needed to make infrastructure funding worthwhile. They really need to happen together in pursuit of a common vision.

   However, we also note that there are other ways to align statutory frameworks for infrastructure and land use without integrating them into one act (eg coordinating decision-making processes better, and engaging in higher level spatial planning). These are discussed in Chapter 10. Some have also noted that:

   - integration of all land transport planning [ie the Land Transport Management Act] into a planning law dealing with the built environment [including land use controls] would be of no advantage, and could hinder the leadership role of central government in transportation.

   As an aside, we do see potential for infrastructure planning and funding components themselves (currently fragmented across the Local Government Act and Land Transport Management Act) to be integrated more closely, in a single “Local Government and Infrastructure Act”. This is discussed further in Chapter 9.

2. **To reflect that the kinds of tools used under each framework are fundamentally different**

   The concept of sustainable management under the RMA is broad enough to encompass many things, including the minimisation of waste, construction standards, fishing, climate change mitigation, pest management, hazardous substances and genetically modified organisms (among other things). Yet these things don’t generally happen through RMA instruments, and some are explicitly carved out from the Act. Instead, they have more targeted frameworks, largely because they provide for a very different architecture of decision-making from the planning and consenting framework of the RMA. Do urban land use controls require a similarly bespoke legislative framework?

   We are not convinced that this is a reason to create a separate Planning Act. The RMA planning and consenting framework already comfortably encompasses the core kinds of tools needed for managing land. It is not clear that fundamentally different kinds of mechanisms would be used under a new Planning Act than, for example, those contained in a district plan and regional policy statement (zoning, rules, performance standards, policies and objectives, resource consents, designations etc).

3. **To provide for a different or faster process for decision-making concerning urban land use**

   There has been much debate in recent years about the need to make urban land use planning faster. The RMA has proved too slow to deliver timely outcomes. The most tangible examples of responses to this issue have been in the bespoke planning process by which the multiple plans in the Auckland region were combined into a single unitary plan (although this was not limited to land use or, indeed, to the urban parts of Auckland), and the introduction of a streamlined planning process in the RMA. Special housing areas were introduced in 2013 to partially override the RMA, and (as discussed in Chapter 11) the Urban Development Act can now do so too. These are all “carve outs” from the RMA, which has been seen as a roadblock to timely planning decisions that provide for greater housing supply.

   The planning process certainly needs to change. However, we do not consider this need for speed to be an issue unique to urban planning or land use change, or a reason to split its management into another act. Equally pressing is the need to ensure planning for other aspects of the environment – notably freshwater and climate change – are progressed in a much faster way, including in an urban setting. In fact, plan agility is a concern across the board. As such, we are suggesting a revised planning process that would include, but not be limited to, urban land use change (see Chapter 8).

4. **To provide for a different purpose and principles under which land use decisions are made**

   In our view, this comes to the crux of the debate. A key reason to separate statutes is because decisions under different acts are governed by different purposes and principles. Clarity of purpose is particularly important when it comes to defending the environment from harm, as we have seen from a turbulent history of interpreting Part 2 of the Act.
But where does decision making for land use fit? Within development-oriented legislation like a Planning Act? Or within protective environmental legislation concerned with sustainability and restoration?

Some have suggested that a Planning Act could encompass “land use patterns, distribution across space of activities and buildings that house the activities, transportation systems, physical infrastructure of roads and other service systems, and urban design”. However, to us land use would really need to fit within both statutes, suggesting that an integrated Act remains most appropriate. The implication of an entirely separate statute for land use would be that its purpose and principles would be quite different from those applying to other domains. This seems to be the idea behind the Productivity Commission’s stance that that “a future planning system should clearly distinguish between the natural and built environments, and clearly outline how to manage the inter-relationship between the two”. However, we are not convinced that a clear distinction between principles is possible even within legislation (e.g. a list for “built” and a list for “natural”). There is too much crossover. But even the Commission made it clear that using this as the basis for a legislative split “raises the risk of inadequately recognising the interconnection between urban and environmental issues”.

By comparison, we might consider the coastal-marine context, which (like cities) looks very different to other settings. Yet we do not generally consider it necessary to put this into a different statute. Our oceans are too intertwined with other “environments” (e.g. the land and rivers that affect them) to treat them as legislative islands. Similarly, land use (urban, built, or otherwise) does not warrant a fundamentally different set of decision-making principles, even if it might warrant some additional ones that are conspicuously missing from the effects-based RMA (see Chapter 6). We therefore urge caution.

There are four key reasons we might want to pursue a Planning Act – Environment Act split: (1) to better coordinate land use with infrastructure provision; (2) to reflect completely different sets of legislative tools; (3) to provide one with faster processes; or (4) to provide a different set of principles under which decisions are made. Better coordination of land use and infrastructure is key, but can be achieved in different ways. We do not find the other reasons for splitting the RMA convincing, as underlying issues can be addressed better in other ways.
There is a strong connection between urban land use and other aspects of environmental management

It is worth dwelling a moment longer on the idea that land use planning and environmental sustainability can be seen as conceptually different things. Historically, we may have thought in this way. Urban planning was, originally, seen as being mainly about ensuring sanitary conditions and other human health concerns. Harmful (eg industrial) activities should not be allowed next to sensitive (eg residential) ones. Subsequently, it was about managing people’s interactions with each other when living in close proximity. Environmental sustainability, on the other hand, was originally about stopping point source pollution and safeguarding specific areas or species from harm. It was about “protection”. Widespread public awareness of environmental issues really appeared only from the 1960s and lagged well behind the concept of urban planning. Historically, the disciplines progressed along different paths.

It is still tempting to see the spatial management of land (what human activities go where) as something inherently different from the sustainable management of the “natural” environment. This is especially the case if land is in an urban area where not much seems “natural” anymore. A separate, targeted statute therefore seems a logical response. After all, what does a deck extension or the addition of a second storey have to do with the lofty environmental principles of the RMA? Some have pointed out that:

The environment is not, for instance, in peril if a bedroom is extended in a suburban home, even if the district plan says the environment must be considered and both a resource consent and a building consent applied for.

Of course, the veracity of such statements depends on what we think the “environment” is. Extending a home might not at all impact on a threatened species, air quality, or the quality of coastal water. If so, the RMA is unlikely to require a consent for those things. But the “environment” in the RMA is – quite legitimately – much wider than that. So while the purpose and principles of the RMA might not have much to say about them specifically, environmental impacts under the Act squarely include effects on communities and neighbours, who may well be in some “peril” from someone else’s house extension. The real question is, therefore, how stringent such restrictions should be, not whether they are imposed under separate legislation. A Planning Act would still need to regulate them in some way.

Furthermore, the distinction between land use planning and the “environment” in its more lofty sense is also not a sharp one. The frequent use of fairly trivial examples of urban planning restrictions (eg fence heights, minor shading effects, an extension of a suburban home) obscures the fact that bigger picture or cumulative land use decisions about urban form can and do have significant ramifications for environmental wellbeing, not just the sensitivities of neighbours. For example, dispersed development can have considerable impact on climate change, energy efficiency, and the viability of public transport; the location of industrial activities and transport.
environments are found within or close to urban centres), and the absence of urban trees and permeable space can impact on a city's microclimates and flooding. Urban land use decisions also have systemic implications over the long term for biodiversity (many of New Zealand's most threatened terrestrial systems are found within or close to urban centres), soil and food production.

Often, how we manage land is crucial to a precautionary and preventative approach to environmental management more broadly, because permitted uses of the land generate cumulative (and usually poorly monitored) impacts. These decisions have significant long term "environmental" consequences. It is particularly difficult to reverse urban sprawl once it occurs – we are giving up many alternative land use choices (eg food production, nature conservation) when we concrete over soils, and are locking in transport modes (eg cars) in our choice of urban form. On the other hand, if it is done well, urban development can be positive (eg by recognising the value of and providing for urban biodiversity corridors). Of course, equally robust or even identical environmental principles could be built into a standalone Planning Act dealing only with land use. But if we did that, what would be the point of splitting up the RMA in the first place?51

There are also important cross-cutting concepts like Te Mana o te Taiaroa, landscape, energy efficiency, ecosystem-based management, and catchment scale management that require a tightly integrated regime. How would these concepts be meaningfully provided for if land use planning were to be located under a different regime with different decision-makers and processes?52 It is by no means obvious what kinds of things should be in one act or another, and how they should relate.52 That extends to "environmental" impacts felt directly by people and communities, such as noise pollution, access to natural light, and the felling of mature trees. If we had a Planning Act and an Environment Act, where would such impacts be considered? In both?

Furthermore, how would fragmenting consideration of urban land use fit with te Ao Māori? We leave that question to Māori, but note that the Te Aranga principles stress that the notion of a cultural landscape connects "whānau and whenua, flora and fauna, through whakapapa. It does not disconnect urban from rural. It transcends the boundaries of 'land'scape into other 'scapes'; rivers, lakes, oceans and sky."53

The environment is a holistic concept. Within this, land use decisions cannot easily be separated from other aspects of environmental wellbeing.

While a Planning Act could be made expressly “subject to” an Environment Act, this tends to assume that there are always hard and fast environmental rules in the latter with which the former could simply “comply” (eg preventing further harm through discharge standards, protected areas etc). For some things, involving clearly defined spatial or performance-based limits, that will be the case. But what is also needed is an integrated approach where development and land use decisions actively pursue environmental goals alongside other aspects of human wellbeing, not just comply with bottom lines. For example, a Planning Act dealing with land use decisions would need to contemplate how urban form and design can be energy efficient, how to green our cities and enhance people's connection with nature, how to reduce greenhouse gas emissions, and how to improve water quality. Those are also things that would be at the heart of an Environment Act.

Splitting the RMA could also cause considerable confusion, overlap and inefficiency. There would likely be a need to either duplicate or cross-reference provisions concerning notification, public participation, timeframes for decisions, and other procedural matters. Endless questions would arise concerning relationships between different instruments and institutional responsibilities. It would risk extensive litigation to define boundaries.

We might even end up trading one enormous statute for two statutes that, when combined, would be even larger and more confusing. The Resource Management Law Association, for example, has said that a split would “introduce significant complexity and confusion as to how the new framework should be interpreted and applied in practice”54 and highlighted that “environmental issues will always be relevant to urban planning – so how would they be required to be taken into account under the planning statute?”.55 We would go even further and suggest that urban planning is an environmental issue. It requires us to conceive of the environment for what it really is – the surroundings in which we live – not a series of separate domains that can be looked at separately.

All of this suggests the need for a single act concerned with land, water, air and so on. How land is used – irrespective of whether it is public or privately owned – is a crucial part of our environment, and strong connections need to be made between all aspects of the biosphere. Some have even called for the land use presumption in the RMA (that land can be used however one wishes unless expressly restricted) to be reversed, to be in line with "common pool" resources like water and air, especially since plans in practice tend to implement fairly blanket restrictions anyway.56 We do not comment specifically on that, but emphasise that land is our common heritage as a nation, even if there are a defined set of property rights in it. It is not a world apart, and our statutes should recognise this.
An integrated single statute – combining decision-making on land use and other aspects of the environment like water, soil and air – should remain at the heart of a future system managing our cities. Land use and the built environment are too intimately connected to other environmental domains to be considered separately.

5.7 Concluding comments

The need to retain some kind of integrated statute for urban planning and the natural environment appears to be shared by many submitters to the government’s resource management reform panel, and previous report writers. For example, some have said that:

The built environment and the natural environment are not separate from each other but are inextricably linked and it is important that the environmental, social, economic and cultural focus of Part Two should apply to all developments, whether involving the built and/or natural environment.57

Separating off land use planning would create a risk of giving environmental considerations lower priority in regard to planning, when they should in our view be centre-stage.58

Separation risks losing the benefits of integrated thinking, policy and decision-making, and by establishing further statutes is likely to complicate rather than simplify and streamline processes.59

The need for better coordination between land use and infrastructure provision is pressing, and should be achieved through other reforms, notably through a layer of strategic spatial plans (see the spotlight below).

However, while we do not think that the RMA should be split up, it will need to change in fundamental ways. The time for tinkering is over. In fact, we think that the depth and breadth of the reforms needed means that we need something new. The RMA should be repealed, and replaced with what we are calling an Environmental Stewardship and Planning Act.

A spotlight on spatial planning

We look at spatial planning in more depth in Chapter 10 (how it would work, who would do it, and under which laws it would operate). However, given that it would be important in addressing concerns that the system is not well coordinated (a key reason some have called for splitting the RMA), it is worth explaining briefly here what it is.

A general definition of a spatial plan is “a high-level strategy for developing a region that relates to its geography, and seeks to achieve desired broad outcomes.”60 It would map out how an urban area was intended to grow, shrink or otherwise change over time, in order to achieve synergistic outcomes. In other words, a spatial plan would provide a clear spatial skeleton in light of which other decisions, including for land use change and infrastructure provision, are made under a number of more targeted legislative frameworks like the RMA, Local Government Act and Land Transport Management Act.61 The idea is that if everyone is following a single blueprint for when and where particular things – like urban growth – are envisaged to happen over time, then all the parts necessary to make that happen will occur in a coordinated and timely way.

Even though it should not be split up, the RMA should be rebuilt in fundamentally different ways. These changes would be significant enough to create something entirely new, not just another RMA amendment. We recommend the enactment of an Environmental Stewardship and Planning Act to replace the RMA.
CHAPTER 5. THE RMA AS A FRAMEWORK FOR "URBAN PLANNING"

1 See also MA Brown Last line of defence: Compliance, monitoring and enforcement of New Zealand's environmental law (2017); MA Brown "Compliance, monitoring, enforcement and evaluation" in G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 3 (EDS, 2018); M Brown Independent analysis of the 2017/2018 compliance monitoring and enforcement metrics for the regional sector (The Catalyst Group, 2018).


3 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019), ch 8.

4 On potential distinctions between "urban" or "built" and "natural" environments, see New Zealand Planning Commission Better urban planning (2017); New Zealand Government Urban development authorises (Discussion document, 2017), Report of the Minister for the Environment's Urban Technical Advisory Group (2010); New Zealand National Party "New urban planning law for cities" (Press release, 4 September 2017).

5 We acknowledge that the term "resources" may not be the best one, and is an anthropocentric way to think about the environment.


7 Even though many aspects reside elsewhere (eg pest management, climate change, protected areas etc).

8 Many jurisdictions in Europe take this approach. On international approaches to resource management, see G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 1 (EDS, 2018).

9 In short, these principles can be described as: coherence, certainty, accessibility, integration, durability, being tailored to New Zealand circumstances and efficiency.

10 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019), ch 8. One option was for "bottom line" outcomes to be established and defended in one act (eg freshwater quality limits); and for the facilitation of trade-offs to occur in another (one might think of urban amenity concerns). That would reflect the idea that balancing equally weighted considerations does not belong in a truly protection-focused act, which must be uncompromising. While it makes some conceptual sense, this kind of hard split is not an immediately attractive option because of the complexity it would create. There would be a need for complicated links to be made between different statutes dealing with the same ecosystems and the same resources, where the distinctions between bottom lines and balance would not always be obvious (and may shift with time).

11 Albeit with complex links with the RMA and other legislation.


13 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 83.


15 For example, heritage legislation.

16 It could also establish and provide for the wider functions of institutions, including local government.

17 A focus on regional planning is due to such proposals being sometimes accompanied by regional amalgamation of councils themselves. However, that is not a pre-requisite to legislative separation.

18 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 282-283 (Figure 14.4).


20 Ibid.

21 Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 59.

22 See discussion in Chapter 6.

23 For example, under the Housing Accords and Special Housing Areas Act 2013.


25 Obtaining a mining permit does not remove the need to obtain resource consent under the RMA.


27 As discussed in Chapter 9, part of the issue here is constraints on funding and financing of infrastructure (there is not enough money to service rapid growth in some places), but not the fact there are different processes under separate statutes that are not well aligned.


29 That is sometimes not made explicit. For example, Infrastructure New Zealand sees the role of an Environment Act including the protection of "land" as something distinct from the "planning" of land use; see New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand (2015) at 77. But if both frameworks are intended to have a role in how land use decisions are made, is this more, or less, integrative than the RMA? Are there, instead, different missions or trigger points when each Act would be expected to control land use? It may, alternatively, be that Environment Act protections are intended to refer to the protection of soil health rather than the spatial aspects of land use (what activities can go where relative to each other).


31 The ability for urban land use to take precedence over rural or other land uses is a risk under the Urban Development Act 2020, where there are few constraints on the discretionary establishment of new urban areas. For more on this Act, see Chapter 11.

32 Which tend to be more certain, and can be managed more easily: see G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 123.

33 Ibid.


35 Although there are some interface questions; for example, provisions that control genetically modified organisms in district plans and some limited pest control where an activity regulated under the RMA would exacerbate it.

36 For example, the Building Code, the emissions trading scheme, product stewardship schemes, packaging, labelling and transport requirements for hazardous substances, and pest management plans.

37 Spatial planning would be a different tool, but that relates to the need to align land use with infrastructure (explained above), not a fundamentally different way of controlling land use itself. It would be in addition to regulatory controls, not a replacement.

38 Auckland as a region is, of course, not all urban.


40 See the proposed changes to plan-making for freshwater in the Resource Management Amendment Act, 2020, from s 23.

41 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) ch 8.


44 See New Zealand Productivity Commission Better urban planning (2017).

45 New Zealand Productivity Commission Better urban planning (Draft report, 2017) at 339.

46 Urban design has developed considerably since those days, to encompass things that are much more about enhancing a community's wellbeing in places where they live, play and work.


48 Not just from construction, but from the use of the built environment in which effects can be concentrated (eg run-off from roads, heavy metal leaching from rooftops etc).


50 Duplication and overlap should be avoided unless there is good reason for it: see G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 126; Legislation Act 2012, s 3(6)(c).

51 Such cross-cutting concepts would be even more pronounced if legislation were split along other lines, such as one for the "built" environment and another for the "natural environment", or one for the "urban" environment and another for the "rural" environment.
52 Compare G Palmer and R Blakeley Submission on the New Zealand Productivity Commission’s better urban planning inquiry draft report (2016).
55 Ibid, at [15].
56 By categorising land uses as discretionary activities. See D Shao “Rethinking land use rights and restrictions under the RMA” (April 2020) RMJ 11.
58 R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘opportunities for change’ (2019) at 4. Again, if equally robust environmental principles were to underpin a Planning Act, one would wonder why it would need to be split up from an Environment Act.
60 Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010) at 23.
61 S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016) at vi.
6. THE PURPOSE AND PRINCIPLES OF THE RMA

6.1 Introduction

A new Environmental Stewardship and Planning Act would need to look different to the RMA in a number of systemic ways to make it fit for purpose in dealing with urban issues. A good place to start is the purpose and principles of the legislation (Part 2 of the RMA). These need to be rewritten from the ground up.

Before considering the adequacy of the specific drafting of Part 2 itself, however, it is worth considering a deeper, underlying question about the RMA. What is the Act really for? And what should this kind of legislation be used for in the future? The trite answer is “sustainable management of natural and physical resources”, as the Act’s purpose tells us. But the boundaries of this concept have never been made abundantly clear, particularly in the urban setting.

6.2 What is the rationale for intervention in the resource management system?

Some have criticised the RMA for allowing regulatory “overreach” – especially controls on land in and around cities that go beyond what is needed or desirable. Urban planning is often seen as a constraint on people’s freedom of action to make dynamic cities really work well, something that slows down development, and something that imposes significant unnecessary costs, especially when the imperative is to provide cheaper houses faster. Commentators have pointed to excessive controls on house extensions, the construction of residential decks, minimum apartment sizes, protections for heritage buildings, mandatory provision of balconies, and inappropriately strict urban limits. In short, the RMA – and how it has been implemented – is said to allow planners to intrude too far into our freedoms. For example, some have said:

[controls] can get down to some questionable detail, e.g. where we put the water cylinder, colour of doors. Varies from building lay-out to position, size of garages, colours and type of fences

rules designed to protect heritage streetscapes can result in consents being required for housing alterations on rear sites that are not visible from the street

Design Guides tend to be filled with emotive, subjective language with no apparent empirical evidence supporting the design preferences in most cases... For example, “positive open spaces”, “visual appeal” and “quality of experience” mean different things to different people

Coromandel
One can certainly sympathise with frustrations about a lack of densification in urban areas and guidance documents that say things like “urban designers typically follow a vision-led, design-based approach to formulating ideas and concepts.” More egregious allegations of “overreach” require a sensible approach to proportionality. Any restriction should be only what is needed to achieve the objectives sought. We therefore require constant regulatory evaluation, good planning practice, and independent oversight by institutions like the Environment Court.

But these issues do not suggest the RMA is inherently deficient or that there is a reason to dismiss the importance of good urban design. There is a fundamental unresolved question here about why we have a resource management system in the first place, and therefore what its boundaries should be. We refer readers to more in-depth discussion about the proper roles of the system in the Phase 1 report, and make only a few observations here.

The resource management system does not need to do everything. It is about resource management, not resource micro-management. Plans and regulations are not a straitjacket or blueprint; they need to prevent unacceptable harm, but they should also be an enabler of human creativity and innovation. That is especially important in cities. The RMA does not tell people what they must build or do, and presumes people are free to use private land as they wish unless it is expressly restricted in a planning instrument.

This has led some to suggest the rationale for urban planning restrictions, and the implicit meaning of sustainable management, should really be to internalise negative externalities. This means, essentially, that those causing harm to others should be expected to carry the cost or burden of that harm (or at least a fair proportion of it). In practice, it often means that a person needs to avoid or mitigate the harm that their activities cause to other people or the environment. Other than that, people should be free to do what they want.

The concept of internalising negative externalities, while having some flexibility, does not always sit well with a broader conception of urban planning or Te Ao Māori. And while it is certainly possible to see a generous dose of free-market economics in the foundations of the RMA (one finds numerous references to this in parliamentary speeches around its enactment), it is equally arguable that the Act has always embraced much more than traditional economic thinking (eg intrinsic value, Treaty principles, community participation). Indeed, a recent discussion document for new urban national direction under the RMA cites the need for cities to proactively pursue a wide range of goals, including social cohesion, mental health and disability access.

The RMA contains many tensions like this that have never entirely been resolved, which stem from its mixed origins – a marriage between the economic rationalism and budding environmental movement that defined the late 1980s. The Act can expand and contract based on planning practice, so education, planning culture and political imperatives are therefore crucial in how it has operated over the years. We are not convinced that “pure” economic origins of the Act have been gradually eroded over the years by “scope creep.” A narrow economic scope was never legislated, only assumed based on the spirit of the times.

Some have expressed concerns not just about disproportionate regulations (the system going too far), but also that the system is now trying to achieve too many things at once (objective overload). While not focused on the RMA or regulatory instruments per se, it has been said that:

significant planning documents, such as the Auckland Plan, have a range of objectives that sit well outside the traditional frame of managing land-use externalities and coordinating infrastructure and arguably outside the control of local government, such as raising vaccination rates, reducing life expectancy disparities...

The criticism is, that if a planning instrument does too much, it might lack coherence, focus and effectiveness. For example, should tools under the RMA play a role in tackling obesity by encouraging active urban transport? Or design communities and infrastructure to minimise crime, or enhance communities’ resilience to health threats? Should effective urban planning be not just about stopping people doing things, but also about making or encouraging people (other than public authorities) to do things? These aspirations are a far cry from traditional notions of environmental protection and neoliberal economics that some see at the heart of the RMA, yet land use decisions can play a significant part in achieving them.

Some have recommended a relatively narrow scope/ rationale for planning under legislation like the RMA, focusing on the need to internalise negative externalities.

We have in previous work pointed out several reasons why enshrining a narrow scope, like internalising negative externalities, would have risks. In short, “good planning practice goes well beyond the avoidance, remediation and mitigation of adverse effects on the environment; it is about maximising good social, economic and cultural outcomes in their own right.” Our urban future is too full of challenges and uncertainty – including a changing climate, the need to actively restore and enhance degraded aspects of the environment, and a need to feed and house a growing urban population in attractive, safe and liveable communities – to unduly narrow what the system can do based on assumptions about market freedom. Similarly, Ken Palmer has reminded us that “the purposes of planning are not set in stone and can be revisited as circumstances arise” and that planning is a multi-purpose process, and is location and culturally variable.

Scotland’s planning system is designed to “balance competing demands to make sure that land is used and developed in the public’s long-term interest.” A
lot comes down to how one perceives the public interest. As we pointed out in the Phase 1 report, this may need to encompass, for example:21

a set of incentives to encourage the uptake of electric vehicles, funding for community-led environmental enhancement measures, or measures to transition land uses to those that are more sustainable for the country as a whole ... It embraces the principle of resilience, and could proactively shield people from external and non-attributable impacts (such as natural hazards, a changing climate, and global economic shocks). It also recognises that outcomes-based urban planning is not just about guarding against “bads” or providing public goods like infrastructure. It is also about creating a wide variety of future-focused strategies to enhance the wellbeing of communities and to move our collective human endeavour forwards – getting people on bikes, reducing criminal activity, encouraging social connection.

A broad view of urban planning also resonates with Māori perspectives, in that it is entirely artificial to “separate people and economics from the natural world and environmental, social and cultural wellbeings” 22 and that land is not a “fiscal asset” to be considered within a “productivity paradigm”, but is tāonga tuku iho (a treasure handed down). 23 It is important to remember that most Māori are urban dwellers, and not just kaitiaki of Māori owned rural land. 24

None of this is a criticism of economics as a discipline – most economists nowadays strongly recognise the need to actively improve environmental wellbeing using economic and other tools. It is simply to emphasise that the foundations of a future system should be about more than internalising negative externalities or preventing further harm.

It is also not to suggest that regulatory overreach does not exist. Innovation should not be stifled, and regulation needs constant review to ensure it does not create perverse outcomes and unintended consequences. 25 Economic instruments and markets can and should be used in the pursuit of public policy goals much more than they have been. But it cautions us against taking a strict neoliberal economic view of a planning system that is there to enhance urban spaces, improve the environment, and promote the public interest. Urban planning intervention is therefore, in our view, warranted in fairly broad circumstances – (1) where there is a public interest in how we interact with our environment and use resources (including land), and (2) where it is needed to implement the Crown’s Treaty relationship. 26

While it is crucial, a strong role for planning and regulation (more than just addressing market failures) will still not be enough. As touched on in Chapter 13, a future system will also need to grapple with the enormous underlying economic and social incentives that drive people’s private decisions and behaviours. Leaving the planning system to respond to these pressures (eg by declining consents, imposing conditions, or mitigating adverse effects) will be more than it can bear in the long-term. Alongside effective regulation, we need to create a regenerative economy and society by drawing on a range of tools and disciplines at our disposal (eg taxes, subsidies, regulations, education, behavioural incentives and social/cultural change). 27

We support a broad rationale for the resource management system, including in urban areas. Planning is about much more than internalising negative externalities and providing public goods like infrastructure. It needs to encompass much wider imperatives around achieving the public interest, giving effect to the principles of the Treaty, and securing the interests of future generations. Strong planning will also need to be accompanied by wider system reforms to change the underlying drivers for poor outcomes (eg the tax system and behavioural incentives).
6.3 The underlying ethos of the RMA: is it adequate?

Some have complained that the RMA is primarily a regulatory, reactive, market-led and effects-based framework, as opposed to being strategic, proactive and outcome-focused. In other words, it lets things happen if they’re not too bad by managing their adverse impacts, but it doesn’t make things better or plot a course towards a future that will be in the public interest. If true, that is not a good foundation for urban planning, particularly as we enter an era where constant environmental and social change looks to be the new normal. Some have suggested that an RMA plan is not really a “plan” at all, and the New Zealand Planning Institute describes the philosophical origins of the Act well.

The main purpose of the [Town and Country Planning Act, replaced by the RMA] was to control the actual activities that took place in relation to land and other resources. The RMA shifted the focus from control of the activities to control of the effects of activities. This was a substantial change in philosophy regarding resource management law.

As a result, it has been said that “the RMA’s focus on effects (and in particular adverse effects) is not conducive to achieving optimal planning and design solutions” and RMA decision-making is often made on a case-by-case basis at the expense of taking a long term strategic or cumulative impact view of development. This fragmented approach to development acts against well planned, efficient and integrated approaches to the provision of land-use and infrastructure.

Instead, “more emphasis should be on designing social, economic and cultural value, to create sustainable human settlements of complexity, diversity and vitality” and plans should “be more strategic – in the sense of long-term, protective of critical natural assets, and with a clear view about vision, values, and goals for the future.” In other words, we need an outcomes-focused statute.

Increasingly, problems requiring urgent or strategic solutions (such as climate change, urban growth and renewal, urban design, and Covid-19 response) are being progressed by circumventing or supplementing a reactive RMA rather than working within it. This adds a lot of complexity to the system.

Not all agree that the RMA is fundamentally deficient, however. It is hard to point to particular offending provisions in what is ultimately a high-level legal framework, and a lot comes down to the practice of planning under it. It is true that the Act has tended to protect the status quo, be risk adverse, and discourage some change that is desirable in cities (eg suburban densification) by focusing on development proposals’ adverse effects. (Existing land uses are also heavily protected by the law, which is a continuation of the
former Town and Country Planning Act approach and requires revision.)

However, there is nothing in the RMA that requires a reactive focus on adverse effects. After all, effects to be considered in planning and consenting decisions include positive effects, not just negative ones. Some issues can equally be explained by the political incentives at play – like the disproportionate influence exercised by existing property owners in council decision-making, which can militate against urban change and densification – rather than any philosophical approach inherent in the Act itself.

Indeed, the RMA has not prevented a lot of good urban planning from occurring over the past 30 years, particularly through district plans. Many plans are not actually “effects” based in the sense that might have been envisaged in 1991, or in practice are a mix between effects-based and more prescriptive or activity-based plans. Furthermore, the Act explicitly highlights the importance of inter-generational equity, the importance of managing finite resources, and the need to enable people to provide for many aspects of their wellbeing now and in the future. The definition of the environment embraces people and communities, and physical (built) as well as natural resources; land can be zoned as “future urban”; plans can and do proactively provide for affordable housing; and the Auckland Unitary Plan contains a multitude of objectives that go well beyond the management of adverse effects on the existing environment.

RMA instruments are also becoming more strategic, even if the underlying legal framework may seem an uneasy fit for them. For example, the NPS on Urban Development Capacity (and its replacement, the NPS on Urban Development) requires some councils to produce future development strategies that inform (albeit not bind) district plan changes, and to provide for the release of development capacity. The NPS for Freshwater Management requires targets to be set for water quality. And a future-facing lens is also being placed over measures to protect productive land around cities, to ensure that:

- a simple economic argument that highly productive land is worth more as urban development does not outweigh the irreversible lost value of highly productive land for primary production. It is also to ensure local authorities take a strategic approach to considering private plan changes and resource consent applications on the highly productive land resource in their region or district, rather than focus on the best use of an individual land parcel(s)

and

- less productive land may be available and better suited for urban use. This is preventing the use of this finite resource by future generations.

The idea of regulation determining the “better” use of land for “the benefit of New Zealand” is a far cry from the market-led and effects-based ethos some see as fundamental to the RMA. It is doing much more than just assessing the adverse effects of proposals: it is facilitating wise land use choices for the future.

Similarly, the philosophy of the RMA has not prevented the NPS on Urban Development from requiring councils to identify positive “development outcomes” for urban zones in their plans, and how policies and rules will support them. All of this has led some to conclude that the stumbling block is not with the RMA per se, but rather with how the RMA interacts with other frameworks dealing with infrastructure. Even then, it is not obvious that a philosophical effects-based foundation of the Act is responsible for actually preventing most infrastructure development.

A problem, however, is that the strength of strategic planning under the RMA relies on strong political will rather than obvious principles in the legislation itself. This can ebb and flow, and vary in different parts of the country. For example, some councils protect productive land while others do not, and urban limits are imposed for a wide variety of reasons, some strategic and some not. RMA plans are often the product rather than the origin of strategic thinking (which is usually done outside of RMA processes, often under the general provisions of the Local Government Act). The overall framework is still reactive to problems as they emerge, and is not clear about the outcomes sought. The Act is not really geared towards the need for change, and in particular does not provide a strong future vision for our cities. Some plans may look good but are poorly delivered; some may be substandard but are well managed in practice; and others can be a mix. This is not ideal given the housing, environmental and climate challenges we face and the need for a high level of coordination.

An effects-based ethos also jars somewhat with te Ao Māori, and the Act gives little recognition of Māori urban perspectives specifically. An outcomes-based system would be more in tune with Māori world views. However, we note that this requires not just a change in the purpose and principles of legislation; it is much more fundamentally about partnership, and the power and ability to collaborate in actual decision-making processes (see Chapters 7 and 8).

In the late 1980s, the RMA was forged in the dual crucibles of free market economics and the concerns of a budding environmental movement. And while it has not prevented much good urban planning from happening, its reactive, market-led and effects-based ethos is not an ideal foundation for the future of our cities. The RMA should be replaced by an Environmental Stewardship and Planning Act that is focused on the proactive pursuit of positive outcomes, including environmental enhancement.
6.4 A new Act’s purpose and principles

The outcomes-focused foundations of a new Environmental Stewardship and Planning Act need to be embedded in its purpose and principles. We therefore need to think about how the purpose and principles of the RMA – Part 2 of the Act – could be reshaped to make them fit for purpose in an urban context.

Part 2 has been described as the normative “engine room” of the RMA. Although it is not an “operative” provision, very few other statutes have a purpose or principles section with the direct legal influence of Part 2, or a framework whereby decisions are legally scrutinised with such care against these provisions (often by the specialised Environment Court).

Part 2 currently provides:

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

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

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights:

(h) the management of significant risks from natural hazards

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga:

(b) the ethic of stewardship:

(c) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(e) [Repealed]

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

(h) the protection of the habitat of trout and salmon:

(i) the effects of climate change:

(j) the benefits to be derived from the use and development of renewable energy.

8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
There are two broad aspects of Part 2 that, in our view, are inadequate. First, the purpose and principles of a new Act would need to embrace principles of good urban planning/design and the importance of pursuing positive outcomes. Secondly, reforms must clarify and strengthen urban environmental bottom lines within which development is allowed to occur.

6.5 Urban matters in Part 2

Owing to its effects-based philosophy, some have said that Part 2 does not currently provide a solid foundation for making good urban planning decisions. Others have countered that implementation is the real issue, in that:

If there is a practice problem, it may be that some district plans stray into the dogma that avoiding, remedying or mitigating an adverse environmental effect is alone sufficient to promote sustainable management, or is inherently more important than enabling social, economic or cultural wellbeing (positive effects in simple terms). Such is not in our view a correct interpretation of the RMA.

That said, it is hard to ignore the fact that Part 2 has notable gaps when it comes to urban outcomes, despite it being the core set of criteria for urban land use and subdivision decisions. It has a strong emphasis on protecting the biophysical environment, on management rather than improvement, and on adverse effects rather than positive outcomes or resilience. Other than in generalities (eg amenity effects), Part 2 does not speak of the importance of urban design, renewal, growth/change or sustainable urban development, including core design features that address issues like traffic congestion, unsustainable energy use, overloaded urban infrastructure, a lack of distinctive identity, social isolation, reduced physical activity and many others. As Ken Palmer has said, a lack of clear strategic focus:

We agree. It is anomalous that we are now seeing national direction on urban matters (eg “well-functioning” urban environments) being developed under an Act with a purpose and principles that have very little to say about them, aside from the need to address adverse effects and to consider “amenity” and the “efficient use” and “finite characteristics” of land. New national direction on urban development seems to rely on the general “enabling” provisions of section 5 (enabling people to provide for their social, cultural and economic wellbeing) rather than any urban-specific provision or particular legislative objective. So while there have been calls for the NPS on Urban Development Capacity to be tied more closely to the purpose of the RMA to avoid a “development at all costs” mentality, that is quite a hard thing to do given the current drafting of Part 2.

Furthermore, it is far from ideal that we now have an NPS being promulgated on the protection of productive soils from urban encroachment and fragmentation, largely on the vague and uninspiring Part 2 “hooks” of using resources “efficiently” or considering their “finite characteristics”. Where is the reference in the RMA to the true issues and outcomes we are seeking – food security for future generations, social resilience, the vitality of rural communities, and the land uses (or controls on them) that will have the most benefit for society in a future besieged by uncertainty and risk? Martin Williams points to another important outcome missing here: the need to protect horticultural land “given that the significant expansion or transition from other land uses into horticulture is likely needed to achieve [New Zealand’s 2050 climate change target].”
More broadly, we might wonder: where is the reference in Part 2 to key social outcomes like affordable housing, urban green space, or broader urban concepts like liveability, mobility and connection? And, as we face a post Covid-19 world, where is the reference to resilience in the face of significant threats to human health and disease transmission, such as through good urban design? While having their flaws, more targeted urban frameworks in recent years like the Housing Accords and Special Housing Areas Act have made direct legislative reference to the Ministry for the Environment’s Urban Design Protocol, which is otherwise voluntary. This incorporation by reference approach could be replicated in a new Act, but we think it is worth exploring how the actual principles themselves could be embedded in legislation more directly, and for case law to be allowed to develop around key concepts. While there are some subjective elements to implementing concepts like good urban design, we think that the outcomes it seeks are able to be described and applied in a clear and transparent manner.

However, principles in the Protocol should be expanded. In particular, they need to embrace Māori place shaping principles, based on the concept of cultural landscape. A good starting point here might be the Te Aranga principles. These are not just about visual design; they are also about how to create cities to foster Māori sense of community and connection and embrace the pre-colonial story of our urban areas: “the relationship that Mana Whenua have with their ancestral lands, waters, wāhi tapu, wāhi taonga, mahinga kai, papa-kāinga, and other taonga within urban environments.” We defer to Māori on how such principles might be expressed and integrated, but note again that legislative recognition will not be enough: it will also require partnership with Māori in the planning process (discussed in Chapter 8) and Crown resourcing to be effective.

Overall, Part 2 of the RMA strikes us as lacking in strategy, urgency and specificity when compared to more agile frameworks. For example, Auckland Council’s climate action framework, although largely aspirational and susceptible to politics, speaks of the need for a resilient, low-carbon and healthy food system, the need for decentralised renewable energy, a circular economy, fairness, and the need to improve and connect natural systems. Local food production is something to aim for, too. Social and economic factors, including the concept of resilience, are increasingly relevant in how we manage natural and physical resources in and around cities, despite some historical resistance to engaging with them in Part 2. That needs to be reflected in a new Act.

A key question is exactly how Part 2 could be reformulated to account for the types of urban objectives described above. The Resource Management Law Association has suggested separate sets of principles for environmental and built/urban issues, as a basis for “outcome (or pro-active, rather than effects based) planning for the built environment.” The Productivity Commission and others have suggested the same kind of thing.

However, we doubt whether a strict separation of principles on this basis would be desirable or workable, given how interrelated urban, built and natural aspects of the environment are across all spaces (see Chapter 5). Just because an area is built up does not mean the natural environment is less relevant, or that it cannot contribute to (for example) biodiversity or climate improvements. Some have therefore been forced to accept that “a third category of objectives may be desirable to accommodate activities and matters that straddle both the built environment and the natural environment, and have crossover manifestation”. Many things may fall in this category. What we need is proper recognition of a wider range of urban outcomes, not an artificial delineation of what matters can and cannot be considered in any given space or situation. Otherwise, one can easily imagine the need for complicated gateway tests to determine when one list can be considered but not the other, or in what measure.

That said, experience has been that simply adding new matters to sections 6 or 7 does not necessarily help solve problems, because there is no clear relationship between them: they are “confusing and lacking in clarity” and lack a coherent vision. Part 2 has already become something of a “shopping list” in need of “some rationalisation” or a “hotch-potch collection of sentiments.”

In particular, there has been extensive debate over the years as to whether section 6 (nationally important matters to be recognised and provided for) should refer only to things requiring protection (which they have tended to thus far), or whether like section 7 it should be a more balanced list reflecting both the positive and negative impacts of activities (eg urban development and housing supply). Some have even suggested folding sections 6 and 7 into one large melting pot of relevant considerations, recognising that there are not always coherent reasons for some things to be “elevated” to section 6 and other things to be “demoted” to section 7.

Proposals to have a single list of principles were, quite rightly, met with strong resistance and ultimately failure (notably in the wake of the recommendations of the Minister’s Technical Advisory Group on the purpose and principles of the RMA). This is because they were intended to conflate environmental bottom lines with the making of trade-offs, and essentially codify the “overall broad judgement” approach that was, at the time, the legally correct approach under the Act. It was not the right one, as we learned from the Supreme Court in the King Salmon case.

The purpose and principles of a new Environmental Stewardship and Planning Act should specifically embrace a range of principles for good urban planning and design that are not just about addressing the adverse effects of proposals. We do not think it would be workable to have different sets of principles applying only to “natural” and “built” environments respectively.
6.6 Part 2 and the “natural” environment in cities

We are not proposing that a new purpose and principles section allows a range of matters to be balanced and traded off on a case by case basis. We should not return to the "overall broad judgment" approach so rightly put to bed by the Supreme Court.94 It is therefore essential that the recognition of the benefits of good urban design, resilience and other social and economic factors recommended above is accompanied by a no-nonsense approach to environmental limits. Cities (1) rely on natural elements of the environment for their existence and wellbeing; (2) themselves contain significant natural elements to be protected; and (3) can have enormous impacts on the natural world both within and beyond their geographical footprints. Most importantly, we must resist the urge to treat legitimate environmental restrictions as a scapegoat for housing affordability or residential land supply issues (see Chapter 4), or to treat them as obstacles to overcome when pressures become too great. Many have expressed concern that inappropriate developments are being allowed under the RMA due to the predominance of economic drivers over environmental and cultural protections.95 Environmental limits need to be much clearer under a new Act, and this needs to be specified in its purpose and principles.

Of course, what environmental limits might look like in cities could be different to elsewhere (just as what they look like in the marine environment is different to the terrestrial context). For example, an urban landscape is very different and often more dynamic than a rural landscape. But the principle is the same everywhere – just because an area is “urban” or even “future urban” should not excuse it from contributing to environmental outcomes. Why, for example, should sewage overflows on urban beaches be more acceptable than the discharge of nutrients from agricultural land? Why should we accept net biodiversity loss or food producing capacity from greenfields expansion? And why should we think that air pollution and related respiratory risks are acceptable simply because someone lives near transport routes?

Climate change mitigation is a good example of a “bottom line” outcome that is almost completely missing in action in our urban planning framework (see the spotlight below), while even freshwater quality (urban or otherwise) is not explicitly included as a matter of national importance in the Act.96 Soil conservation is singled out in the broad purpose of the Act in section 5 but, strangely, not in the more directive sections 6 or 7. Is this meant to make it more or less important? It is not particularly clear.

The importance of climate change in urban planning

Cities pose significant climate risks, not just because of today’s urban emission sources (eg factories, vehicles, waste etc) but also because choices about urban form today – such as low density, car-dependent sprawl, high emissions infrastructure and the need to travel frequently across neighbourhoods – can lock in carbon-intensive activities for decades. So too can broader choices about land use around cities; for example, there is a clear imperative to increase horticultural activities on productive land for climate reasons rather than build houses over it. Yet although the RMA is the main vehicle through which urban land use choices are controlled, it originated before climate change was really in the public consciousness and still has very little to say about it.

This problem runs deeper than simple oversight or negligence. In 2004, local government was expressly prohibited from considering the effects of greenhouse gas discharges on climate change,97 and the courts interpreted this in an extremely (and, perhaps, surprisingly) expansive way.98 Not only could councils not impose conditions for specific emitting activities (or provide rules that restrict them), it has been unclear the extent to which impacts on climate change from urban form and design can be taken into account by councils when planning the growth or evolution of cities as a whole.99 At the very least there has been no imperative or encouragement in the RMA to do so.

One of the key rationales for the RMA restrictions on local government jurisdiction was that there was no national level plan/policy in place to create consistency between regions or districts.100 With targets, budgets, and emissions reduction plans under new zero carbon legislation, that will no longer be the case. Furthermore, there has never been good justification for preventing consideration of climate change in matters of urban design and broader land use change (eg a compact urban form).101 Councils have always been well placed to tackle such issues by, for example, “planning for places where people can live, work and play and are able to limit their need to travel, or by making it easy to walk, cycle or take public transport to destinations.”102
The idea in 2004 was that climate action would need to happen consistently at a national level – not that it would be excluded from the RMA entirely. As such, there remains potential in the Act for central government to promulgate national direction. Unfortunately (like a lot of expected national direction), that has not been forthcoming, and since 2004 reliance has been placed almost exclusively on a carbon price through the emissions trading scheme. The effectiveness of this can be seriously questioned. If a national approach was needed, then banning councils from doing anything about it means only half of the job has been done.

The Climate Change Response (Zero Carbon) Amendment Act provides generally that targets and budgets are able to be considered under other frameworks, but under the RMA (for local government, at least) they have explicitly been removed from consideration. That has created an anomalous situation. The RMA’s decision-making restrictions on local government need to go, and we note that this is set to happen under the latest round of amendments to the RMA (although not due to come into force until potentially late in 2022).

This is a good start. Yet more needs to be done. A new Act should see climate change mitigation placed front and centre in its purpose and principles, alongside an obligation for the government to provide for mitigation measures in national direction (whether through regulatory standards or through firm policy). There should also be a clear legal link between emissions reduction plans now required under the Climate Change Response Act and all other relevant legislation, including how cities are expected to use planning tools under a new Environmental Stewardship and Planning Act to contribute to broader emissions reduction targets. A permissive link – that emissions reduction plans may be considered – will not be enough. We require something that will have real influence on the ground in regulatory and funding frameworks, not just another “plan to make a plan”. Otherwise there is a risk that undue focus will be placed on non-regulatory or soft approaches to reducing emissions.

For example, while the lofty concepts in Auckland’s climate action framework are laudable, there has been limited ability to translate them into hard regulatory decisions about land use. It is hard to see how climate targets can be reached without substantial land use change, which is overseen squarely by the RMA, and a strong stance in a non-RMA emissions reduction plan will not necessarily result in a strong outcome in RMA processes unless the RMA’s purpose and principles themselves require it. As one commentator has pointed out:

It would be unsafe to rely on the Zero Carbon Act and the [emissions trading scheme] in isolation. The [Resource Management Act] should be framed so as to enable an overall broad, comprehensive and coherent policy response, to give the greatest prospect of the 2050 Target of the Zero Carbon Act actually being achieved.

Reliance on the emissions trading scheme alone also fails to reflect “the varying range of co-benefits and co-harms associated with different land uses”.

Strong recognition in a new Act’s principles would be important to ensure mitigation steps taken under other legislation are not undermined. For example, there has been no mandated ability to link emissions implications with urban development generally, or resource consents for subdivisions specifically. An example is peri-urban development aimed at reducing housing costs which exposes purchasers to higher commuting costs. This compromises attempts to reduce emissions from transport [via instruments made under the Land Transport Management Act]

It is to be hoped that an objective in the newly gazetted NPS on Urban Development, referring to the need to support reductions in greenhouse gases, will now push decision-makers towards the creation of low-carbon cities. This provision should also be enough to authorise councils to bypass the RMA’s restrictions on considering the effects of greenhouse gas emissions (prior to those provisions themselves being repealed) when making decisions about urban land use and growth. However, that is not an adequate substitute for the insertion of climate change mitigation into the purpose and principles of new legislation, or for a clear link to be made to emissions reduction plans prepared under the Climate Change Response Act.

The RMA has not been so inherently deficient when it comes to climate change adaptation. Reasonably strong reference is already made in Part 2 to the need to address the effects of climate change (although it is still not elevated to a matter of national importance to be recognised and provided for, and is not specifically a function of councils; instead, it is a matter to which particular regard must be had). However, the relationship between a national level risk assessment and adaptation plan under the Climate Change Response Act and actual decision making on land use under the RMA remains unclear. While adaptation is dealt with in the New Zealand Coastal Policy Statement, councils can struggle politically to impose restrictions that not only prevent development but which also have impacts on property values. This has been seen on the Kāpiti Coast, and will be repeated in the years to come. As the Productivity Commission has noted:
Considerable guidance for councils on climate-change adaptation already exists. But more is needed, and providing it through central, specialised sources of knowledge will be more cost-effective than each council inventing its own solution. Most councils will welcome guidance and find it helpful not only as advice but as backing for taking the difficult and unpopular decisions that will sometimes be necessary.

Aside from the almost complete absence of climate change, we can question whether the “passive” language in Part 2 that purports to impose other environmental bottom lines is good enough. “Recognising and providing for” in section 6 is a strong direction, but the descriptions of the things being recognised and provided for (“preservation” or “protection” of various matters) envisages a world in which we are stopping further decline rather than recognising we have already overshot badly in many areas – particularly in cities. The general direction to “avoid, remedy and mitigate” – especially “mitigate” – is a tacit invitation to make things worse, not better. 118

Furthermore, Part 2 does not make a clear enough distinction between environmental bottom line outcomes and scenarios where balance or cost-benefit analysis is appropriate. That uncertainty can both lead to true bottom lines being eroded (eg sprawling developments undermining climate change targets), and things that require balance being treated inappropriately as inflexible lines in the sand (eg the amenity values of low density neighbourhoods preventing intensification).

In the principles of a new Act there needs to be a clearer distinction made between the kinds of outcomes that are true environmental bottom line requirements (eg freshwater quality, biodiversity) and aspects that are more inherently about trade-offs where there is a need to balance many interests (eg urban amenity, the efficient use of resources above bottom lines, economic wellbeing, efficient labour markets, employment opportunities). 119 The Act’s purpose and principles should not be just a policy framework within which many value-based judgments are to be resolved 120 – some values need to be preeminent as a matter of law. 121 But where values are not preeminent, there also needs to be clearer guidance about what that means for how trade-offs are made, not just a laundry list of desirable things. 122

The difficulty, of course, is in distinguishing (and translating into actual drafting) what outcomes are “bottom lines” and what ones require balance and flexibility. That requires value judgements at the margins. However, it would in our view be useful to introduce and specifically define a term like “bottom line” in terms of a series of inflexible outcomes to be achieved or complied with. 123 These should cover minimum acceptable outcomes for:

- freshwater, both for flow levels and quality (including for different purposes, like drinking and discharges)
- soil health
- air quality
- quality of coastal water
- indigenous habitats/biodiversity
- the level of risk from natural hazards (particularly climate change)
- the contribution made by the RMA to climate change targets

There will no doubt be sub-categories of those things, and other potential “bottom lines” that require further debate (eg urban landscapes or the protection of food producing land capable of having hard limits imposed? How should they be measured?). Other outcomes should be firmly “subject to” achieving such things. Consideration could be given to framing some “urban” bottom lines (or “urban” contributions to achieving broader bottom lines like those for biodiversity) 124 differently to overall bottom lines. But these outcomes should be more clearly specified in legislation and built on through national direction.

The King Salmon jurisprudence made important leaps forward in recognising environmental bottom lines under the RMA. 125 No longer is there blanket license to weigh up conflicting matters on a case by case basis. However, as we described in the Phase 1 report, it does not go far enough.
A spotlight on Part 2 of the RMA: Why is King Salmon not enough?

The context of the King Salmon litigation was not an urban space, but its general findings of law apply across the board and are significant in cities. The legal position prior to the case was that decision-makers were to engage in reaching what was generally called an “overall broad judgment” when making decisions under the RMA.¹²⁶ That meant that a decision-maker was ultimately to have recourse to Part 2 of the RMA in balancing the benefits and costs of a proposal, even if objectives and policies in lower planning instruments were much more specific, directive and protective.

The Supreme Court overturned that approach. It emphasised that in certain circumstances the Act was about defending firm environmental bottom lines set under it, not weighing up many factors. Central to the decision was the fact that the New Zealand Coastal Policy Statement contained directive and firm provisions concerning the protection of the coastal environment.¹²⁷ It made clear that national direction could impose firm, policy-based¹²⁸ bottom lines and that subsequent lower level decisions would not be allowed to undermine them by referring back to the wider, more balanced set of considerations in Part 2 of the RMA. Since 2014, the Supreme Court’s message has been applied and refined through a number of other decisions.¹³⁰

However, overall, this line of case law falls still short in a number of senses. It has since been made clear that a balancing approach (including in the consenting context) will often still need to happen (eg where there are no firm and directive policies to point to, or where there are multiple provisions that conflict).¹³¹ The Supreme Court also said that Part 2 is not an operative set of provisions; it sets an expectation that a cascade of subordinate instruments will impose strict protections.¹³² But it does not itself demand that firm bottom lines are generated through planning instruments; regional plans are not mandatory, rules are not required, and the government could make the New Zealand Coastal Policy Statement less protective if it wished.¹³³ There can be a reluctance to impose and enforce strict limits in cities, which are seen as places where the natural environment has already been destroyed. King Salmon does not change the “deliberate openness” of Part 2 itself, and questions still abound over what exactly the Court means when it concluded that the word “while” means “at the same time as” – after all, enabling people to provide for their economic wellbeing cannot always happen at the same time as protecting crucial biophysical bottom lines.¹³⁴ The important lesson from the Supreme Court is, essentially, that authorities can impose bottom lines if they consider Part 2 demands it, and it is not permissible to undermine a higher level authority’s decision to do so.¹³⁵

In the context of a “natural” coastal environment, that is a very good thing. Reasonably firm environmental bottom lines are imposed under the NZCPS for varying (including historical and cultural) reasons. That has been confirmed in a number of subsequent cases in which litigants have tried to carve out exceptions for particular developments (like ports or aquaculture).¹³⁶ But outside the coastal environment, the policy landscape is much more varied, and there are fewer comparable bottom lines to give effect to. This is most noticeable in and around urban areas, where development pressures are most acute and where there is increasing political pressure at central and local levels to facilitate rapid urban expansion. Despite King Salmon, a lot of balancing still occurs between environmental and development considerations, and it is often unclear exactly what relevant environmental “bottom lines” – if any – are.

Moreover, as the government becomes more active in producing national direction, not all of it is about setting environmental bottom lines. A concerning trend is, essentially, for the RMA to be used to impose “top lines” or “social and economic ceilings” in the interests of wider policy agendas, even where corresponding national level environmental bottom lines are not in place.¹³⁷ For example, the discussion document proposing a new NPS on Urban Development specifically talks about bottom lines as minimum levels of development, significantly strengthening the language of “targets” used in the NPS on Urban Development Capacity.¹³⁸ This has now flowed through into the new NPS, where councils are obliged to impose “housing bottom lines” in regional policy statements and district plans.¹³⁹

This is not to say that those measures are inherently undesirable. Housing supply is extremely important, and densification in cities is needed (see further below).¹⁴⁰ It is simply to point out that there are risks that the key contribution of King Salmon – the primacy of firm and directive policies, especially in national direction – can swing both ways depending on what those policies actually say. To us, this suggests a need to focus on improving a legislative purpose and principles, to ensure that any balancing that continues to be necessary has clear constraints based on clear environmental bottom lines.

A comprehensive and coherent range of biophysical environmental limits needs to be much more clearly defined, required and defended in a new Act’s purpose and principles. All other principles need to be expressly subject to the achievement of those. Climate change mitigation and a link to the targets and budgets of the Climate Change Response Act need to be strongly recognised within the purpose and principles of an Environmental Stewardship and Planning Act.
Alongside clearer environmental bottom lines, a new Act needs to recognise more specifically that things like urban amenity and character – how a city looks, feels and is experienced at the moment – are not aspects of the environment to be “protected” in the same way. Cities are dynamic, and change can provide net benefits if shaped in positive ways. There would also be benefit in having a wider range of principles concerning the resolution of what are essentially private disputes (eg the height of a fence) without reference to lofty principles of “environmental” wellbeing, although care would need to be taken here. There can be significant cumulative effects flowing from thousands of decisions that appear, when looked at individually, to be only about private conflicts.

A new Act should clearly distinguish between environmental bottom lines (which must not be infringed) and things like urban amenity and character (which may need to change over time).

6.7 The importance of pursuing synergies, not just preventing harm

An Environmental Stewardship and Planning Act should also be framed so it explicitly supports choices that have synergistic benefits for both urban development and environmental wellbeing. Environmental sustainability is not just about stopping things happening; it should encourage us to think laterally and embrace win-win situations. Synergies are more common than one might think, but are not necessarily options pursued by the market alone. We can see synergistic benefits, for example, in the densification of neighbourhoods around mass transit nodes, in the greening of urban space, in the energy efficiency and climate change benefits of compact urban form, in the provision of water and energy sensitive infrastructure, and so on. A discussion document on the proposed NPS for Indigenous Biodiversity notes that:

- supporting mental health and wellbeing
- enhancing recreation opportunities
- carbon sequestration and climate amelioration
- improving water and air quality
- visitor and tourist attractions
- social, cultural, educational and health benefits
- social cohesion in working with a common purpose
- reconnecting urban dwellers to their natural environment
- developing a more liveable and aesthetically attractive urban centre

Some have persuasively suggested that the RMA should be more courageous in the urban outcomes it seeks to drive, including:

- specific policy direction over urban growth and form to better secure or sustain efficient transport networks and maintain compact urban form... [and] urban design (section, and street orientation and layout, to optimise solar warming/localised power generation and minimise reliance on centralised electricity generation and/or natural gas).
A spotlight on compact urban form

A compact/efficient urban form offers many synergistic benefits, and urban sprawl has corresponding downsides. For example, well-designed compact cities/neighbourhoods can:

- encourage active transport modes like walking and cycling (health benefits) as well as public transport. They can improve mobility while reducing the environmental and climate impacts of private motor vehicles.
- make the provision of infrastructure (including green space) more efficient, including fully realising the potential of existing infrastructure.
- make land and energy use more efficient.
- reduce pressure for development of land protected for good reason (eg heritage protections, sensitive or rare ecosystems, buffer zones for streams or hazards, landscapes, and food producing land).
- have a strong sense of community, connectedness and vitality.
- enhance the ability to attract and concentrate knowledge-based industries that do not require large spaces.
- offer people better access to job opportunities.
- provide access to recreation, amenities, and essential services including for the elderly who can age in place and feel part of a community.
- enhance community safety (given there are many people around).

One concept for compact urban form at a neighbourhood level, adopted in Melbourne among other places, is the “20 minute city”. It recognises the benefit in having everything an urbanite needs (employment, recreation, social connection, services) accessible by walking, cycling or using public transport within 20 minutes of where she or he lives. Closer to home, Hamilton is taking steps towards this vision too, but it is not one driven by the purpose and principles of the RMA. This is an enabling concept; in other words, it is by no means intended to prevent longer cross-city commutes if that is what people and businesses want. After all, large labour markets are one of the agglomeration benefits of cities and cannot be replicated within smaller suburbs. However, it supports a move towards urban density and associated rapid public transport networks.

The newly gazetted NPS on Urban Development has positive aspects for a compact urban form, in that it looks to enable intensification where there is demand for housing, and where there is proximity to services, amenities, infrastructure and employment. Its effect is to encourage quality intensification where its benefits are most apparent (eg many jobs, good infrastructure and mass transit, high demand and prices etc). In some larger cities, it even goes so far as to require plans to enable a minimum of six storey developments in places within walking distance of rapid transit and urban centres. But it, like the RMA and its predecessor NPS (on Urban Development Capacity), is ultimately agnostic as to the form urban growth takes. For example, while mandating plans to allow density in some places, the NPS on Urban Development also requires councils to be “responsive” to private plan changes for new development even if it is not planned for. In effect, there is still a strong enabler for greenfields sprawl if that is where the market wishes to undertake development.

In our view we should more explicitly seek compact urban form, rather than compromising or prevaricating, and are persuaded that “there is compelling international evidence that cities should primarily grow up and not out and emerging local evidence that New Zealanders are acclimatising to higher density living.” Ireland’s national planning framework, for example, has explicit national objectives for delivering 40 percent of new homes across the country (and over 50 percent in larger centres) within existing urban footprints in order to prevent sprawl, and a strong national imperative for increased residential density through infill, the efficient use of public land, repurposing existing buildings and increased building heights.

Of course, density has drawbacks, and is not appropriate everywhere. Actual construction cannot be forced by regulation without market demand or policy incentives. This is what the NPS means when it requires planned development capacity to be “feasible” and “expected to be realised”, not just something that looks good on paper. Good design is also crucial to mitigate the real risks of residential densification (including potential for disease transmission, social conflict and claustrophobia), and to enhance its benefits. Furthermore, greenfields growth can be done in a way that provides some of the same benefits, and is not the same thing as “sprawl”. For example, entirely new suburbs or even a new “satellite city” can be planned with greater density and links to mass transit.

There may be some tensions to work through here if demand for peri-urban or low-density suburban living increases due to people’s post-Covid desire for more space and the ability to work from home. But we would caution against allowing such pressures to create unmitigated urban sprawl. We should focus instead on density done well.
In a post-Covid world we will also need to be mindful of ways to ensure physical contact between people in denser settings can be limited when required, without compromising social connection and access to essential services (if anything, Covid-19 has reinforced the need to foster a sense of community further through walkable and inclusive neighbourhoods). Some measures have been taken, for example, to widen footpaths and cycle lanes and shut some non-essential roads to motor vehicles. And while some have seen mandatory balconies as an unnecessary cost in apartment developments, they provided important mechanisms for fresh air and social connection during lockdowns in dense urban areas like Milan.

Policy support for compact urban form also does not mean we adopt blunt and inflexible tools like urban limits to the extent that it contributes unduly to housing prices. Cities may still need to expand outwards, for many reasons dependent on local context (eg where it is appropriate to move noisy or constrained industrial activities and replace them with more efficient residential development, and because “New Zealand city dwellers may reject a level of urban density that would be perfectly acceptable in some Asian and European cities”). Attempting to identify one type of urban form “as being more efficient than another would be overly simplistic” if too prescriptive. There are also many tools other than regulatory urban limits that can be used to encourage effective density and ameliorate the effects of sprawl, including incentives for infill, the creation of multi-nodal cities, relaxing building height limits in some places, and strategic spatial planning to manage growth in a staggered way.

However, none of this means we should be agnostic about how cities grow. While land supply and housing affordability is crucial, we are not convinced that market forces should entirely dictate such choices at a big picture level, or that “what matters ultimately are the preferences of households” and “councils in our largest cities should be able to pursue the goal of a compact urban form if that is what their communities want”. Public and inter-generational interests in compact urban form are not always well reflected by market preferences or the interests of existing residents. One option would be to devolve decisions about how to provide densification, by requiring neighbourhoods to accommodate some degree of growth and leave the “how” to them. But, in any case, it would be better for the planet if growing urban populations were encouraged to live in “cities built around the elevator, rather than in sprawling areas built around the car”.

Principles of a new Act should expressly support measures to achieve synergies between social, economic and environmental outcomes, which the market might not otherwise provide. In particular, they should provide legislative policy support for a compact urban form.
6.8 Concluding comments: A new purpose and principles

We should no longer accept that urban development that enhances economic and social indicators of wellbeing must come at an environmental cost. The system needs to move towards a model where, through careful planning, the benefits of both can occur at the same time, and where “green” cities can flourish in economic, social, environmental and cultural terms.

It is interesting – one might even call it quite odd, in an effects-based regime – that the RMA itself already singles out renewable electricity generation as a sector for explicit legislative policy support. It recognises the synergistic benefits that this choice provides. We think that a new Environmental Stewardship and Planning Act could expand this approach. Its purpose and principles will need to be much more specific and directive as to the things that will achieve the outcomes that we want, not just vague concepts of wellbeing that could be achieved in many ways. Of course, such objectives also need to be linked to mechanisms for achieving them. For example, at the time of writing the United Kingdom is considering a linked to mechanisms for achieving them. For example, at the time of writing the United Kingdom is considering a

Of course, there also needs to be strong recognition of the principles of the Treaty of Waitangi in a new Act. As is commonplace now, a standalone clause highlighting the importance of these principles will have its place. But this also needs to be accompanied by a real effort to weave Māori concepts into the fabric of the legislation. One option would be for a concept like te Mana o te Taiao to be a framing principle for all others (a replacement of the concept of “matters of national importance”), in a similar way that te Mana o te Wai is used under the NPS for Freshwater Management. Kaitiakitanga is important too, and not just as an approach to protecting the natural environment or preserving cultural artifacts (eg specific sites of cultural significance). It should be understood in a much wider, metaphysical sense, as actively pursuing improvements to both human and natural elements of an urban space or landscape – supporting synergistic benefits. Mātauranga Māori needs explicit recognition alongside other forms of knowledge.

In the Phase 2 report we included suggested drafting for a new purpose and principles. This was designed as a starting point for discussion. We do not reproduce that drafting here, but note that it will need to do the following things better from an urban perspective:

- Replace a core purpose of “sustainable management” with a more aspirational and wide-ranging collection of outcomes: sustainability, resilience, liveability, health, and fairness; this could be potentially encapsulated within a concept like te Mana o te Taiao.
- Strengthen directions in relation to the Treaty of Waitangi (including to “give effect to” Treaty principles), and provide for the consideration of mātauranga Māori alongside other forms of knowledge.
- More clearly define the kinds of things that are subject to environmental bottom lines in and around cities (eg including freshwater, but excluding urban amenity), and strengthen directions in relation to them (eg all other considerations are “subject to” or must “comply” with them).
- Specifically refer to the importance of climate change mitigation in urban design and planning, and link to targets and plans under the Climate Change Response Act.
- Make clear that bottom lines are not just about protecting and preserving what we have left, but also about returning to acceptable outcomes where the environment has been degraded already (ie sometimes enhancement is required).
- Clarify that the interests of future generations (of both people and nature) are as important as the interests of current generations, and that a long-term view must be taken in all decision-making.
- Be geared towards positive action and the achievement of targets, not just management and the prevention of negative impacts.
- Subject to clear environmental limits, recognise the importance of good urban planning and design for the wellbeing of people and communities, and give explicit policy support for synergistic outcomes. This could be reasonably specific (eg encouraging ecologically sensitive design, green infrastructure, quality and affordable housing, social connection and resilience etc) or left as a more general hook (an expanded version of the “well-functioning urban environments” envisaged under the NPS on Urban Development).

The purpose and principles of the RMA require substantial revision to be fit for purpose in a new Environmental Stewardship and Planning Act. However, we need to be realistic about the impact of these changes. Strong aspirations are the foundation of the Act, but they will need to be backed up by the tools to achieve them. A crucial part of that will be a revised approach to national direction.
ENDNOTES


3 Submission of Mike Greer Homes (sub 48, at 4) to the New Zealand Productivity Commission’s inquiry Using land for housing (2015) at 142.


6 People, places, spaces: A design guide for urban New Zealand (Ministry for the Environment, 2001) at 18.

7 G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019), chs 6-7.


9 Section 9. Contrast the Urban Development Act 2020, where the planning authority is also the developer (so a development plan is envisaged to be much more detailed).

10 As well as other roles under the wider resource management system, such as providing public goods (eg infrastructure) and coordinating the supply of those goods with the provision of land. See New Zealand Productivity Commission Better urban planning (2017) at 39 and 47, and compare (4 July 1999) 516 NZPD 3019-3020. On externalities, see G Harin “The tragedy of the commons” (1968) 162 Science 1243; T Denne “Resource management law reform and economics” in G Severinsen and R Pearlt Reform of the resource management system: The next generation – Working paper 3 (EDS, 2018).

11 This is not to say that economics as a discipline is always narrowly focused. Indeed, even more traditional approaches to welfare economics can, in theory, recognise the importance of promoting positive externalities (eg benefits like social cohesion, climate change, mental health and environmental enhancement). Furthermore, more modern approaches like ecological economics recognise the intrinsic values of the natural world alongside the instrumental value of resources.


13 See G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019), ch 3.


15 Ibid.

16 See New Zealand Planning Commission Better urban planning (2017) at 412; New Zealand urban design protocol (Ministry for the Environment, 2005).

17 G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019) at 83. Those include risks of an overly short-term focus; undervaluing intangible or immeasurable effects, including nature; a lack of information until it is too late; giving up opportunities to improve people’s and natures wellbeing; and removing the impetus for changes in ethics.


21 G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019).


23 Ibid at 9.

24 The 2013 census recorded that 84 percent of Māori live in urban areas: see ibid at 16.

25 For example, the National Party has pointed to one case where the process for consenting a “green” development was more laborious than one that was less green. See New Zealand National Party Building NZ: RMA reform and housing (2019) at 6.

26 G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019) at 88.

27 As discussed in the Phase 1 report, non-regulatory tools will be particularly important in encouraging positive outcomes rather than just preventing negative outcomes.


31 New Zealand Planning Institute Submission: RMA Review Panel issues and options paper (2020); see also G Severinsen and R Pearlt Reform of the resource management system: The next generation (EDS, 2019), ch 3.


35 R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘opportunities for change’ (2019) at 4.

36 Under the Climate Change Response Act 2002, the scope of which has been expanded by the Climate Change Response (Zero Carbon) Amendment Act 2019.

37 Under mechanisms like the proposed Urban Development Act – see Chapter 11.

38 Through the non-statutory Urban Design Protocol and voluntary use of urban design panels.


43 Including in Auckland and Queenstown.

44 For example, ensuring town centres are community focal points, development contributing positively to a sense of place, improving community access to public spaces, enhancing pedestrian safety and convenience, and encouraging crime prevention through urban design.


46 Ibid, at 6.


48 The opportunity cost of a proposal to use a resource is not generally considered under the RMA, only whether the effects of the proposal meet the test of sustainable management.

49 Although moves to protect productive land have been careful to stress that retaining land for “primary production” is broad and is not designed to pick winners within that category (eg horticulture etc).

50 NPS on Urban Development at 27-28.

51 Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper (February 2020) at 3.


54 For example, they can be imposed simply to keep the costs of infrastructure provision down, or to drive a compact urban form.

55 For example, an urban limit in the Canterbury regional policy statement was a product of the Urban Development Strategy partnership between multiple public sector entities.


59 Of course, the King Salmon jurisprudence has, in a sense, reduced the direct effect of Part 2 in cases where subordinate instruments are clear on a matter, but those subordinate instruments themselves are only influential because they have been created to directly implement Part 2.

60 Many other discretionary decisions of a public nature are made in accordance with a prescribed process and guided by decision-making principles, but with legal challenge being done by way of general administrative law principles (reasonableness, relevance etc) rather than an extensive legal definition of a statute’s purpose statement.

61 Auckland City Council v John Woolley Trust (2008) 14 ELRNZ 106 (HC) at [47].


63 See New Zealand Productivity Commission Using land for housing (2010) at 272, citing the submission of Munro and Beattie.


65 New Zealand urban design protocol (Ministry for the Environment, 2005) at 9.


70 Resource Management Act 1991, ss 7(b), 7(g).

71 See New Zealand Government Valuing highly productive land: A discussion document on a proposed national policy statement for highly productive land (2019) at 28, where the possibility of changing Part 2 to include protection of productive soils was floated as something for wider reform.

72 M Williams “Flattening the climate change curve – Putting the RMA ‘shoulder to the wheel’” (April 2020) RMJ 4 at 10.

73 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 1; New Zealand Productivity Commission Using land for housing (2015) at 273. Such references are common in other jurisdictions: see Environmental Planning and Assessment Act 1979 (NSW); Development Act 1993 (South Australia); Planning and Development Act 2007 (ACT); Environmental Management Act 2004, Local Government Act 1966 (British Columbia); Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004 (UK).

74 New Zealand urban design protocol (Ministry for the Environment, 2005).

75 Compare A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 74.


77 Ibid at 40.


79 Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [20].


81 For example, we do not say that specifically “coastal” principles apply only where someone seeks to do something in the coastal environment – they are there for wider consideration where the coastal environment is impacted or relevant.


83 For example, green infrastructure, landscape, viewsheets, green walls, water sensitive design, energy efficient urban form, etc.

84 That will be dictated by the needs of the particular context, and can be constrained through (for example) using restricted discretionary activity status.


86 New Zealand Productivity Commission Better urban planning (2017) at 3.

87 Compare R Peart A place to stand: The protection of New Zealand’s natural and coastal landscapes (EDS, 2004), in which this was identified as an issue in the context of natural landscapes 15 years ago. The Act is not clear on what it is actually trying to achieve, other than ensuring the recognition of landscape.

88 Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper (February 2020) at 4.


91 Section 7 tends to contain a more diverse mix of matters, but still remains fairly incoherent.


93 New Zealand Rail Ltd v Marlborough District Council [1994] NZRMA 70 (HC).

94 Although some questions are still being raised, and exceptions inappropriately pursued.

95 For example, see Ngā Aho and Papa Pounamu Review of “Better Urban Planning” draft report (2016) at 9-10.


100 See generally Environmental Defence Soc Inc v Auckland Regional Council [2002] NZRMA 492 (EnvC); Environmental Defence Society Inc v Taranaki Regional Council EnvC Auckland A184/02, 6 September 2002.

101 Compare R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘Opportunities for change’ (2019) at 1.


103 In the form of an NIES (the ability to promulgate an NPS is less clear, although arguably implicit given the policy intent of the 2004 amendments). See generally G Severinsen “Climate change considerations under the Resource Management Act: A barrier to carbon capture and storage deployment in New Zealand?” (2014) 22 Wai L Rev 117 at 13.

104 M Williams “Flattening the climate change curve – Putting the RMA ‘shoulder to the wheel’” (April 2020) RMJ 4 at 10.

105 Resource Management Act 1991, ss 70A and 104E.

106 For example, provisions could still include reference to the desirability of taking a nationally consistent approach to mitigation measures.

107 Resource Management Amendment Act 2020, s 2(3)-(4).

108 That need not be just through a dedicated part on climate change. For example, it could usefully be embedded in other domain-based or sectoral provisions imposing standards or policy guidance – including ones concerning urban form and design.


110 Lawyers for Climate Action New Zealand Submission to issues and options paper: Transforming the resource management system (February 2020).

111 M Williams “Flattening the climate change curve – Putting the RMA ‘shoulder to the wheel’” (April 2020) RMJ 4 at 8.


113 S Knight Lenihan and K Scanlan “Climate compatible development in New Zealand” (2018) 14 Policy Quarterly 43 at 45.

114 Whether it can be a sufficiently complicated question. Under ss 70B and 104F, the RMA explicitly allows councils, when making decisions on rules and consent conditions, to consider the effects of greenhouse gas discharges only where an “NIES” has been promulgated. It is silent as to the effect of an NPS on the making of objectives, policies, rules and consent conditions. However, it seems likely that the policy intent was to allow councils to consider such matters where authorised at a national level, including under an NPS. See G Severinsen “Climate change considerations under the Resource Management Act: A barrier to carbon capture and storage deployment in New Zealand?” (2014) 22 Wai L Rev 117.


116 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 109, where we shone a spotlight on the Kāpiti experience with coastal hazard lines. See also R Peart Castles in the sand: Next generation to carbon capture and storage deployment in New Zealand?” (2014) 22 Wai L Rev 117.

117 New Zealand Productivity Commission Local government funding and financing
(Draft report, 2019) at 262.
118 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019), ch 7.
119 Compare R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, “opportunities for change” (2019) at 5.
121 Professor Richard Macrory describes these as having a moral dimension if contained within primary legislation: see R Macrory Regulation, enforcement and governance in environmental law (Bloomsbury, 2014) at 264.
122 Dr Tim Denne has pointed out that “decision-making criteria can become paralysed” in the absence of clear guidance around trade-offs: see T Denne “Resource management law reform and economics” in G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 3 (EDS, 2018).
123 For example, there is a significant difference between having to “recognise and provide for” something like the maintenance of wetlands and a direction that there be “no further loss” of wetlands.
124 For some things bottom lines might look different (landscape values, biodiversity etc). This debate could prove controversial for some things, especially for legacy issues like urban runoff from roads and rooftops causing water pollution.
126 New Zealand Rail Ltd v Marlborough District Council [1994] NZRMA 70 (HC). Contrast earlier cases where the primacy of bottom lines was explicitly recognised: see Shell Oil New Zealand Ltd v Auckland City Council W/94/2, 2 February 1994 (PT) at 10.
127 Section 67(3)(b) of the RMA requires a regional plan to “give effect to” the New Zealand Productivity Commission Reform of the resource management system: The next generation (Pan, 2011) at 197-129.
128 Ones that are so firm that they have to be given effect to in rules and resource consents, rather than being directly binding in a regulatory sense.
132 See Resource Management Act 1991, ss 68(1), 78(1). In practice, rules are found in all plans.
134 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 97.
136 For example, corresponding bottom lines in an NPS on biodiversity or an NPS protecting productive soils.
138 NPS on Urban Development at 15.
140 See generally S Knight Lenihan and K Scanlan “Climate compatible urban development” in (Cambridge University Press, 2006) at 19.
141 This does not mean that plans should be prescriptive about where such clusters are located, as this can happen best in an organic way that meets the needs of businesses.
142 R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, “opportunities for change” (2019) at 5.
143 This is not absolute, however: Many people move to lower density suburbs because they are perceived to be safer, for a variety of reasons.
144 Which does not necessarily result in compact urban form from a city-wide perspective.
147 Ibid, at 36.
148 Policy 3. While there are some exceptions (“qualifying matters”), robust evidence, reasons and site-specific analysis are required to impose more restrictive provisions on building heights.
149 See NPS on Urban Development Capacity at 3.
150 Objective 6(c).
152 See ibid at 3.
154 For example, where natural hazards pose risks, or where character must be preserved.
155 NPS on Urban Development at 14, 23.
156 See Beli Business land: problems and causes - Research to support a proposed NPS on urban planning (2016).
157 G McIndoe and others The value of urban design (Ministry for the Environment, 2005).
159 As is now required under the NPS on Urban Development.
160 See Chapter 10.
162 E Glaser Triumph of the city (Pan, 2011) at 197.
164 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 147.
168 This will not be an easy task but, as pointed out in the Phase 1 report, there is a significant difference between the need to strictly protect things like the life supporting capacity of resources like freshwater and more contestable concepts like urban amenity (defined in the RMA as “natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”).
169 How this occurs, and who pays, would be an important question in detailed policy development; Regulatory tools will need to be accompanied by non-regulatory incentives.
7. NATIONAL DIRECTION FOR CITIES

7.1 Introduction

National direction under the RMA has been slow in coming. Although it is not inherent in the Act itself (national direction can be created for a wide variety of reasons), inappropriate central government interference in resource management during the Muldoon era has, in practice, cast a long shadow of distrust over central authority. There has been a strong assumption that resource management decisions should be largely local. Therefore, aside from in the coastal environment, Ministers and ministries have been expected to exercise benign oversight rather than drive policy. That attitude has not produced good results. National interests in things like freshwater quality, housing and biodiversity decline have been underemphasised. In particular, there has traditionally been reluctance for central government to be involved in land use planning in cities. There is a feeling that this is how other countries do it, not New Zealand. In recent years, this has started to change. We have lately had a flurry of instruments, ranging from several iterations of national policy on freshwater to a first real effort to implement nationwide protections for biodiversity and productive soils on private land. Even more instruments are in the works at the time of writing; after a drought, comes a flood.

Over the course of our resource management system reform project, we have looked at national direction from a wider perspective, and many of the conclusions we reached there are equally relevant to cities. Urban matters are not just about development and zoning. For example, significant flora and fauna exists within and around cities, so national direction for indigenous biodiversity is an “urban” matter as well. Many cities are surrounded by and are expanding into land with rich soils, so an NPS on highly productive land is tightly linked to the future shape of our cities. But the government has in the last decade or so also turned its attention to national direction on what it describes as specifically “urban” matters. In particular, we have a new NPS on Urban Development, which expands on a previous NPS targeted at the narrower imperatives of providing sufficient urban development capacity. The provisions of specific pieces of national direction can be debated at length, and we touch on some relevant aspects below. But, more fundamentally, we are asking: is our legal framework for national direction sufficient? We do not think it is. A new approach is required to address urban issues. In particular, we see a stronger and more coherent role for central government than has been the case in the past. The challenges of a post-Covid 19 recovery further emphasise the vital role of central government. Subject to robust checks and balances, ministers will need to take the reins to prevent urban problems arising and to increase our resilience to system shocks.

7.2 A more proactive role for central government in urban planning

Under the RMA the government has to a large extent only responded to urban issues rather than pre-empt them. Freshwater is a prime example of where we have had to play catchup, and urban water quality is an area in which we are very much still behind the eight ball. A failure to anticipate nationally significant issues around development capacity and housing is now being addressed not just through firm NPSs, but also by inappropriately wide ranging powers to override the RMA entirely under bespoke urban development legislation (see Chapter 11). Urban biodiversity is important, yet an NPS for Indigenous Biodiversity is only now, at the time of writing, progressing to its later stages. The same goes for peri-urban productive soils. A more general observation is that a strategic, future-focused lens has been missing. In our view, central government needs to be both a system steward (providing oversight, and making sure the system as a whole is working well) and an active player (making decisions within the system based on the national interest). The RMA already allows it to be both of these things, but does not generally require it to be the latter. The only national direction that is mandated by the Act is the New Zealand Coastal Policy Statement, and Ministers generally have powers, rather than responsibilities, to intervene in urban RMA plans. In hindsight, it may have been naïve to expect a non-directive framework like the RMA to result in central government action, especially in light of the political and economic circumstances leading to its enactment (eg a reaction against central planning, faith in the wisdom of the market, and a drive to improve economic productivity). But it has left a significant gap, including in our cities.

We recommend that there be a legal requirement for the government to create national direction in relation to all matters for which there is a reasonably foreseeable national interest, and for this national direction to take a precautionary, future-focused approach so that issues are anticipated before they manifest. Energy should not be thrown into solving one politically pressing problem quickly (eg housing provision) at the expense of creating others (eg impacts on the environment), which is a real risk under current settings. There is a much stronger national interest in urban planning policy than is currently recognised under the RMA. This can be seen in the nationally important implications that urban land use decisions have for housing, infrastructure, energy efficiency, climate change, economic performance and social welfare alongside problems of environmental degradation.

A more active central government raises difficult questions about the proper roles of central and local authorities. Where exactly does the national interest begin, and the local end? There is no bright line, and interests frequently overlap in cities. But the absence of clear principles...
around subsidiarity is particularly problematic when it comes to urban planning, where small-scale decisions often seem local in their impact but where cumulatively they can have significant implications for many aspects of the national interest.⁸

We have tended to fudge the issue in New Zealand by centralising powers when it becomes urgent to do so (when councils are perceived to have under-performed), not by having a conversation in advance about where different communities of interest should reside.⁹ A quick glance at the functions of central and local government in Part 4 of the RMA reveals significant overlap in terms of the outcomes being sought by both levels of government, and very little guidance as to when one should be the dominant or sole decision-maker. Matters of “national importance” in Part 2 of the Act overlap and have no clear relationship with matters of “national significance” for which national direction can (but does not have to) be made. For example, urban freshwater quality has for a while now been subject to national direction, but is not listed as a matter of national importance in Part 2. The life supporting capacity of soil is highlighted in the purpose of the Act, but national direction on protecting peri-urban productive land is still in the pipeline 30 years after the Act was passed. Is this what the RMA envisaged?

Furthermore, housing is not mentioned at all in Part 2, yet it has received targeted national direction well before indigenous biodiversity (which we are still waiting for), which is specifically highlighted as being nationally important. This speaks partly to the internal incoherence of Part 2 itself (why are some things in section 7 rather than section 6, or in section 5 but not sections 6 or 7?). But it is also reflective of a system that allows central government to (1) pick and choose responses to nationally important issues based on political will, and (2) pass the buck to local government for issues that cannot easily be measured across election cycles and that can manifest many years after being foreseen.¹⁰ In other words, “the current approach to considering new interventions is ad hoc and lacks a structured, transparent approach to forward planning on current Government priorities and emerging issues”.¹¹ This will not be acceptable in a future beset with challenges that need to be pre-empted.

A clearer understanding of the responsibilities of central and local government, alongside a more coherent purpose and principles in a new Act, should assist. We do this already for the coastal environment (in that the New Zealand Coastal Policy Statement is mandatory, and the Minister of Conservation has a strong role in regional coastal plan making), but there are many things other than the coastal environment that require central involvement. A number of commentators have made a similar plea for clarity, in calls to develop a “common understanding of, and respect for, the roles, duties and accountabilities of both spheres of government”;¹² and that central government “participate in the co-operative mandate that the RMA created”.¹³ Nowhere is this need for cooperation more obvious than in urban areas, where national and local interests co-exist across the board. For example, planning provisions created by councils to shape communities can have real impacts on the climate targets that Parliament has set for the government as well as affecting its environmental, housing and social welfare responsibilities in cities.

This does not mean that central government should take over urban planning or that blanket national regulations are the answer. Ministers have no business master planning a new neighbourhood;¹⁴ for instance. But they do have an interest in setting out how and where an adequate supply of housing will be provided, and the implications of development for things like water, climate, productive land and biodiversity. The political imperatives of local government will not always weigh national interests as highly as they deserve, and currently “the interests of existing residents, homeowners in particular, are prioritised over other interests, including renters and new households.”¹⁵

In particular, in a new Act central government should be required, under a clear definition of subsidiarity, to establish a comprehensive set of nationally and inter-generationally important environmental limits, including in cities. This could be targeted at the specific needs of different places (eg provisions for Auckland could look different to Christchurch)¹⁶ but environmental bottom lines should not be left to political prioritisation. For example, it is telling that, in the absence of a proactive obligation, a significant portion of national direction applying to urban areas has so far been driven by direct impacts on people’s health¹⁷ or the desire to facilitate development or resource use for social and economic benefit.¹⁸ Progress has even been slow where human health has been impacted, for example in the absence of common urban wastewater discharge standards across the country.¹⁹ Many have shared the sentiment that “integrated and cohesive national direction including bottom lines is a critical component”²⁰ of a future system.

The RMA generally does not compel central government to plan or intervene, other than in the context of the coastal environment. It does, however, enable government involvement in urban areas in a wide variety of ways. We are proposing a requirement, not just a power, for central government to promulgate a comprehensive range of national direction that gives effect to the purpose and principles of a new Environmental Stewardship and Planning Act. This would mean that matters identified as being of national importance then have an expectation of at least some national response (which might take the form of policy, regulation or both). There should be a clearer definition of subsidiarity in the Act, outlining the reasons for which central and local government are expected to act.
7.3 A more coherent role for central government in urban planning

At the time of writing, the government is in the process of promulgating several new NPSs and NESs and reviewing or reworking a number of existing ones. Many have direct implications for urban areas or issues, including those targeted at development capacity and well-functioning urban environments, protection of productive land, freshwater quality, climate change and indigenous biodiversity. It is generally a positive trend for the government to be taking a stronger leadership role in such issues.

However, mandatory national direction needs to form a coherent package, particularly in cities where trade-offs between interests can be particularly difficult, where policy predictability is important, and where things can change so rapidly. However, despite valiant efforts, coherence has not been the experience so far. The more separate pieces of national direction that are promulgated to target specific issues as they arise, the more complicated the relationships and cross-referencing between them (if any) become. Some aspects of national direction are spatially-focused, such as much of the NPS on Urban Development Capacity (and now an NPS on Urban Development), many provisions of which apply to particular cities and how they grow. Others are domain-based and cut across spaces, such as the NPS for Freshwater Management and proposed NPS for Indigenous Biodiversity. Still others are sector-specific, such as national direction on electricity transmission. To exacerbate things further, many NPSs are characterised by fairly general wording, requiring extensive interpretation and mental gymnastics to figure out relationships and hierarchies. A lot is simply left to local government to figure out the hard way, including through time-consuming litigation on plans and consents.

Policies in NPSs can also pull in different directions, seeking to achieve quite different (and arguably not entirely compatible) things, a scenario that was reluctantly foreseen by the Supreme Court. Urban matters are particularly noticeable here. For example, there are real tensions between the New Zealand Coastal Policy Statement and the proposed NPS for Highly Productive Land on the one hand, and the NPS on Urban Development on the other.
A spotlight on relationships between “urban” NPSs

A number of NPSs have been produced by the government under the RMA. Relationships between them, and their overall purpose as a package, can be unclear, especially when dealing with urban development. There are few specific cross-references between NPSs. We are left wondering: which things does the government think are more important for New Zealand, and should the law itself be more directive about it? In particular, there are tensions and uncertainties in and around cities between national policies concerning (1) urban development; (2) protection of highly productive land; (3) climate change imperatives; (4) indigenous biodiversity; and (5) protection of the coastal environment.23

For example, the NPS on Urban Development Capacity is concerned almost entirely with making more land available for urban development, with no consideration of the environment within which that capacity is being provided (eg the rivers that may need to be crossed or piped, or the significant natural areas (SNAs) that may be impacted) or whether the values of that environment might place a sensible cap on expansion. The quality of the natural environment within cities is given only cursory attention, because that is expected to be dealt with elsewhere.24

While it is broader than its predecessor in many ways, a similar thing can be said of the NPS on Urban Development. Its conception of a “well-functioning urban environment” includes one that supports the reduction of greenhouse gas emissions, but does not include reference to other aspects of environmental wellbeing in cities. Urban “development outcomes” are required to be established and closely monitored by councils, but there is no link to corresponding environmental outcomes. And councils are obliged to be “responsive” to plan changes that provide for more development capacity without clear reference to environmental constraints (and even if a development in that place has not been contemplated by a plan that does impose such constraints).

It has been said that future development strategies required under the NPS on Urban Development Capacity and NPS on Urban Development are a way for councils to “identify areas where urban development may not be appropriate”. But the links to, and relative weightings of (1) the protection of SNAs under the proposed NPS for Indigenous Biodiversity; (2) the protection of highly productive soils under the proposed NPS for Highly Productive Land; and (3) the need to mitigate greenhouse gas emissions under emissions reduction plans, are not made explicit. The lack of direct connection can be seen in the following statements in discussion documents supporting NPSs:

[the NPS on Urban Development] recognises open space as one of the features of a quality urban environment that local authorities must provide for … while the proposed NPS [for Indigenous Biodiversity] includes policies to restore indigenous vegetation in depleted areas, including urban areas. Areas of land identified as SNAs under the proposed NPS [for Indigenous Biodiversity] can be considered ‘no go areas’ for urban development25

a piece of land may be identified as both highly productive land under the NPS [for Highly Productive Land] and partially or completely overlap with an SNA identified under the proposed NPS [for Indigenous Biodiversity]. This is a consideration to be made at the local decision-making level26

the NPS [for Highly Productive Land] will require local authorities to identify highly productive land where urban development, and other non-primary production activities, should be avoided… [which will] help local authorities to identify no-go areas [under the NPS on Urban Development], while allowing for new urban areas on highly productive land in appropriate circumstances27

the NPS [on Urban Development] provides a mechanism for local authorities to identify areas where development may not be appropriate because of the likely effects on highly valued freshwater environments.28

Discussion documents are adept at describing opportunities for synergies that might be possible if councils choose to interpret them in this way. But there are tensions, too. What if, for example, there are a number of SNAs in high growth areas but an abundance of other open space opportunities already (eg sports fields, gardens)? Or if there are productive soils that are much more significant from a national perspective than a local one? And what about planning matters that fall between the cracks of discrete policy topics, like the need to facilitate local food production within an existing urban footprint (in which there is an increasing interest in the wake of Covid-19) rather than residential and productive land as black and white alternatives?

There needs to be meaningful cross-referencing that truly reflects the balance of national goals under a new Act, rather than passing the buck to local government. Reliance on non-statutory guidance and explanatory text in discussion documents will not be adequate where serious questions of national interest are at play.29

A stronger approach is possible. For example, one recent discussion document states that a future development strategy could be obliged under the
NPS on Urban Development to identify “areas where evidence shows urban development must be avoided”.

There is an obvious question here, in that “evidence” alone cannot determine where or why development must be avoided in the absence of clear cross-references to protective policies contained in other NPSs.

Evidence and data do not give normative guidance about what should happen as a result. There is a further problem, in that even strong directions in a future development strategy do not actually have to be given effect to in RMA plans.

And the NPS on Urban Development, as gazetted, falls well short of even this approach. A future development strategy needs only to be “informed” by other national direction alongside any other government policy (e.g., for housing and development), and must only identify “any constraints on development” without specifying what those are or should be. Environmental wellbeing and sustainability are not mentioned as part of the purpose of such strategies, while development capacity and infrastructure are specifically highlighted.

A think piece released by the National Party has pointed to a much stronger model in South Australia, which involves a State Planning Commission issuing:

a direction that establishes food production and environment areas in Greater Adelaide. Once established, only Parliament can overturn the boundaries of an environment and food production area – and only after a report by the State Planning Commission. An environment and food production area designation precludes the subdivision of land for housing.

As a whole, the message to local government from the recent flurry of national direction seems to be to take more things into account, but not which things deserve relatively more weight on the ground.

Of course, it is in the nature of much RMA policy to require tensions to be balanced and resolved in more specific contexts by councils, and it is true that:

local authorities should consider interactions between national policy statements when undertaking these functions. Even with consistent and well-integrated national direction, competing environmental priorities will need to be resolved by local authorities in their RMA planning processes.

This has led in some places to strong local protections, for example in relation to horticultural land around Napier and Hastings. But pressure for urban development can be immense, local political dynamics can change quickly, and urban expansion is strongly supported by national direction. It is far from obvious to us that increasingly fragmented national direction is consistent, or that it embeds national policy priorities at the highest levels. Instead, one gets the sense that synergies are being retrofitted, where possible, into a model where urban development capacity is still the main concern.

The reality remains that the NPS on Urban Development provides for “bottom line” levels of housing development, and such directions are strongly worded relative to others. If other things fit that narrative, they are welcomed into the fold.

Part of the issue is that, except for aspects of urban development capacity, national direction has remained high level and not really engaged with the much more specific national interests in particular places. For example, the protection of horticultural land in South Auckland may be much more significant from a national perspective than the protection of pasture in Taranaki.

There has been reluctance to include any specific spatial element in national direction to target such areas.

Not only is there policy uncertainty in our ever-expanding package of national direction, there is also increasing complexity. At the very least, every policy proposal for a new NPS now has to go to increasingly heroic lengths to try to outline the relationships with a large web of existing and proposed NPSs that have been created for very different reasons.

Relationships can be reduced to somewhat hopeful statements that, for example, they “are intended to be compatible” and “should be complementary.” The format and structure of different pieces of national direction can also look very different, adding to confusion for councils expected to give effect to them across different timeframes.

Fragmentation becomes even more problematic where national direction requires the creation of completely new “quasi-RMA” documents like future development strategies and biodiversity strategies that attempt to influence multiple statutory frameworks beyond the Act, and which do not speak well to each other. A future development strategy, for instance, is expressly able to be subsumed within non-statutory documents, or within instruments prepared under other legislation.

Its tendrils try to extend well beyond the RMA (e.g., attempts to influence infrastructure funding decisions under the Local Government Act). But future development strategies do not themselves have the weight of the NPS that required their creation, and thus do not have to be given effect to in regulatory RMA instruments like district plans – there is only an obligation to have regard to them. Nor do they have to be given effect to under other statutory frameworks like the Local Government Act and Land Transport Management Act.

Instead, councils are “strongly encouraged” to use them to inform things like infrastructure strategies and regional land transport plans.
Similarly, the Biodiversity Collaborative Group has recommended that the proposed NPS for Indigenous Biodiversity requires biodiversity strategies to be made, which would link together instruments under multiple legislative frameworks as well as linking to other NPSs under the RMA.\(^{44}\) This more holistic and strategic view of biodiversity is a much needed step. However, these strategic instruments introduce more and more things to which councils must have regard in making decisions under the RMA, alongside the policies contained in national direction itself.

Not only are RMA instruments seeking to extend their reach to other statutes; other statutes are also increasingly trying to influence the RMA. For example, adaptation plans and emissions reduction plans made under the Climate Change Response Act have a crucial but extremely unclear relationship with national direction (see the spotlight below). It is also unclear how a government policy statement on housing and urban development (mandated under the Kāinga Ora – Homes and Communities Act) fits in with RMA national direction concerning urban development.\(^{45}\) And this is just the tip of the complexity iceberg, given that we are experiencing an avalanche of bespoke legislation (eg the Urban Development Act and a proposed Water Services Act) that will need to link not only to the many NPSs and council instruments under the RMA, but also to the increasing array of strategic instruments that span legislation (such as future development strategies, emissions reduction plans, biodiversity strategies and so on).

We really need to question whether the RMA is the right place for this wider kind of strategic urban planning to occur, and whether it is a good idea to have multiple strategies trying to operate in silos (eg housing, climate, biodiversity, future urban development) across several statutory frameworks. Future development strategies seem to have become the default mechanism for strategic planning – the best that we’ve got – but they are overwhelmingly focused on providing for development in high growth areas and do not integrate well with other national direction or other statutory frameworks.

A single spatial planning exercise with direct, regionally targeted central government input would better perform this function, and this is discussed in Chapter 10. Spatial plans would simplify the increasingly congested landscape of national direction, by removing instruments like future development strategies and biodiversity strategies from the RMA and placing them in an overarching, integrated, regionally targeted (and mapped) and strategic framework where they are a more comfortable fit.

As discussed in the Phase 2 report (and see Figure 7.1),\(^{46}\) there is also potential for misalignment between NPSs and NESs, because they do not need to be created as a package (although practice is improving through more integrated approaches to national direction for things like freshwater). Regulatory provisions in NESs can exist without clear policy guidance in an associated NPS. And even where a clearly relevant NPS exists, it is largely presumed rather than specified that an NES must be consistent with it. There is no clear hierarchy.
Vertical misalignment between policies and regulatory provisions

Increased complexity and tensions as more instruments are promulgated with different focuses and using different lenses

Horizontal misalignment between different policies

Strategic instruments created under NPSs (e.g. Future Development Strategies and Biodiversity Strategies)

Instruments created under other legislation (e.g. emissions reduction plans, government policy statement on housing and urban development)

Regulatory provisions can exist without clearly associated policy guidance

Figure 7.1: Potential for misalignment between multiple pieces of national direction in the current system
A spotlight on climate change in national direction

In Chapter 6 we highlighted the importance of including climate change mitigation in the purpose and principles of an Environmental Stewardship and Planning Act, and for there to be a strong link with instruments created under the Climate Change Response Act. Because climate change mitigation and adaptation are nationally important issues and require land use change that local political dynamics may push back strongly against, national direction will be a crucial tool in achieving climate objectives.

This will require the mandatory creation of national direction concerning both mitigation and adaptation. National direction should be required to give effect to emissions reduction plans and adaptation plans, or at least be required to contribute to the purpose (and specific targets) of the Climate Change Response Act. This would need to be woven into many different components of national direction (eg for coastal environments, urban development, urban form and design, biodiversity etc), rather than just being a standalone instrument dealing with point source emissions. For example, climate imperatives support quite specific policy directions around enhancing urban biodiversity (planting), compact urban form (densification), coastal retreat, and protecting productive soils for horticultural use (which sees climate benefits from planting, fewer food miles to market, and shifts in food consumption away from meat). In practical terms, significant land use change – including horticulture around cities – will be needed if greenhouse gas targets are to be anything more than window dressing.47

Once the relevant provisions come into effect, a recent amendment to the RMA will specifically require councils to take climate change mitigation and emissions reduction plans into account when making planning decisions under the RMA.48 Strangely, these provisions do not extend to a similar obligation on central government to do so when creating NPSs and NESs, despite its existing ability to create national direction on the emission of greenhouse gases.49 That needs to change. An emissions reduction plan to which councils will need have regard is not a substitute for national direction under the RMA to which councils must give effect. In this light, it is positive that the recently gazetted NPS on Urban Development includes a direction that planning decisions in urban environments need to support emissions reductions.50

A strong national level approach to urban climate change adaptation is also needed. Councils have struggled to impose land use restrictions or even to flag the existence of climate-related risks on privately owned land,51 and there is often a preference for shorter term cures (eg seawalls) over longer-term preventative measures (eg managed retreat).52 National direction needs to be clear that new development in vulnerable areas is to be avoided (or that people waive any rights to future compensation or public services).53 However, the RMA cannot shy away from the challenge of changing existing land uses to adapt to a changing climate. That will, however, require an approach that is not just regulatory, but also closely linked to funding and incentives, potentially including compensation for the curtailment of property rights (see Chapter 9). National direction will be important to overcome local political pressures to continue to fund or otherwise support inappropriate development. So too will strategic spatial planning (see Chapter 10). Finally, we cannot discount the possibility that the complexity of climate change adaptation – including the need to link land use controls to property laws,54 insurance settings and compensatory frameworks – means it may require its own bespoke legislation. If so, its relationship with national direction under a new Environmental Stewardship and Planning Act would need to be made crystal clear.

Overall, we think the system as a whole needs to be much clearer about the hierarchy of national objectives where they may come into conflict.55 This does not mean that urban expansion and development is bad or should be discouraged. But it does mean that it must be done in a way and in places that achieve environmental limits and targets. At the moment, we have a rather curious collection of national direction that is clear about the need to develop housing, but which is silent as to some key nationally important environmental limits.

We already have mechanisms for a more integrated approach at a regional level, in the form of a single regional policy statement. But we lack a national level version, within which all significant matters relating to central government’s RMA functions – including urban planning – can be dealt with in an integrated way.56 This risks authorities looking at “bite-sized pieces rather than ... a high level vision”.57

We therefore recommend:

(1) a more coherent package of NPSs and NESs in the form of a single, mandatory National Environment Plan,58 which would outline relationships between a comprehensive set of national level RMA policies (including in and around cities). This would also outline in a consistent way how the Crown’s Treaty obligations would be given effect to.59

(2) a more direct role for central government to be involved in council planning processes to ensure that nationally important matters are resolved in a locally targeted way, including financial and other support for implementation (see Chapter 8).60
(3) a regional strategic spatial planning framework that integrates the increasingly fractured range of strategies originating within and outside the RMA (see Chapter 10).

Having a single National Environmental Plan would encourage consistency in the structure and format of national direction. At present, NPSs and NESs are created through a variety of lenses (eg spatial like the NPS on Urban Development Capacity, sectoral like the NES for Plantation Forestry and domain-based like the NPS for Freshwater Management) and can be structured quite differently. National planning standards could usefully apply to both national direction and council plans, to make it easier to translate one to the other.

Changes could, of course, be made to a National Environment Plan once in place. It would need to be agile. But such changes would not be able to target particular domains or sectors – such as facilitating urban development – without considering the impact on the instrument as a whole, particularly environmental protections and objectives. At present, changes to an NPS under the RMA can be pursued largely independently of changes to others (or the development of new NPSs). To make them abundantly clear, environmental limits should be spelt out in a National Environmental Plan on a comprehensive domain by domain basis (eg a section on freshwater, a section on biodiversity etc) and then translated into sectoral or spatially targeted provisions where required (including how those limits apply in and around urban areas, or to the three waters sector). These provisions would have higher legal status than other national direction (eg requiring “compliance”). It is crucial that in the future we avoid complex interpretive arguments about whether or not a generally worded policy (eg one requiring “avoidance” of some effects as in the NZCPS discussed in King Salmon), requires strict compliance or not. Clear, national level, biophysical thresholds or indicators would be required to be established that, if breached, would trigger a legal obligation for the government to investigate and take corrective action.

We also see a case for a beefed-up arm’s length EPA to translate policy bottom lines to actual regulatory restrictions, or at least for the establishment of criteria for when powers to do so could/must be transferred from ministers to the EPA. For example, it would be possible and probably desirable for the EPA to take charge of setting minimum, science-based standards for urban wastewater discharges, within a policy framework set by ministers.
A spotlight on three waters

Recent reviews have found that council wastewater plants are affecting water quality and the frequency of sewerage overflows has become unacceptable, including in densely populated urban areas. In fact, a high number of wastewater treatment plants are continuing to operate on expired permits for extended durations, and no prosecutions have been pursued for a breach of health standards. Infrastructure is failing, and high profile incidents have occurred in Auckland and Wellington (leading to the use of the latter’s infamous “turd taxis” to transport waste). Urban stormwater is also polluting both freshwater and coastal water. The Havelock North incident has highlighted chronic failures in our drinking water system, leading to poor health outcomes around the country.

Various proposals have been put forward by the government for more effective regulatory arrangements for the sector (drinking water, wastewater and stormwater), to improve both health and environmental outcomes. Broadly speaking, we think that those are positive measures and should be incorporated into a future system. A strong and consistent approach to national level environmental limits for the sector should be embedded in a National Environment Plan. In particular, we suggest that:

- The environmental impacts of all water discharges should continue to be managed under an integrated act like the RMA (a new Environmental Stewardship and Planning Act). There is a strong case for standardisation across the country.
- In particular, we should not expect wildly different approaches to wastewater discharges in different parts of the country, in the same way that minimum drinking water standards need to be consistent.
- There is also a case for some consistency in the quality of stormwater runoff, and performance-based measures to ensure minimum standards are met (particularly in cities).
- An Environmental Stewardship and Planning Act should also continue the RMA’s role in protecting sources of drinking water (including urban water supplies), under strengthened provisions in a National Environment Plan.
- A strong approach to monitoring and enforcement is needed. In particular, there should be an independent entity to act as a watchdog and take on primary enforcement of nationally consistent wastewater discharge standards, and for strict penalties to be imposed for non-compliance (coupled with a “carrot” approach where adequate funding is provided to remedy any reasonable funding deficits). We note that recent amendments to the RMA have strengthened the role of the EPA in enforcement across the board (a positive step), but we still lack nationally consistent wastewater standards.

- There should be a dedicated drinking water regulator with active oversight, robust funding, and clear mandate, with all drinking water suppliers covered by nationally consistent drinking water standards. A large number of localised and unregulated water providers have operated outside of existing frameworks, and these should be brought into the fold. Such a regulator has recently been established as a Crown entity under the Taumata Arowai – the Water Services Regulator Act. Alternatively, in a future system this could be nested within an existing independent organisation (eg a strengthened EPA) to reduce institutional complexity across the system.

At the time of writing, we understand that separate legislation imposing strengthened regulatory arrangements for the water sector will soon be introduced into the House. To avoid complexity in the system, this should focus on drinking water (ie human health standards), with wastewater and stormwater standards being strengthened through national direction under a new Environmental Stewardship and Planning Act.

However, while regulatory standards are crucial, we note that these will need to be accompanied by reforms to how we fund and deliver the infrastructure that will allow those standards to be met in practice (see Chapter 9). This will involve significant institutional change in how we deliver water services.
There has been an ever-expanding range of targeted NPSs and NESs under the RMA, many of which are relevant to urban areas. These have been created through quite different lenses, and it is increasingly unclear how they are intended to work together as a package. A single piece of integrated national direction – a National Environment Plan – would much better address potential conflicts and uncertainty. This plan should specifically identify the environmental limits required under a new Act’s purpose and principles, including how they are to apply in urban areas. Provisions setting out environmental limits should have a different (dominant) status to others.

There is a strong case for a strengthened EPA (or other independent agency) to have a role in translating policy provisions for environmental bottom lines to regulatory rules and standards. This includes provisions regulating drinking water, wastewater and stormwater.

There needs to be a strong link between national direction and the aspirations for climate change mitigation and adaptation embedded in the Climate Change Response Act.

7.4 A more strategic approach to national direction

A National Environment Plan would be oriented towards urban change and improvement, not just the reactive management of resources. In the words of one commentator, it would be about “anticipatory governance”. In this sense, the Plan would be an “action plan” (a way to get from A to B) as well as a “regulatory” plan (a framework for making decisions about what is and is not allowed). It would reflect the change in outlook embedded in a new Act’s purpose and principles, and the direction in which NPSs have been increasingly heading in recent years.

Central to that would be the mandatory establishment of targets for nationally important indicators. These would be especially important to achieve environmental bottom lines where they have already been infringed and require improvement over time (e.g., minimum levels of urban water quality). Targets are not alien to the RMA – we have had them for freshwater for some time – but they are not required by the Act. As mentioned earlier, it is anomalous that our preeminent statute for the natural environment has required clear targets for development (through the NPS on Urban Development Capacity) but not for the enhancement of things like biodiversity. Why do we assume cities are only about development targets? Why is it that regional councils, with clear functions relating to biodiversity, do not have to set minimum targets relating to that in their plans but they do have to set targets for development capacity (despite not having a clear mandate under the RMA for urban development or housing)?

This anomaly should hopefully be corrected in proposed national direction on biodiversity (which contains targets), but it remains unclear how biodiversity targets and development targets are to work together – especially since development targets have now been recast by the NPS on Urban Development as “bottom lines”.

Targets should also include other positive measures – for example, targets for affordable housing, the contribution of urban planning to greenhouse gas emissions, and measures of community health and wellbeing. This would provide an outcomes-based, future-focused and dynamic framework that would much better reflect the concept of urban planning than the current management-based system. Requiring legislative targets – even if they were not legally enforceable in a court of law – would be a form of commitment device, elevating the status of the outcome and ensuring a long-term view is taken. For example, for a more holistic approach, we could look to the Swedish approach. There, an All-Party Committee on Environmental Objectives, which works with experts, stakeholders and local government, has been established to pursue a range of mandatory environmental targets.

Mandatory targets – and not just for development capacity – should be embedded into a National Environment Plan. This would reflect the orientation of a new Act which would be future-focused and geared towards achieving change, not just managing adverse effects.
7.5 Creating a National Environment Plan

In the Phase 2 report, we sketched out how a National Environment Plan might be created and changed (see Figure 7.2 below).

This looks not dissimilar to how national direction is currently created, with a few key differences. These are not urban-specific, because a National Environment Plan would not be focused only on cities, but the core features of the proposal are worth mentioning briefly.

First, the Plan would be prepared by responsible ministers (on advice from relevant agencies, including the Ministry for the Environment and Ministry of Housing and Urban Development). It would be reviewed in close collaboration with Māori (including urban Māori) to better reflect the importance of the Treaty partnership.

Secondly, the Plan would be developed in close consultation with councils, recognising that much of the actual leg work of implementation (eg translating to more detailed, place-specific policies and regulation) will still need to be done at the local and regional levels. We have heard repeatedly that meaningful council involvement in actual development would produce much better outcomes and much less pushback than presenting a finished policy proposal for feedback and submission. Crucially for elements relating to urban development, it might also mean that related funding concerns are brought to the attention of government much earlier and addressed sooner. Local Government New Zealand has expressed a similar sentiment, in that "local government, charged with giving effect to national direction, should

Figure 7.2: A proposed process for creating and changing a National Environment Plan
have a co-development role alongside central government in setting the agenda for national direction and on designing the tools that express that direction.”

Thirdly, there would be a key role for a new, independent, standing institution: a Futures Commission. This would exist either alongside, or incorporating, a Tikanga Commission. The Commission(s) would take the place of ad hoc boards of inquiry in the current process for creating national direction, recognising the importance of truly independent assessment and an institutional repository of knowledge. This would counteract the risk that short-term political cycles make long-term, future-focused decisions less likely. The Commission(s) would have a firm mandate to defend the interests of future generations.

The Commission's role would not be to make final decisions but rather to provide a fully independent assessment and recommendations to an elected government. While it would not have a purely urban planning role, we envisage it would have urban expertise and might even have one or more dedicated urban planning commissioners (or a "Chief Planning Commissioner") within it. We looked at a Futures Commission in more depth in the Phase 2 report, and the idea of a truly independent, standing body to review national direction to ensure compliance with the Act's purpose and principles has since been echoed by others. In particular, "to maintain cohesion, there must be trust and transparency in the decision-making institutions" and a Futures Commission would enhance that.

Of course, there is already the ability for a robustly independent institution – the Parliamentary Commissioner for the Environment – to participate in proceedings under the RMA. It performs a crucial role in the system. However, there have generally been "inadequate staffing levels of the office to participate in any planning application or related plan change matter" and the Commissioner acts primarily in a policy watchdog and educational role rather than an active intervenor in plans and consents. Thus "the potential of the Commissioner as a systems guardian has not been achieved". We consider that the Parliamentary Commissioner for the Environment could be expanded or morph into a broader, better resourced Futures Commission with a more structured role in decision-making processes.

The process for developing a National Environment Plan should involve a collaborative approach between central government, local government and Māori. There would be a crucial review role for a new independent Futures Commission (and a Tikanga Commission/commissioners)

There is a pressing need for central government to get more involved in the implementation of national direction, not just in creating it. That is particularly important in cities. For one, there needs to be a clear, at least partially independent, central agency (potentially an expanded EPA) tasked with supporting councils to achieve stricter environmental standards for water, including in urban areas where sub-standard wastewater infrastructure can imperil water quality. The inquiry into the Mangawhai Community Wastewater Scheme noted, for example, that when regulatory standards are set by central government, local authorities must then build and maintain infrastructure assets to meet those standards. The risk is that the standards set by one part of government cannot be delivered by another.

Revisiting our infrastructure funding model is also crucial to this (see Chapter 9), as is the structure of local government itself. Many urban issues facing New Zealand are of a scale or complexity that could prove challenging for councils to address, particularly those with few resources or a small rating base.

Central government should be required to support and monitor the implementation of a National Environment Plan. This should include funding, advice and operational assistance to councils where necessary. The Plan should flag where the funds for implementation are expected to come from.

Orewa, Auckland
7.6 Urban development in national direction

Above, we have looked at the framework through which national direction is delivered, including a need for development-focused aspects to be constrained by clear environmental protections. However, it is worth dwelling for a moment on some issues relating specifically to national direction on urban growth and development, namely the recently gazetted NPS on Urban Development (replacing the NPS on Urban Development Capacity).

First, some have floated the idea of rezoning rural land around cities automatically, in the event that a set price differential between urban and non-urban land is reached. We see risks in that approach, because it underestimates the importance of many other factors determining whether and where urban expansion is appropriate, including the opportunity cost for future generations. We are not at all convinced that prices always “indicate the highest and best use of a particular parcel of land” when a public interest and inter-generational lens is applied. For example, it is reasonably clear that an expansion of sustainable horticulture is required to meet climate change targets, but it is equally clear that the unfettered market is likely to place higher short-term value on using versatile soils for housing. The market will also have a clear preference if forced to choose between residential subdivision and the protection of indigenous habitat. It doesn’t mean the market is right.

Price differentials are one important factor and must be monitored closely alongside other economic indicators that have not had sufficient prominence in RMA decision-making so far. But urban growth planning should not be taken over by inflexible economic thresholds set in advance. The NPS on Urban Development is right to treat them as just one of many things to be considered within Housing and Business Development Capacity assessments and within broader assessments under the RMA.

That said, the concept of thresholds or trigger points that automatically require a clear response is an interesting one. Why should this approach be limited to the mandatory provision of new development capacity? Or the use of economic thresholds like urban-rural price differentials? The rationale for monitoring economic data is “to ensure every local authority with an urban environment has a robust, comprehensive and frequently updated evidence base about its urban environments” and responds accordingly. But urban environments – both greenfields and existing urban areas – contain nature too, and there is a clear imperative to enhance it. Why not, then, introduce a similarly strong system of trigger points for urban biodiversity and other environmental indicators? According to a recent discussion document, the proposed NPS for Indigenous Biodiversity could require targets and methods for urban biodiversity (eg a ten percent target for indigenous cover), but proposals seem to fall well short of the clear and directive requirements for development (“bottom lines”) in the NPS on Urban Development.

Instead, we could look to the United Kingdom for inspiration. There, an Environment Bill proposes to require greenfields development to result in no net loss in biodiversity, and even a 10 percent measurable net gain. We could take this further, in requiring authorities to take immediate remedial measures if robust monitoring showed a decline in urban biodiversity past an acceptable limit. This could be operationalised through a requirement for developers to contribute to a national biobank operating beyond city limits (see the Phase 2 report) or for council or others to restore habitat within the existing footprint of a city (where it would provide valuable synergies). We need to push back against the idea that cities are already so heavily modified that we might as well just give up on them as cradles for nature.

Aspects of national direction providing for urban development and growth should not be based solely on economic trigger points like the price differential between urban and rural land. There should also be triggers set for immediate corrective action in the event of declining environmental indicators, including urban biodiversity.

Secondly, a key question about national direction for urban development is how broad its scope should be. The NPS on Urban Development Capacity was focused narrowly on development capacity – making room for growth – and the NPS on Urban Development looks
to expand its scope somewhat by supporting “well-functioning” urban environments. That concept includes access to jobs, housing, community services, active transport and natural spaces, as well as recognition of Māori cultural values and the reduction of greenhouse gases. That is a big improvement. The idea is that growth and density cannot be facilitated without at the same time thinking about what those urban environments should look like. But should we embrace broader concepts like good urban design? Some have seen them as too subjective, with an NPS on urban design being “too broad a concept for an NPS and ... result[ing] in a ‘one size-fits-all’ approach”.

Proposals for an urban design NPS in 2008 were shelved. Yet many others have supported a broader instrument focusing on urban form, ecologically sensitive urban design, green cities and creating liveable communities. We tend to agree with the latter view, in line with the broader range of matters that should be addressed in a revamped purpose and principles.

A National Environment Plan should also more explicitly provide policy support for positive urban outcomes having environmental ramifications. This needs to go well beyond the notion of protecting urban “amenity” that has, in practice, tended to protect the status quo in urban RMA decision-making rather than thinking about what a future neighbourhood could look like. It is positive that the NPS on Urban Development clarifies that not all change to urban amenity is an adverse effect, and that we need to be thinking about the preferences of future generations and residents. However, in a way this is just stating the obvious, and does not address the importance of political dynamics in big picture council decision-making. Decisions can be weighted in favour of the lower-density preferences of current (and wealthier, property owning) residents, because they are more likely to vote and be engaged in planning processes.

More visionary objectives and policies in a National Environment Plan could include ones about compact urban form, relationships with nature, facilitating social connection, affordable housing, vibrant centres, resilience to environmental change, attractive public space, ease and efficiency of mobility, safety, water and energy efficiency, climate sensitivity, human health (including mental health), and enhancement of urban biodiversity. These are all things that should be common to our cities, even if they would need to be expressed differently in different locations. And they are not just abstract concepts. For example, they could drive tangible changes in how we position and design rest homes to support social and inter-generational connection and community cohesion; to support development of the “20 minute city”; to pedestrianise large tracts of urban centres; or to deploy green walls and roofs across our cities.

Thirdly, there are questions about how prescriptive local rules should be. Some can add to the cost of development (especially housing). Should national direction override the ability to impose such things? We need to proceed with caution here. Despite their costs, there can be good reason for requirements to include things like balconies in dense developments, and to impose minimum floor areas. Hong Kong’s micro-apartments show the significant mental, social and health costs that a lack of space can have on residents desperate for affordable central city living, while Italian balconies in Covid-19 lockdowns have shown the lifeline that such measures can provide for people living in high density environments. Despite some talk of it doing so, the NPS on Urban Development refrained from stepping in on these matters, and instead focuses mainly on facilitating urban density.

For other things, there is a stronger case to move with the times. For example, some have pointed to “the sheer inefficiency of devoting so much of our scarce and expensive urban real estate to cars (and parking)”, exacerbated by a sprawling urban form reliant on the use of private motor vehicles (eg greenhouse gas emissions). So much parking in our larger cities is particularly wasteful if we think about a future in which we have efficient and reliable mass transit systems, walkable and self-sufficient neighbourhoods, and autonomous or hired vehicles. On-street car parking is essentially a subsidy for car owners. It is positive that the NPS on Urban Development has removed the ability of councils to set minimum car parking requirements in new developments.

But what if we think about such issues, not from a development or efficiency perspective (how can we we can fit more houses in), but rather a synergistic and inter-generational perspective? That might see the system revisit the best use of both new and existing car parking space. For example, perhaps in exchange for greater building height limits, areas/ corridors of indigenous planting and habitat could be required or incentivised where equivalent space would otherwise have been required for car parking. This could provide biodiversity gains while also improving visual amenity, enhancing resilience to a changing climate, filtering runoff from roads and reducing stormwater loads (and therefore costs, potentially reducing targeted rates to homeowners). Areas of planting could even be provided on rooftops or building walls. This would be one fast way to “green” a city.

We need to take care that national direction does not prevent council plans from taking appropriate measures to ensure good urban planning, or responding to the local context, just because some requirements can add cost to developments. Robust and context-specific cost-benefit analysis is required that includes close consideration of the interests of future residents and generations. However, there is an opportunity to transform cities by removing minimum car parking requirements but replacing that, at least in part, with requirements for indigenous planting.
7.7 Concluding comments

In this chapter we have looked at the role of national direction under an Environmental Stewardship and Planning Act, and its place in addressing urban issues. At present, NPSs and NESs are too reactive, too fragmented, and not strategic enough. It is often not clear what national priorities are, or how they are intended to work together. For an integrated statutory framework, central government policy is still characterised by silos. A lot of nationally important trade-offs are left to be made by local government and the courts.

What we need in the future is a requirement on central government to create national direction that covers all matters of national importance, and which is internally coherent. Environmental limits should be specifically identified and clearly defended, and be easily translatable to council plans. A single National Environment Plan should therefore be created using a process that closely involves councils, Māori and an independent Futures Commission. It would need to be strategic and pursue mandatory targets, including for a broad range of urban matters. And it should cover a range of good urban planning principles, particularly where there are synergies between social, economic and environmental wellbeing.

The role of central government in our cities needs to be much broader than housing, infrastructure and development capacity. However, a more coherent and proactive role for central government does not mean a takeover of local government, as explored in the following chapter.

Compare Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010) at 30, where one option floated was for a combined NPS-NES.

Some have recommended having an NPS specifically concerned with the Treaty of Waitangi.

Compare New Zealand Planning Institute Submission: RMA Review Panel issues and options paper (2020), where it is said that local and central government need to work with each other in an integrated way and provide guidance on conflict resolution.

For example, there are separate but overlapping processes for developing national direction on freshwater and indigenous biodiversity.


This would require a stronger institutional mandate, given “the absence of any specific statement in the Act that environmental protection is the main objective of the EPA” K Palmer Separating regulation of the built and natural environments of the EPA” K Palmer (2017) at 47.

Strengthening the regulation of drinking water, wastewater and stormwater (Regulatory impact assessment, Department of Internal Affairs, 1 July 2019).

Productivity Commission Local government insights (2020) at 10.


See <www.dia.govt.nz/Three-Waters-Review>.

A new NES on wastewater has been proposed by the government: see New Zealand Government Action for healthy waterways (2019) at 58.

See Drinking water standards for New Zealand 2005 (revised 2018); Strengthening the regulation of drinking water wastewater and stormwater (Cabinet minute CAB-19-MIN-0332, 1 July 2019). Some have been critical of this recommendation on the basis that a new national standard on wastewater would still not address agricultural discharges or on the basis that it would propagate a “race to the bottom”.

For example, through requirements for green infrastructure and water sensitive design.

See New Zealand Government Action for healthy waterways (2019) at 54-56.

Compare New Zealand Productivity Commission Local government funding and financing (2019) at 290-291, where poor enforcement has been pointed out as a key reason for failings in the sector (eg for wastewater discharged).

Resource Management Amendment Act 2020, s 96; Resource Management Act 1991, pt 12A.

See Taumata Arohi – the Water Services Regulator Bill, Clause 11 of the Bill outlines the regulator’s general functions, including oversight, leadership, coordination, monitoring, research and guidance for all three waters.


These include some larger self-suppliers, such as schools and prisons as well as small rural suppliers and community scheme that serve fewer than 25 people.

Before the House at the time of writing.


Compare the Welsh approach: see G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 224.

This NPS requires local authorities in high-growth urban areas to develop (future development strategies) that describe how they will provide sufficient development capacity ... and how they can meet the minimum development capacity housing targets”: New Zealand Government Planning for successful cities: A discussion document on a proposed National Policy Statement on Urban Development (2019) at 21.

Compare Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010) at 30, where one option floated was for a combined NPS-NES.

Compare New Zealand Productivity Commission Law emissions economy (2018). Budgets, akin to carbon budgets, may also be appropriate for some things (eg pollution) where reductions are required over time to meet targets.

M Petrie “Reversing the degradation of New Zealand’s environment through greater government transparency and accountability” (2018) 14(2) Policy Quarterly 32 at 35.

Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper (February 2020) at 4.


See, for example, New Zealand Planning Institute Submission: RMA Review Panel issues and options paper (2020) at 2.

P Glückman and A Bardsey The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 3.


Ibid.

A similar model would be required to implement national direction for biodiversity. see Report of the Biodiversity Collaborative Group (2018) at 92.


There is no automatic provision for greenfield land release if price differentials are triggered, only an obligation to respond to provide sufficient capacity and enable development through planning processes if not forecast to be sufficient.


Environment Bill 2020 (UK), Part 6. This can provide for offsetting (ie offshore), but gains will need to be protected through legal mechanisms (including covenants).


Ministry for the Environment Summary of submissions to the proposed national policy statement on urban development capacity (2016).

For example, “designing to maximise the ecological and recreational benefits gained from ... ecologically important areas and elements”, A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 73.

Beca Enabling growth – Urban zones research: Key observations, findings and recommendations (2019).

Policy 6(b).


8. COUNCIL PLANNING UNDER THE RMA

8.1 Introduction

In some countries (including Australia and across Europe), the nationally important status of large cities has seen strong and direct central intervention. In New Zealand, things have tended to progress in a more ad hoc way, with a strong undercurrent of devolution. But despite our recommendations for a stronger urban policy role for central government through a comprehensive National Environment Plan, we envisage that most decisions – particularly relating to urban land use – would still need to be taken by local government. Central government agencies should not micro-manage urban communities to which they are not themselves close, and a future system should define roles more clearly by articulating a more comprehensive range of nationally important outcomes for which the government can (and must) intervene. Because councils would retain a strong role, it is important to consider how local planning processes in a new Act could be reformed.

8.2 Local government structural reform

Looming above this question, however, is a much bigger institutional one: should we restructure local government in a fundamental way? Many calls have been made to do so, prompted in part by a desire to address urban problems. Of course, the implications of reforming local government go well beyond the resource management system as a whole, because councils have a wide range of functions. Yet the question is of vital importance, and we see it as one of the next big reform questions to face New Zealand.
A move towards regionalism

Many have stressed the benefits of thinking regionally, including in the context of urban resource management. We currently have dozens of regional, unitary and local councils, most of the latter being fairly small, and some have pointed out the increasing challenges and burdens facing them in light of their financial, technical and human capacity. Some of that relates to planning, consenting and other environmental functions under the RMA, and some of it is related to the provision of urban community services (including expensive infrastructure like roads, water pipes and treatment plants). Scale does matter when it comes to the increasing complexity and challenges of integrated environmental management and infrastructure provision, especially in a small country like New Zealand, and:

while size is not correlated with capability (there are some small councils who are performing well given their circumstances), it can limit the extent of a council’s activities and its ability to fund necessary investments... The populations of many small and rural councils also have lower than average incomes and greater social deprivation, which add to affordability problems.

The ability to socialise the costs of essential services across larger scales is important, especially where whole districts are declining in economic terms. All of this has led to suggestions for regionally shared services or, more dramatically, for a fundamental overhaul of what local government boundaries look like. Covid-19 is likely to exacerbate funding challenges faced by local authorities, with a significant amount of planned expenditure having been deferred.

But regionalism is not just about saving money and concentrating expertise. A recurring criticism of district and regional planning under the RMA is its fragmented nature and a lack of consistency or integration between documents. Since the inception of the Act, there has been the ability for territorial authorities to “consider the preparation of a combined regional or district plan under this section whenever significant cross-boundary issues relating to the use, development, or protection of natural and physical resources arise or are likely to arise”. Large urban areas require such a view, given (among other things) their regional population distribution, travel patterns and labour markets. A tightly connected area like Wellington or the Golden Triangle (connecting Auckland, Hamilton and Tauranga), which demands an integrated planning approach, spans multiple local government units.

Despite its benefits (consistency across a region, accessibility for users, potential for shared resources, resolution of cross-boundary concerns), there are difficulties with integrated planning under the RMA. Under section 80 of the Act, a combined document must still be prepared in accordance with the provisions of Schedule 1 and needs to be approved by each local authority. This exposes any combined planning process to potentially different political pressures, depending on the councils involved.

Some have therefore suggested that the solution is structural regionalisation of local government, whether along current regional council lines or different ones. We could see territorial authorities merged with each other, or for them also to be merged with regional councils to form unitary authorities.

We agree that this is the right direction of travel, noting that new regional boundaries would need to be carefully considered in light of many factors (catchments, communities of interest, labour markets, travel patterns etc). Options would need to be worked through with local communities (eg through compulsory referenda presenting feasible alternatives). Infrastructure New Zealand has outlined a number of possibilities for what that could look like.

Recognising the benefits of regionalism is also not to dismiss the importance of localism and community ownership and identity. Especially in cities, where different neighbourhoods have their own character and priorities, grassroots localism makes a great deal of sense, and genuine devolution is appropriate where choices have local impacts.

The more basic points, we think, are that issues need to be managed (1) at scales where communities of interest lie and (2) where there is the ability to address issues effectively, efficiently and fairly. There can be tensions between those two things, and a difficult adjustment to be made where circumstances change over time (eg where costs become prohibitive to deal with things at one scale). Importantly, communities of interest do not always reflect the ability of a population to fund some of their functions.

Conversations about local government reform often seem to be framed coarsely and pejoratively in terms of council “amalgamation” and “restructuring”, assuming that functions remain at the same level of government and that we simply change lines on a map. It can be seen as an “all or nothing” takeover of communities by a larger and more remote authority. But the more important
thing in our minds is to test where particular functions should be exercised, allow for those to shift according to context, and to build institutional arrangements around them. For example, we see merit in having regional unitary authorities for things requiring scale, consistency and a holistic view (eg urban form, environmental protections, infrastructure provision), and for those to be complemented by local boards with clearer local functions and more secure budgets. The earlier suggestion that the system have a clearer definition of subsidiarity should apply to different aspects of local government as much as it does to the relationship between central and local government. The conversation should focus first on what functions should lie where, not where existing council boundaries should be drawn.

A regional lens will be crucial to achieving good urban outcomes in a future system. Local government functions around land use and infrastructure should, over time, be shifted to a regional level. While local structures (eg boards) would remain important, this would mean a shift over time to regional unitary authorities.

8.3 RMA planning processes

When people speak of urban planning, the central instrument in the current system is the district plan. This controls land use and subdivision, and has regulatory effect. In other words, it tells people what they can and cannot do with land, including through zoning. However, as we have stressed elsewhere, resource management in cities is much wider, even under the RMA. Regional plans provide crucial environmental safeguards including for land use, and regional policy statements can have a significant role to play not just in protecting the natural environment but also in shaping broader land use patterns.

A number of reform measures have been taken in recent years to address real and perceived issues with council planning under the RMA (eg special housing areas under bespoke legislation, an NPS on Urban Development Capacity, the Auckland Unitary Plan process, an urban development authority model, and a streamlined planning process). A lot of this has been about reducing constraints on urban development and speeding up decision-making processes.

The jury is still out in terms of how effective some of these measures have been (or will be). However, they are ultimately band aids, and in our view more fundamental reforms are needed to the planning process. This is in two key senses. The first is the need for more coordinated decision-making at a regional scale. This need for coordination cuts across multiple statutes – not just the RMA – and is discussed in Chapter 10.

The second is for more timely decision-making (including, but not limited to, land use change in areas of high growth). While some see less reason for concern, we have heard many complaints that the current planning process under Schedule 1 of the RMA is costly, time-consuming, and almost inevitably results in appeals that can drag on interminably, particularly in urban areas where change is highly visible and many people have an interest. Plans can take many years (from notification to resolution of final appeals) to become fully operative, just in time for another review, although in recent years timeframes seem to have been shorter. An average timeframe of four to five years for a plan change is far from ideal.

Timeliness of outcome is a concern not just for plan changes facilitating urban development, or where there are high growth pressures. It is equally important for changes designed to protect and enhance natural elements of the environment in urban areas and beyond. It is also an issue when it comes to time lags for implementing national direction. Years of development for an NPS can be followed by many more years before it is expected to be actually reflected in plans. Timeliness of outcome was one of the key drivers behind the bespoke process for developing the Auckland Unitary Plan.

Owhiro Bay, Wellington
A retrospective on the Auckland Unitary Plan process

The process for producing the Auckland Unitary Plan (an RMA instrument) was outlined in special legislation, following recommendations from the Royal Commission on Auckland Governance in 2009. Auckland’s eight former city, district, and regional councils were amalgamated into the unitary Auckland Council, and with them went their associated district and regional plans. With the formation of an integrated institution came the need to integrate the former councils’ RMA planning instruments. The Unitary Plan is not just about “urban” issues, as much of the Auckland region is not urban. However, urban matters form an important focus and driving force behind integration.

The first step in the Unitary Plan process was a completely different plan required under another piece of legislation, called (rather confusingly) the Auckland Plan. This was a “spatial plan” for Auckland, the purpose of which was different to that of the RMA (to contribute to Auckland’s social, economic, environmental, and cultural wellbeing through a comprehensive and effective long-term strategy for Auckland’s growth and development). The Auckland Plan was to set a strategic direction for Auckland and provide a basis for aligning infrastructure plans, regulatory plans (including RMA ones), and funding programmes of the now unitary Council. We shone a spotlight on the Auckland Plan in the Phase 1 report.

The Unitary Plan followed a modified RMA process, whereby things were (generally) streamlined. For example, while the time for submissions and further submissions was extended (because of the enormity of the exercise), there was no discretionary ability to extend or waive time limits beyond that. The Council was then required to deliver up the proposed plan, all submissions, a section 32 (of the RMA) report and other information to an Independent Hearings Panel, which would then present recommendations for final decision by the Council. That panel was established by the Minister for the Environment and Minister of Conservation. The entire process from notification to recommendations was required to be completed within an ambitious three years.

When the Plan was notified in 2013, 13,000 submissions were lodged. Across 249 days and 70 topics, the Panel considered over 10,000 items of evidence and over 4,000 appearances by submitters. Hearings were held by topic, with the “big picture” regional policy statement and Auckland-wide topics heard first, before a host of more specific zoning questions. Hearings largely followed the usual RMA process, with legal submissions, summaries of pre-circulated evidence, and questions from the Panel. Cross-examination was the exception, rather than the rule.

However, there were significant challenges, and important lessons. For example, the Council’s summary of requested decisions ran to some 4,000 pages, presenting significant issues for submitters in identifying what areas they should lodge further submissions on. The Council itself lodged a lengthy submission on its own plan. Towards the end of the process, it became apparent that the Panel might not report within the three-year timeframe. Last minute changes were made in response.

The result was that, by the end of the process, there was a significant increase in submitter burnout. Questions about rezoning, which had a large number of site-specific submission points, were held at breakneck pace in the last four months of the 20-month process, after most of the other Auckland-wide topics had been heard but before any decisions had been made. Hearings on proposed changes to the rural urban boundary, another contentious issue, were also held towards the end of the process.

The process was also still open to political pressure. In February 2016 the Council voted controversially to withdraw evidence it had filed in support of intensification in some suburbs. There were also issues with timing, and a lack of higher order policy to inform lower level decisions. Ultimately, decisions about whether to accept or reject the Panel’s recommendations lay with the Council. The law provided very little time for the Council to consider and decide on the Panel’s recommendations. A small number of recommendations were rejected, opening up merits appeal rights to the Environment Court.

Overall, the Unitary Plan allows transformational change in Auckland and takes a much more future-focused approach to planning than has usually been the case under the RMA. Among other things, it provides for greater residential intensification. But implementation has not been without its challenges. Despite constraints on appeals, a number of actions have been filed. There have also been declaration proceedings brought by landowners, successfully challenging the Council’s interpretation of key provisions of its own plan. The result has been yet more plan changes and legal argument.

Another lesson has been the need for strong strategic guidance for specific regulatory provisions. In other words, the “code” for land development embedded in a district or combined plan needs to be directed quite strongly – although not prescriptively – by a wider strategy for how a city is envisaged to grow or otherwise change over the course of many years or decades. This requires a strong link with a spatial plan (in Auckland’s case, the Auckland Plan), which also needs to be more than just a set of general aspirational statements. Spatial planning is discussed in Chapter 10.
Cities change rapidly. A new planning process under an Environmental Stewardship and Planning Act needs to be more agile, in order to respond to a rapidly changing biophysical and social context. There should be a shift to a largely single stage hearings process. However, this should be done in a way that still provides for robust decision-making and meaningful public participation.

We are persuaded that, as in the Auckland Unitary Plan model, reducing the current two-stage process for plan making to (largely) a single stage is the right direction of travel for a future system. However, we propose two different processes. The first, closely resembling the Auckland process, would be for “resetting” existing plans in their entirety across a region. The second, which would be quite different, would be for ongoing plan changes.

These reforms would be designed to address many complaints that arise from the urban or built context (notably a lack of agility in providing for growth). But we also envisage that it would apply to all council planning under a new Act (e.g., for freshwater, air, biodiversity and land use in non-urban areas). It would be extremely difficult, and unnecessary, to have entirely different planning processes for “urban” and “non-urban” matters while retaining truly integrated management of the environment.
8.4 A new process to “reset” council plans

In our view, plans should be “reset” (over a reasonable transitional period) in order to do the following things:

1. to align existing district and regional plans with each other, to form single combined plans at a regional level,

2. to implement the direction in a new Act’s purpose and principles, including strengthened Treaty obligations and urban-specific matters (see Chapter 6),

3. to give effect to a more integrated suite of national direction (in a National Environment Plan), including targets for environmental enhancement and the pursuit of synergies (see Chapter 7).

The process for doing so (see Figure 8.1 below) would largely reflect that of the Auckland Unitary Plan, where an independent institution considers a proposed plan, makes recommendations to councils, and where merits...

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**Figure 8.1:** A process for “resetting” existing plans at a regional level
appeals are then constrained. However, there would also be significant differences to the Auckland Unitary Plan process.

We described this process in the Phase 2 report, and refer readers there for more detail. In short:

- A combined regional plan would be developed in a collaborative way. This could be between a regional council, territorial authorities, and iwi/hapū, each consulting with their respective communities. Effectively, this would be the compulsory use of what the RMA already provides for as “combined regional and district documents”. Depending on the timing of associated local government reforms (see earlier), regional unitary authorities would take the place of regional councils and territorial authorities, and would develop unitary plans in collaboration with local boards and mana whenua. This would make the process simpler, as well as providing for fewer plans.

- Central government would be required to have early input, so that from the outset plans developed in a way that gave effect to national direction and linked well to other statutory plans as well as with the national resourcing required for implementation. Alternatively, the Ministry for the Environment and Ministry for Housing and Urban Development could be required to provide comment on a draft developed by councils prior to notification, although we think earlier input (eg through co-designing key elements) would be preferable. There could even be provision for relevant national direction to form a chapter within a combined plan, and for cross references to be made to it. In any case, the government needs to embrace a more active role, as it was intended to have at the genesis of the RMA.

- We also see a case for regional branches of a strengthened, independent EPA to work alongside councils to develop some regulatory components of a plan, at least to the extent needed to implement environmental limits (which would be flagged in a new purpose and principles and expanded on in a National Environment Plan). Councils could still have jurisdiction to set objectives and policies for environmental bottom lines, but the EPA would then be responsible for translating those to rules and standards necessary to achieve them. This would protect against some of the political tensions faced by councils that are currently tasked with environmental regulation as well as economic development in and around cities, and mitigate the risks of merging regional councils (which some see as “environmental” regulators) with territorial authorities into unitary bodies. Councils should also be able to transfer jurisdiction to the EPA where there are genuine resourcing issues or where necessary to give effect to national direction.

- After public notification of a combined plan and the receipt of submissions, the standing “Futures Commission” and “Tikanga Commission” (or commissioners) described in Chapter 7 would be tasked with reviewing the notified plan, section 32 analysis, and submissions. The Commission(s) would hold hearings, which would be in two stages. The first would be to set the strategic policy framework (including, where relevant, targets), and the second would be to consider more detailed matters (including site specific zoning and regulatory provisions).

- The Commission(s) would make recommendations to the council, and only to the extent they were rejected would there be the opportunity for merits
appeals to the Environment Court (in which case other persons could join proceedings as interested parties). There would also be appeals on points of law to the High Court.

- Across all of this, reasonable timeframes and support for participants would be crucial. In the Auckland Unitary Plan context, much feedback has indicated that the time available for submissions and decision making was too short, and there was considerable submitter burnout. A future system also needs to be mindful of the need not to discourage public involvement in what should be a reasonably informal and non-threatening setting. Meaningful public participation is crucial for many reasons, and needs to be encouraged, not just allowed.

- We suggest the establishment of a publicly funded “Friend of the Commission” to assist participants (especially lay participants) through the process, as well as a properly funded statutory Environmental Defender’s Office charged with taking on public interest litigation (to the extent appeals were allowed). People and communities need to be supported through what can be a demanding process, especially for urban-focused plans where people’s ability to do things on their land (and potential to be impacted by their neighbours) are at stake but where many may lack the resources to represent their own interests.

There should be a separate process for “resetting” existing plans to (1) integrate them at the regional level; (2) reflect the purpose and principles of an Environmental Stewardship and Planning Act; and (3) give effect to a new National Environment Plan (including its environmental limits). This process should also be used where a plan change is “called in” by the government or an independent Futures Commission/Tikanga Commission.

This would roughly resemble, in many respects, the process for creating the Auckland Unitary Plan. There would be more direct central government input (including resourcing assistance) and collaboration with Māori in developing a plan. The EPA should also have a role in translating policies concerning environmental limits into regulatory restrictions, including where needed to give effect to national direction on environmental limits. Merits appeals would be constrained by whether councils accepted or rejected the recommendations of a standing, independent Futures Commission.

A “Friend of the Commission” model could usefully be established to assist submitters through the process, and there should also be a new, publicly funded Environmental Defender’s Office established to pursue public interest litigation.

8.5 Objectivity and accountability in RMA plan-making

Some have suggested that final decision-making power on local plans should lie with an independent and expert reviewer, like the Futures Commission or an independent hearings panel. The idea is that those who develop and promote a plan (ie councils) should not be those who decide it. On this view, it is not the council’s plan – it is the community’s plan (including private property owners and infrastructure providers).

However, we consider that a screening role for councils is important at the final stage. At least in theory, a council makes such decisions on behalf of all in the community – everyone has equal rights to vote – and proper recourse for unpopular policy decisions is through the election process. So while judicial oversight is essential (ie the ability to appeal to the Environment Court if recommendations are rejected, and on points of law to the High Court), power should not be stripped from councils to determine what are often not expert or technical points but rather value judgements on behalf of their communities. That is particularly important where a plan is being reviewed or “reset” in its entirety, which reflects the vision of a community through its democratically elected and politically accountable representatives.

That said, independence is crucial. A Futures Commission in this option would play a valuable role as an expert, independent check and balance on local democratic decision-making. It would provide a voice not just for future generations of people generally, but also for future residents of an area that local government elections do not reflect (which is sometimes described as a “democratic deficit”). The Commission would also closely consider the national, not just local, interest in how our cities function and be able to address similar issues in similar ways while accounting for local variation. Close independent oversight of a “reset” process would guard against any tendency for rules to be simply carried over from previous plans while objectives and policies changed.

Some have suggested that an independent entity should only appoint hearings panels on an ad hoc basis. This is an option, but we believe that a standing independent institution would be better placed to perform the review function and form a hub of independent expertise, unless required expertise lay outside its pool of commissioners (in which case it could make ad hoc appointments). The Commission would also need robust climate change expertise, given its close connection to urban form and transport. This was arguably a weak aspect of the Auckland Unitary Plan process.
A spotlight on urban design panels

A new Act’s purpose and principles and national direction need to engage much more with good urban design than they currently do (see Chapter 6). We need to build institutional arrangements around that. A non-statutory urban design panel has been operating in Auckland for some time, and major building projects are referred to it on a voluntary basis. Similar models have been used in Nelson, Wellington, Queenstown and Christchurch. While some see design considerations as too subjective and not an appropriate basis for regulation, the model has worked reasonably well in facilitating collaboration between the private sector and council, and resulted in constructive changes.

However, “while urban design panels can offer many benefits, they do not give statutory direction, and do not ensure that key objectives will be considered” in RMA decision-making. We therefore agree that for a review “undertaken by an urban design panel to be effective, it should be with reference to accepted objectives or criteria, and these concerns should be explicitly recognised” by a new Act. Furthermore, urban design is valuable not just for individual buildings or projects (for which panels are mostly used), but also for city-shaping at a grander scale.

Some have suggested the establishment of a national urban design panel, to be deployed for complex, large or controversial planning issues. But to avoid a proliferation of institutions and complexity, we instead suggest that the Futures Commission have dedicated urban design expertise embedded within it, perhaps as one standing commissioner (similar to an independent version of a government architect or chief planning advisor) supported by robust capability in its supporting secretariat. That way, independent design expertise can be married up with other skills (eg environmental protection) to encourage synergistic thinking when making recommendations on regional combined plans.

A balance between independence and accountability in plan making will be important. A Futures Commission would play a key role in reviewing regional combined plans. It should have strong urban design expertise to play the role of an independent urban design panel.

8.6 The importance of localism in plan-making

Combined plans should not just be imposed from the top down, especially where their point is to shape neighbourhoods. There needs to be meaningful input and co-creation by increasingly diverse communities – a sense of ownership and durability – rather than a system that relies on post-notification submissions and litigation. As the New Zealand Initiative has pointed out, “when people get a chance to see how their efforts actually make a difference to the outcome, their level of interest in the discussions increases.” Community collaboration builds social capital and trust. There is much information that is known only to those who live or work in a place, which needs to be built into system design from the start. We see citizens’ assemblies as a particularly valuable tool to feed into regional level plans, especially in urban areas where interests can clash and where common ground needs to be found at a personal and collaborative level rather than in a formal and litigious manner.

Of course, “participation and collaboration is not a simple panacea for solving urban planning problems”. Tensions will always remain within communities, and decision-making power needs to be located at a broader spatial scale when managing urban areas as a whole (eg to address systemic environmental issues, growth, and problems like Nimbyism). It is also hard, or even impossible, to identify those representing the voice of future residents or of future generations. But tensions can be minimised by allowing communities to come together, contribute a vision for what they want their community to look like, and understand different points of view. Successful cities “build a strong sense of community, and encourage people to participate in making decisions that affect them.”
A spotlight on citizens’ assemblies

Citizens’ assemblies can be used as a way to ensure a wider variety of local voices are heard in plan making. While they can be of wider application (eg for climate change policy), they are particularly useful in the urban context where many people live in close proximity to each other and can have a strong sense of community. Members of an assembly could be randomly selected from the relevant population, and would hear submissions and evidence, deliberate and reach a conclusion. The model has been used overseas with success.

In the New Zealand context, an assembly could be established by selecting between 10 and 20 lay participants from the relevant district, region or neighbourhood. The jury could sit in on the public hearings of proposed plan provisions and then meet to deliberate and provide recommendations to the council. The council could be required to take the recommendations into account.

This model could also be used much earlier in the process, so that a citizens’ assembly actively contributed to creating a plan or plan change. For example, in Vancouver, the City Council established a citizens’ assembly to develop a plan for the Grandview-Woodland community. An open invitation resulted in 500 volunteers, from which 48 members were selected by lottery.

Recommendations in such a model should not be binding (they are not a substitute for local democracy or a replacement for firm national or regional limits to achieve environmental bottom lines), but they should have substantial moral authority, contribute useful local information, and provide an indication of community feeling. They should be one matter to take into account, or even have particular regard to, within a planning framework for a region as a whole. For example:

Brisbane has processes that allow neighbourhoods to work through and make trade-offs about how broader citywide decisions on densification will apply. Auckland, on the other hand, has no such mechanisms.

Broad citizens’ assemblies – eg for a region as a whole – could be supplemented by ones more targeted at under-represented groups (such as youth). Citizens’ assemblies could be one “opportunity to approach these issues by establishing trusted partnerships and truly engaging society, the private sector, NGOs, academia, and government in critical conversations” as we transform our system in the Covid-19 recovery.

Creative, bottom-up measures for community engagement and co-creation would be desirable, including the use of citizens’ assemblies.
8.7 A different process for plan changes

As in Auckland, a “reset” process would be needed to create integrated, regional combined plans that reflected a new Act’s purpose and principles and which eased the path to local government structural reform. This process could also be used to conduct whole of plan reviews periodically (e.g., every ten years) in order to prevent the integrity of plans being lost through piecemeal public and private plan changes. Furthermore, it should be able to be used where a plan change was called in by either the Minister or Futures Commission based on its significance. At the same time, the current board of inquiry processes for plan changes would be removed.

However, there is a valid distinction to be drawn between an in-depth process that “resets” entire plans and one that represents an ongoing process by which parts of plans are then changed. Many plan changes to the Auckland Unitary Plan are largely progressing in the normal way, and site-specific zoning decisions are seeing a large number of appeals in some urban areas like Queenstown. A different process is needed to provide agility, particularly in the urban context, to safeguard the environment as well as facilitate changes in land use where appropriate (see Figure 8.2 below).

We described this proposal in the Phase 2 report, and it is not limited to the urban context. To have separate processes for urban and non-urban planning would not be in keeping with the integrated management central to the RMA. In short:

- As with a plan “reset” process, council plan changes would be developed in a collaborative way with Māori, and there would be input from many sources, including citizens’ assemblies and local boards.
- Central government would have a specific mandate to provide input on council plan changes at an early stage, to ensure (1) that the proposal gave effect to national direction and (2) that associated funding implications for central institutions, such as the NZTA, were identified and addressed. Furthermore, the EPA could have a mandate to initiate plan changes to give effect to environmental limits required under national direction, including in urban areas.

Figure 8.2: A new process for plan changes
A "hybrid" institution would make final decisions on the plan change in a one stage process. This would comprise a majority of Environment Court and/or independent commissioner expertise, alongside members representative of iwi/hapū and the relevant council (which, over time, would transition to a regional level unitary authority). Local board members, and representatives of the Crown, could have observer status rather than decision-making powers. The panel would have latitude to establish its own procedures.

Appeals could either be limited to points of law to the High Court or to a new senior "appellate division" of the Environment Court. There could even be a requirement to obtain leave, or prove a prima facie case (eg to show an issue of local or regional importance, so that the Court at appellate level is not bombarded with dozens of site-specific zoning appeals for far reaching plan changes).

An alternative way of looking at this plan change model would be for the Environment Court to be "co-opting" members onto a panel in a way prescribed by statute. Currently, there are few formal places where this coming together of different levels of governance (including Māori) occurs, but we think it would be a positive step. Taking Wellington City as an example, a hybrid decision-making panel could comprise:

- An Environment Court Judge (Chair).
- Several independent commissioners appointed by the Chair in light of their expertise.
- One member nominated by relevant iwi/hapū.
- Two members nominated by the City Council (or, following local government structural reform, a regional unitary authority).
- Observers from central government.
A spotlight on mixed-membership panels for private plan changes

Increasingly, decisions on private plan changes under the RMA are being handled by entirely independent hearings panels. These panels then report back to the relevant council with recommendations, which are either accepted or rejected. Other panels have included a blend of independent and councillor membership, with a similar reporting and recommendatory function.

This trend is not so different in principle from what is being floated above, in that there would be a mix of independent and accountable decision-makers in a single institution. The key difference is that this would be formalised in legislation, and that the independent element would integrate the appellate function of the Environment Court with the first-instance hearing function of independent commissioners into a single stage. There would also be a more permanent place for mana whenua, and appeals from the panel’s decisions would be limited to points of law.

It would be important to ensure an appropriate balance is struck between the independent and elected members of a decision-making panel. Such questions will no doubt prove controversial, and are open to allegations of undermining local democracy. However, it is important to remember that the current system is already strongly defined by an (ultimately) independent decision-making power (in the Environment Court), even if merits decisions are limited by the scope of appeals. An institution with a preponderance of independent members – which we would recommend as a crucial safeguard in the absence of merit appeals – would therefore not necessarily be "less" democratic than what we now have. It would simply be independent and accountable in a different way. Council involvement would remain vital to ensure that close consideration was given to associated matters within the preserve of elected members, such as fiscal constraints and the ability to provide supporting infrastructure.

We envisage a different process for plan changes, following regional level "resets" of existing plans. Decisions on plan changes would generally involve a hybrid decision-making panel chaired by an Environment Court judge, and comprised of independent commissioners, representatives from the relevant council(s), and mana whenua. There would be a preponderance of independent members. Central government could have observer status. The EPA would be tasked with initiating plan changes required to give effect to environmental limits in national direction.

There may also be issues over the extent to which iwi/hapū should be represented relative to the community more broadly (or whether other democratic mechanisms, like Māori wards for council elections, would be more appropriate), and how decisions are to be made in the event of intractable conflicts between members of the panel.

A spotlight on Māori as gatekeepers in urban planning

There are significant questions to be asked in the local planning context about the role of Māori, especially in light of strengthened Treaty obligations in a new Act’s purpose and principles. Much of the literature concerns the role of Māori in managing and protecting natural resources like water and the coast, but the principles of the Treaty apply equally to land use planning, the built components of urban areas, and the ability of urban Māori to shape not only their ancestral lands but also the places in which they live and work.

Should iwi and hapū as “representative” groups be treated as gatekeepers (ie final decision-makers, alongside others) at the system-wide level, not just as co-designers in plan production or “expert” advisors on Māori issues or tikanga/mātauranga? Is a strengthening or greater resourcing of Mana Whakahono ā Rohe agreements the way forward, to allow those questions to be tailored and negotiated up front between councils and Māori? Do they need to be brokered more actively by the Crown as Treaty partner?

In the model described above, there is provision for co-production of plans by mana whenua and independent review by a Tikanga Commission/commissioners. This recognises that Māori are not just passive “objects” of the system to be protected or recognised in legislative principles, but also active Treaty partners whose voices must be heard and contribute positively to plan development. For example, this might see the active planning of communal or connected housing developments, which have particular resonance for Māori.

Partnership is more than just "consultation", and should ensure that sites and landscapes of particular significance to Māori are identified in plans, preventing the kinds of issues that arose in relation to the non-notified consenting of earthworks on Te Mata Peak. It also goes further than suggestions that led to the NPS on Urban Development, which speak of the need to “take into account [hapu and whanau] aspirations for urban development on whenua Māori within their rohe” after providing opportunities to identify them. The system should recognise the importance of Māori culture in our urban spaces, not just protect particular sites and cultural artifacts.
The extent to which there is direct representation by Māori as final decision-makers across the system is a challenging issue – especially if there are many different iwi or hapū across a region. In urban areas it is even more difficult, because the ancestral connections of urban Māori are often outside rather than within a city, and Māori holding an interest or connection to sites in a city may not have mana whenua status. Self-organisation is a matter for Māori themselves rather than something to be imposed from above, but greater clarity around who has the authority to speak and engage with councils could be useful. In the Phase 1 report, we noted that:

In some areas there is little or no ambiguity about which is the relevant iwi to engage with…. In other areas it is very unclear and often highly contested…. In practice, engagement with hundreds of hapū is not usually possible. How should councils determine which to engage with? What criteria are relevant when deciding this?

This is an area for which improved statutory definitions, processes and standards could be developed. In some places, such as Auckland, the “mana whenua” recognised are those with Treaty settlements. While this ensures that the entities have a legal personality and constitutions providing for accountability to beneficiaries, a tikanga based solution is an alternative … Whatever the solution, the problem is a real one for both councils and tangata whenua in many regions and could useful be addressed in system reform.

In any reforms, we must also take care to ensure that existing Treaty settlements (which may significantly alter the default local government planning process) are upheld.

A partnership approach with Māori is needed to give effect to the principles of the Treaty of Waitangi. This should involve close collaboration in the production of plans alongside councils; the provision of independent advice through a Tikanga Commission/commissioners; and the provision of resourcing by the Crown to enable those roles to be effective. There could also usefully be greater clarity around who has legal authority to speak for Māori, particularly in urban areas where many Māori have interests yet do not have mana whenua status.

Overall, we see considerable merit in a largely one stage planning process to improve agility, as long as there is a robust balance between independent oversight and community accountability. A single stage process provides other benefits, too:

- The evidential base for plan reviews and changes are often compiled in a much more comprehensive manner in response to an appeal to the Environment
Court than as part of the notified proposed plan change. This results in the first merit assessment being less well informed than the second. Stronger incentives on the promoter and participants to inform the merit assessment of first instances are highly desirable, in order to lay the basis for a more effective and efficient merits assessment at the first step.

It may be possible to pre-empt urban issues in a future system, thereby increasing agility even further, by using the process to determine the content of future plan changes in advance. Thus, plans could “incorporate the current set of planning controls, the set of controls that would replace them, and the trigger that would be used to switch from one set to the next.”124 While there are risks in determining detailed, context-dependent decisions well into the future (after all, things can change in the meantime), especially where they are based on narrow triggers rather than holistic assessment (eg price differentials between urban and rural land) this more dynamic approach is interesting. Most suggestions for this concept have been driven by the need for rapid release of residential land where prices are rising, but pre-prepared “backup plans” could also automatically kick in when urban environmental triggers were breached (eg a threshold for reduced urban biodiversity).125 That may be necessary if our system is going to be more strategic and future-focused. Of course, this requires a more robust approach to monitoring, reporting and evaluation to provide clear trigger points, and we have discussed that in more detail in the Phase 2 report as well as earlier EDS reports.126

It would also be desirable to provide greater consistency across plans through further work on national planning standards. They should be structured in a common way that can easily give effect to a National Environment Plan while still being able to respond to local context.127
Figure 8.3: A revised process for local planning under the RMA
New purpose and principles

National Environment Plan

Plan "reset" following development of National Development Plan

Regional combined plan developed in collaborative way between council and iwi/hapū

Combined plan approved for notification

Submissions received

Recommendations considered by council

Merits appeals to the Environment Court to the extent council rejects recommendations

Appeals to High Court on points of law

Operative plan

Proposed combined plan and submissions considered by Futures Commission and Tikanga Commission/commissioners for consistency with purpose and principles of the Act and with the National Environment Plan. Hearings held.

Council develops plan change in collaboration with iwi/hapū

Plan change notified

Submissions received

Hybrid panel considers plan and submissions, and makes final decision. Panel comprised of Environment Court judge, independent commissioners, iwi/hapū, and nominees of relevant council

Leave for appeals to appellate division of the Environment Court, or to special division of High Court, on points of law

Significant plan change “called in” to use different process

Direct insertion

Private plan change application

Community consultation

Citizens’ assembly

Collaborative processes (not prescribed)

Central government input

Mana Whakahono ā Rohe

Periodic whole of plan review

Mana Whakahono ā Rohe

Environmental Defender’s Office

Direct input by EPA for regulatory limits

Environmental Defender’s Office

Collaborative processes (not prescribed)

Central government input

Direct insertion

Private plan change application

Significant plan change “called in” to use different process

Direct input by EPA for regulatory limits
Council plans will need to reflect the purpose and principles of a new Act, which would engage more specifically with urban issues and principles than the RMA. While the detail of such plans is beyond the scope of this report, they should be required to pursue synergies, and it is interesting to consider two things in this light: urban tree cover and urban boundaries.

**A spotlight on urban trees**

There are many benefits in having an urban footprint filled with greenery. Trees provide shade and regulate temperatures, reduce the impact of dust, sediment and noise, are visually pleasant, provide recreational opportunities and pleasant places to be, promote mental health, enhance biodiversity, mitigate climate change, and help to manage flooding and filter stormwater. A green city is a desirable city from many viewpoints – in the language of the NPS on Urban Development, a “well-functioning urban environment”.

On the flipside, however:

Indigenous biodiversity is depleted where there is low indigenous vegetation cover. This is particularly the case in urban environments... Ecosystems are at particular risk in the coastal lowlands, and in urban and peri-urban areas. The depletion of ecosystems and loss of indigenous biodiversity in these areas is so great that reconstruction of indigenous habitat is essential to maintain indigenous biodiversity and ensure the persistence of these ecosystems.

Yet our urban forests are disappearing further. Indigenous cover makes up less than 2 percent of urban land, and only 10 percent in peri-urban zones. It has been found that reducing native cover below 10 percent can trigger a disproportionate collapse in biodiversity. Planning provisions now permit significant intensification of our cities without the integration of existing trees, unless they are expressly scheduled. New trees take a long time to mature, and if we pave over soils we may lose the opportunity for them to do so in the future.

In our view, there is substantial public interest in green cover on both public and private land – even on rooftops – and the imperative to densify our cities need not come at the cost of losing it. It is positive that the proposed NPS for Indigenous Biodiversity speaks of the need to require councils to set targets in regional policy statements – at least 10 percent in urban areas – for increased vegetative cover. To their credit, some places like Hamilton have already set such a target.

However, we need practical mechanisms to achieve targets, not just general directions to include policies and methods in plans. We have pointed to the United Kingdom’s Environment Bill, which proposes to require a net gain of biodiversity in new greenfields development. We have also mentioned the potential for some car parking requirements not just to be scrapped (as will be required under a new NPS), but to be replaced by requirements to create indigenous planting – including in areas previously used for on street parking with the potential to create near contiguous corridors of habitat. Covid-19 has created added momentum to pedestrianise central city streets and repurpose public space, and an opportunity (including funding) to fill them with trees. Provisions in plans should also encourage or require the retention of existing mature trees, not just those specifically scheduled. In Chapter 12 we point to economic incentives that could reinforce (or, potentially, in some cases replace) regulatory requirements.
A spotlight on urban boundaries

The housing crisis in recent years has sparked something of a crusade against urban limits from both sides of the political divide. It has been said that this tool, which allows development on one side of a line but not on the other, rations the supply of land and has been largely responsible for skyrocketing land prices and unaffordable housing. In response, there have been calls from some to abolish the rural-urban boundary in Auckland to flood the housing market with supply. While few seem to support the wholesale removal of planning restrictions on growth, some calls have had echoes of the free market thought that defined much of the 1980s.

In 1989, the NZ Treasury advanced a radical view that the RMA should not proceed and all development location should be left to the free market with no formal regulation.

An urban boundary can be used to achieve several policy goals (eg providing a predictable pipeline of public infrastructure requiring funding). Central to it, however, is a legitimate desire for a compact urban form. In Chapter 6, we suggested that a future system needs to be more direct in its support for compact and efficient cities, given the synergistic benefits they can have (and the corresponding risks of car-dependent sprawl), including: more efficient use of infrastructure (especially where there is spare existing capacity); more viable public transport and consequently reduced emissions and congestion; protection of the natural environment and productive land around cities; more vibrant town centres; and increased opportunity for social and economic interaction. Indeed, the preference of local government in high growth areas like Auckland has tended to be towards more compact urban development in recent times.

In our view, blame for housing unaffordability should not be placed solely at the doorstep of urban limits. The causes of housing affordability are many and complex, and other measures need to be taken. While there are other views, Professor Tim Hazledine has pointed out that it is often the expensive services provided to urban land that account for most of the price differential with rural land, not a planning boundary, so direct comparisons may not always be appropriate. And even to the extent that urban limits do have an impact, the issue is not with the tool but how it is used.

Many studies concerning the impact of urban limits on affordable housing have focused on the pre-Unitary Plan metropolitan urban limit in Auckland. One 2016 report pointed to the price of land inside the limit as being nearly 10 times more than land outside, with an alarming growth in that disparity over the course of a decade. The logical conclusion has been that the council “has enforced and maintained its metropolitan urban limit to such an extent that the future supply of land for greenfields development has become sorely limited” and that rising demand created an artificial scarcity of land.

However, a significant part of the issue was that the compact urban form envisaged by the metropolitan urban limit was not made possible due to additional restrictions on height and density within the city. Growth could occur neither up nor out, driving prices up. Overall, increasing land supply was estimated to be able to reduce the cost of housing by up to 23 percent across New Zealand, and even more in Auckland.

The new rural-urban boundary embedded in Auckland's Unitary Plan has changed the situation. The plan provides for more greenfields growth (with sequenced release over time), as well as enabling greater density. While it has generated a lot of debate, a recent report by Auckland Council found that, once other factors are taken into account (eg the value added to urban land by infrastructure and services), the price differential between urban and non-urban land is now relatively small. It concluded: the boundary is likely to add a price premium of at most 5.2% to developed residential land inside the boundary compared to farmland outside, and at most 4.2% compared to lifestyle land outside. These premiums are substantially lower than estimates in previous studies, and are before accounting for any social costs of more expansive development not included in market prices, such as increased congestion or emissions.

Only time will tell whether the supply (and actual development) of land envisaged for Auckland is sufficiently responsive to reduce prices to affordable levels relative to incomes, and whether the rural-urban boundary needs further amendment. However, the broader point is that the public interest benefits of compact urban form are far from negligible, even if they may be hard to quantify. The relevant public policy question, then, is not how to ensure that limits have “no causal impact on land prices” but rather: are those benefits worth the impact that they have, and if so how could we address that impact in other ways? We would suggest that benefits are well worth pursuing – as long as they continue to form part of a coherent package of measures supporting the benefits of compact urban form rather than just constraining the supply of land for other reasons (eg the cost of infrastructure).

While the public interest benefits of urban limits are not always given the weight they deserve, free market calls to remove barriers to urban sprawl also
tend to dismiss or underestimate costs and risks. For example, such proposals are often accompanied by reassurances that sprawl would not be subsidised (eg through the public funding of roads) and that all costs would need to be internalised by developers.

But it may prove to be very difficult to internalise the “true” costs of dispersed development in practice. The longer term burden of maintaining and renewing the infrastructure supporting sprawl will fall eventually on public authorities, and once such costs are apparent to future residents (eg through rates or additional debt) the urban form relying on such infrastructure has been locked in and is very hard to change. It is also because not all costs are easily translated to monetary terms. The Resource Management Law Association, for example, has warned against preferring any particular economic philosophy in the RMA, and supported the broader assessment of benefits and costs through the planning system that are not readily monetisable. There is an abundance of evidence, for example, to suggest that while the short-term market value of using productive soil for food production cannot hope to compete with its use for residential development, that is by no means the best use when a longer term view is taken. How do we internalise the intergenerational opportunity cost of using a finite resource using the language of the market? It will be hard to take back poor decisions here, because buildings and infrastructure last a very long time. The Centre for Sustainable Cities has summed this sentiment up well:

the aspiration for unending urban expansion is a remnant of a permissive market-based model of urban development in which prices are imagined to reflect full costs, an ideal which departs from the messy reality that it is rarely if ever possible to either assess such ‘true costs’ (because of their complexity and heterogeneity) or in practice embed those costs in relevant prices.

Providing a “choice of housing options” is important, but we wonder whether that deserves a place at the top of the public policy pile alongside affordability. Is it a good idea to continue to supply everyone with their culturally-driven dream of a detached house in a sprawling suburb or lifestyle block – which continues to persist – even if they are willing to pay the cost and mortgage themselves to the hilt to achieve it? Would it not be preferable for the system to encourage a more sustainable way of urban life – to change hearts and minds – as we enter an age quite different from that dominated by the private conventional motor vehicle? In our view, we need a strong public policy lens for such questions, not just a price-based trigger that reflects what a narrow range of potential purchasers are willing to pay at this point in time.

We see urban limits as being one valuable tool in a future system to implement a wider, more strategic spatial planning framework to manage urban growth over time and achieve a long-term vision supporting compact urban form (see Chapter 6). In isolation they are too blunt a tool. Thus they need to be regularly reassessed to ensure they are contributing to desirable policy outcomes (eg coordinating sequenced land release with infrastructure supply, supporting density in the right places, and ensuring overall housing affordability), not just established and then forgotten about (in which case they can have significant impacts on land prices and housing affordability). The important thing is that development capacity is released at the right time and the right place.

However, constant evaluation does not mean urban limits should weekly give way to pressures for dispersed development simply because that is what the short-term market preference is. They should certainly not dissolve automatically on the triggering of narrow economic indicators like price differentials. Some relaxation may need to occur – greenfields growth is not the same thing as sprawl – but equally a review might mean that more needs to be done to incentivise density in the right places (eg by relaxing height restrictions, funding mass transit infrastructure, investing in attractive spaces, or by Kāinga Ora using land aggregation powers or physically building in complex brownfields sites). Some have even suggested subsidising compact inner city housing “at a level that is in proportion to the assessed future liabilities of not meeting emissions reductions targets” associated with sprawl. As is being seen in Auckland, providing for density in a plan does not mean it will actually be built, so constant monitoring and deployment of such incentives is crucial to make it happen. Deep engagement with the property development sector will be important to achieve solutions for density – in terms of its location and design requirements – that will be attractive to developers and future residents, while also achieving public policy goals.

Urban limits will be a valuable tool in a future system to implement a wider, more strategic spatial planning framework, which would enable and manage urban growth over time and achieve long-term compact/efficient urban form. Limits should not have undue impact on land prices and need to be responsive, but if such issues arise that might signal a need to take other measures (such as making density more attractive).
8.8 Consenting

We note that while the planning framework will be crucial in a future urban resource management system, consenting will also be important. Plans cannot account for every single scenario. Complaints abound as to consenting delays for urban development, and the regime has been seen as too complex, uncertain and costly. A number of suggestions have been put forward to revamp our consenting framework. Most recently, the government has put in place a mechanism to fast-track consenting for projects deemed essential for post-Covid economic recovery. We agree that the current regime requires change, but we should not throw the baby out with the bathwater.

For one, it should be more obvious in a plan what development is allowed and not allowed and in which places, providing greater predictability of outcome for developers as well as firm and transparent environmental limits. Over-reliance on a series of site-specific or activity-specific consenting decisions, within a planning landscape defined by general (and sometimes conflicting) policies, has contributed to unacceptable cumulative impacts over many years, as well as extensive complaints from applicants who do not know whether a consent will be granted or not. In the Phase 1 report, for example, we noted that it is "alarmingly that the imposition of bottom lines in the landmark King Salmon decision relied on an extensive argument and interpretation of a "rule-like" policy ... Where were the actual rules?" It is odd that "policies" in regional policy statements can effectively be a form of inflexible "rule" in consenting in some circumstances, like the imposition of urban boundaries. Vagueness, uncertainty, discretion and political wrangling are not conducive to good outcomes for either developers or environmental interests. A number of commentators have pointed to efforts to reduce reliance on consent processes in order to make outcomes from plans more predictable, noting that:

in the event that an application is challenged, proceedings can drag out for years with the ultimate outcome hard to predict except that it will be expensive.

There are different ways in which we could move our emphasis away from consenting and towards planning. One would see greater use of permitted activity status in plans, for which there is already considerable pressure on local authorities to do. In other words, if people met minimum standards, which would be prescribed in much more detail, no consent would be required. This may be appropriate in some cases, such as small scale and largely similar activities like deck extensions. It would be difficult to legislate for this, although greater guidance on activity status could be provided through national direction.

Even where permitted activity status is not appropriate, many urban consenting issues are essentially about private disputes (eg impacts on neighbours), not lofty questions of public interest or environmental principles. These could be properly dealt with through mediation or other alternative dispute resolution processes.

Some have suggested that this would be a much more efficient way to proceed, although we note that the line between private dispute and public interest is by no means always a clear one. The Environment Court has become adept at directing disputes to private resolution, and could potentially act as a kind of sorting house to determine which track consenting disputes went down – private mediation and arbitration or a decision by public authorities (council decision and appeals). That might need to see the insertion of more specific dispute resolution principles in a new Act alongside more lofty concepts like sustainability, and for a new Environmental Defender’s Office to have standing in both consenting tracks as a safeguard for the public interest.

A spotlight on dispute resolution

The Environment Court has established an effective process for narrowing issues in dispute, directing (as much as possible) parties towards resolution, and timely and effective decisions. Participation in alternative dispute resolution is now mandatory. Other alternative measures, such as "charettes" or facilitated meetings held by one division of the Environment Court with parties and counsel present, are used to narrow legal issues (such as scope) before a hearing. Expert conferencing can be extremely valuable in focusing experts on technical points of agreement. The much more hands-on approach to case management at the Environment Court level means that we do not see the sorts of time and cost blowouts of the past.

Many (although by no means all) of these measures are about dispute resolution between parties, but (as discussed in the Phase 1 report), the distinct role of "private" dispute resolution often cannot easily be separated from the "public" decision-making in which those tensions arise. Private settlements do not remove the need for decision-makers to consider all relevant issues under the Act where the public interest is at stake.

However, we do not think reforms should travel down the permitted activity or private resolution pathways wholesale. Controls need to be proportionate and reasonable (as well as precautionary), but it is a bit of a stretch to assume that a 99.7 percent rate of applications being granted (the vast majority being non-notified) means that a large number of those should have proceeded without consent in the first place. The consenting process, even if non-notified, provides a valuable check, and allows targeted conditions to be imposed. It also allows for monitoring to occur or at least for authorities to be aware of the activity, ensuring a better knowledge base for resource management decisions across the board. Cumulative effects of what seem like minor private disputes in isolation can still be significant for the public interest when magnified across a city, such as the decline in vegetative cover.
It would be preferable, we think, to focus on making urban policies more specific and outcome-focused rather than effects-based, clarifying the relationships and hierarchies between policies, and tailoring them towards requirements for particular activities and sectors. It would also be desirable to provide for more common minimum consent conditions for particular types of activity. Overall, discretion could usefully be more targeted through use of restricted discretionary activity status in plans, although that may be hard to legislate for. We see a case for non-complying activity status to be removed, as this adds an extra step and another layer of uncertainty for applicants (more directive and specific policies should help make discretionary activities more predictable). Rather than relying on discretion through consenting, agility should be provided through the ability to progress plan changes faster (see Chapter 8).

A new purpose and principles and stronger national direction would also make clear that environmental bottom lines (minimum outcomes) would need to be translated into firm regulatory limits, including in urban areas. We expect they would be associated more strongly with prohibited activity status and moratoria in plans, for which consent could not be applied for. As with regulatory provisions in plans needed to address national level environmental limits, we see a case for jurisdiction over specific forms of consent (eg for freshwater in vulnerable catchments) to be assumed by a strengthened EPA.

Close consideration should also be given to smoothing the consenting pathway for projects that have significant environmental benefits (eg through permitted or controlled activity status, or perhaps even altered notification status). This could apply to “eco-friendly” urban developments that meet higher standards. However, there is a need to be acutely aware of the risks that many “beneficial” measures can still have. For example, a dispersed urban development with lots of open green space may, when looked at from a city-wide view, be undesirable because of its reliance on cars.

Overall, we think a future system should provide greater predictability of outcome in advance through environmental standards and clear policies in plans, rather than relying on the discretionary weighing of general and potentially conflicting policies through a string of consenting decisions.

Environmental limits defined in a new Act’s purpose and principles would need to be translated into regulatory limits, associated more strongly with prohibited activity status, moratoria, or common mandatory consent conditions.

If consent is required, the process by which applications are considered also needs scrutiny. In particular, questions have been raised about the participation of the broader...
public in urban consenting, particularly through appeals. There may be some grounds for private appeals to be curtailed if we were to have an effective, robustly independent and adequately resourced Environmental Defender’s Office to take on public interest litigation under a firm advocacy mandate. Constraining merits appeals in this way might even then allow for greater public notification of consent applications (because notification would no longer be automatically linked to hearing or appeal rights). This would enhance both communities’ and decision-makers’ understanding of what is happening in their environment and reduce developer pressure for applications to be non-notified.

However, we need to think carefully about whether appeal rights are truly worth giving up in the context of all urban consents. While red tape is a common complaint, the Environment Court has developed effective case management and dispute resolution mechanisms over the years, and the fact remains that the vast majority of consent applications remain non-notified. Where notification does occur, there is generally good reason for potential appeal rights to follow. And while complaints about abuse of process are legitimate, and have been counteracted through various reforms (eg restrictions on vexatious litigation and trade competition arguments), the fact remains that less than 0.5 per cent of consent decisions are appealed, most of those on legitimate grounds. Providing greater clarity in plans about what is permitted and prohibited, and whether consent is likely to be granted or not, should reduce developer concerns.

An alternative would be for prospective appellants to be required to prove a prima facie case or discharge some form of evidential burden and allow the Environment Court to grant or decline leave for merits appeals. However, that raises issues of access to justice, especially for those appellants representing environmental interests that are often less well-resourced than consent applicants. We do not recommend it.

Appeal rights to the Environment Court in the consenting context provide valuable independent oversight of first instance decision-making. In our view, the risks of removing appeal rights outweigh the benefits. We also see a strengthened role for the EPA in consenting where there is a national interest.

It is worth exploring the need for more independent oversight of notification decisions. These have enormous significance, in that the notification status of an application determines who has rights to submit and appeal. Presently, people may not be aware an application has even been made; if they are, their only recourse is judicial review. Reform on this front could involve introducing new appeal rights to the Environment Court in relation to council notification decisions, an idea that has been seriously floated for a while now.

However, that would add an additional step to an urban consenting process that many want to be more streamlined. A sensible alternative would be to require councils to send all information on applications and notification decisions to a new Environmental Defender’s Office, which could then determine whether to exercise appeal rights over notification decisions for reasons of public interest. This would enable the creation of an independently managed national consenting database. There should also be more national guidance provided on making notification decisions, including for urban developments. At present, notification tests are open to wide interpretation.

A new notification status could also be introduced: where a proposal is notified and submissions invited, but where there are no associated appeal rights. That would allow for valuable information to be received by councils (reducing the risk of a situation like the Te Mata Peak walkway occurring, where consent was granted and construction was commenced before iwi and the public knew about the proposal), and for residents to feel in touch with what is happening in their communities. We could even move towards a system where all applications were publicly notified (electronically) by default, but where appeal rights do not automatically flow. This would enhance transparency and increase the information available to decision-makers, but at the same time avoid perverse incentives on developers (to ensure their development is non-notified and thus not subject to appeal, which can lead to applications that are less innovative and progressive from a design perspective).

An independent, publicly funded Environmental Defender’s Office should have standing to appeal councils’ notification decisions to the Environment Court. A new notification status should be introduced whereby applications are notified and submissions invited, but where hearing and appeal rights do not follow automatically.

Permits for activities in urban areas can be required under multiple frameworks, not just the RMA. A proliferation of tracks has introduced complexity. We have previously highlighted that:

For consents, we have direct referral to the Environment Court and call-in procedures where council decisions can be bypassed, and a separate designations regime… we also have separate … permitting processes under multiple conservation statutes, mining legislation, marine and coastal legislation, and the Building Act. Is this too complex? Is it time to rationalise, or at least connect these … processes even if we do not integrate statutory frameworks themselves?

A future system should align processes. There are undoubtedly many ways to do so. But we see particular merit in the idea of an integrated “project consent”, especially in urban areas. This would be for complicated projects requiring multiple authorisations across statutes or institutions, and would be used to align decisions in a procedural sense. An application could be lodged with the EPA, which would oversee the process.
it would not be a “carve-out” for significant projects, and would still require each authorisation to be obtained from decision-makers under the usual decision-making criteria (including a new purpose and principles in an Environmental Stewardship and Planning Act for resource consents and notices of requirement).

A future system could usefully provide for an integrated permitting process (a “project consent”) for complex or nationally significant projects, which would align permitting process under multiple statutes.

Direct referral to the Environment Court should remain, including in response to call in by the Minister or Futures Commission, providing a faster track for significant urban projects. This avoids a two-step process, but would not overwhelm the courts. Councils should remain consenting authorities for the most part.

However, we see a case for removing consenting functions from elected councillors, and placing them firmly with council staff, independent commissioners, or (on appeal or direct referral) the Environment Court. Presently, only a small fraction of consents are decided by elected members anyway. Consenting decisions should be much more about applying values already established through planning instruments, rather than deciding value-based questions, and are therefore much more amenable to independent analysis. Furthermore, rather than have councils appoint commissioners, we see merit in establishing a nationally accredited pool of standing independent commissioners (perhaps under the umbrella of the Futures Commission, or the EPA), which would be deployed upon request from councils.

Intimately related to urban consenting is a framework for monitoring and enforcing compliance with consent conditions and other regulatory requirements. This is not unique to urban areas, and has been explored in several previous reports. We refer readers to that analysis, noting that new enforcement powers for the EPA conferred by recent amendments to the RMA are a positive step.

Consenting functions could usefully be removed from elected councillors and placed instead, alongside council staff, with commissioners selected from a nationally accredited pool.

While we will not go into detail, several miscellaneous points should be made about consenting in the urban context:

- First, it is curious that we have a statutory direction for consent decisions only to “have regard” to national direction alongside a whole range of other matters (including anything relevant and reasonably necessary to consider), yet a clear directive to “give effect” to national direction in local plans. Resource consents can have similar effect in practice to private plan changes, so such a significant distinction is not warranted.

Admittedly, the distinction might be explained by an assumption that plans should reflect national direction already, so consent authorities should not have to look beyond them.

However, that is not always the case, particularly where there is a long time-lag between the promulgation of an NPS and its implementation in plans. While more coherent and comprehensive national direction, the plan “reset” process described above, and a more agile process for plan changes should fix much of this, it would still be prudent to require consenting decisions to at least “be consistent with” national direction as a backstop.

- Restrictions on councils considering climate impacts in consenting decisions, in place since 2004, are no longer appropriate. It is positive that the Resource Management Amendment Act 2020 will, within a couple of years at most, remove the offending provisions. These restrictions have been particularly inappropriate in the urban planning context, since land use choices and associated transport patterns have significant legacy issues for our carbon emissions and are hard to change once established.

- Ongoing attention will need to be paid to the fast-track consenting of urban projects (both public and private) under Covid-19 response legislation. We need a temporary fast-track approach to consenting that is quick and decisive, to facilitate large projects that provide employment and stimulate the economy, and the Act provides for this. It also provides for environmental safeguards (which were improved through the parliamentary process). The legislation offers an opportunity to drive through transformational urban projects that not only provide social goods like affordable and healthy homes, but also ones that improve energy efficiency, carbon neutrality, biodiversity gains, urban connection, and many other objectives. That said, the ongoing exercise of ministerial decision-making under the legislation (including as to which projects are fast-tracked and for what reasons) will require ongoing scrutiny.

In a future system, urban consent authorities should be compelled to make decisions that are, at minimum, “consistent” with national direction.

It is positive – and long overdue – that provisions preventing councils considering climate change mitigation are being removed under recent amendments to the RMA. Climate change is important when making decisions about urban form and design, not just when consenting point source greenhouse gas emissions.
8.9 Designations

Reforms may also be desirable to our system for designations. This exists in parallel with the resource consenting process, and allows requiring authorities (public authorities or private entities approved by the Minister for, among other things, network infrastructure like roads, water pipes and telecommunications) to make their own decisions on notices of requirement for designation. These are then incorporated in RMA plans and negate the need for land use consent. Given the prevalence of infrastructure supporting urban areas and its importance for managing growth and essential services, this system is particularly significant in and around cities.

There have been calls to extend the five-year expiry date on designations under the RMA to allow for a longer lapse period. Large scale projects scheduled within a council’s long term plan or infrastructure strategy require longer timeframes, particularly where approval is subject to funding availability. Allowing such designations to run for longer periods, even up to 20-30 years, would also align them more with the timeframes set out in regional transport strategies and documents such as the Auckland spatial plan (especially important where the requiring authority is a council or the NZTA involved in those decisions). Others, however, have pointed out that the RMA allows requiring authorities to seek longer lapse periods, which tend to be used when needed. The solution may simply be removing default lapse periods altogether, and targeting them to the circumstances of a particular project.

However, perhaps more significantly:

The designation system does not promote an ethic of cooperation between infrastructure providers ... [who] are not encouraged to work together to find least-cost, least disruption solutions, such as creating integrated infrastructure corridors or to coordinate plans for upgrading existing infrastructure to minimise disruption.

To us, this speaks not so much to the need for reform to the RMA, but rather to the need for an overarching spatial planning framework to influence that Act and many others. A range of requiring authorities are necessary to deliver urban objectives, and their early input into spatial planning alongside councils and the government are crucial to address issues of coordination. Spatial planning is discussed in Chapter 10.

While some improvements to the regime for designations may be possible (such as removing default lapse periods) we see most merit in pursuing a regional spatial planning framework to address complaints about poor coordination of land use and infrastructure decision-making.
8.10 Concluding comments

In this chapter we have looked at the role of councils in urban planning under a new Environmental Stewardship and Planning Act. We see a case for regionalising functions relating to land use, urban growth and infrastructure, and envisage that council restructuring would occur in parallel. A local voice would need to remain strong, however (eg through local boards and bottom up plan co-creation through citizens’ or neighbourhood assemblies). Regional combined plans would simplify and integrate what is becoming a complex and fragmented landscape of plans.

The planning process needs to be improved, too, particularly to make it more agile. We have outlined two ways in which this could happen: one to “reset” plans at a regional level and another to provide for ongoing plan changes. In both cases, there would be a largely single stage merits assessment, and democratic accountability and independent oversight would be married up within that single stage.

Consenting will also be important in a future system, and although we do not see a compelling case for removing appeal rights across the board, there would ideally be much more certainty of outcome embedded in plans themselves rather than relying on extensive discretion at the consenting stage. We have made a range of other suggestions in relation to consenting, and note also that compliance monitoring and enforcement reforms – discussed in the Phase 2 report – will be equally relevant to the operation of an Environmental Stewardship and Planning Act.

Oneroa, Waiheke Island
1 For example, central government created a legislative framing for the development of the Auckland Plan and Auckland Unitary Plan, but detailed development was largely left at a local level.

2 On the benefits of localism, see B Craven, J Goldthorpe-Newsom and O Hartwich #localismNZ: Bringing power to the people (2019).

3 As mentioned in Chapter 7, a clearer definition of subsidiarity (on what grounds national direction is possible or required) should help define roles better. This could itself form a “principle” in a new Act’s purpose and principles, but would probably be more suited to parts in the Act dealing with the functions of various levels of government (currently contained in Part 4 of the RMA).

4 See, for example, Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019).


7 See ibid, Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019); G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 348.


9 New Zealand Productivity Commission Local government insights (2020) at 15.

10 See New Zealand Productivity Commission Local government funding and financing (2019) at 7, where it is pointed out that stagnating incomes in some districts have meant that rates as a proportion of income - to maintain adequate levels of service - have increased markedly compared to other districts.

11 See, for example, <www.newsmoon.co.nz/2020/06/03/1216651/aucklands-budget-cuts-a-half-billion-too-far/>. See also Controller and Auditor General Insights into local government (2020).


13 Ibid s 10.


15 Compare Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019).

16 The New Zealand Initiative Go Swiss: Learnings from the New Zealand Initiative’s visit to Switzerland (2017).

17 See R Crawford What can complexity theory tell us about urban planning? (research note 2016/2 for the Productivity Commission’s Better Urban Planning inquiry, 2016) at 10; see also B Craven, J Goldthorpe-Newsom and O Hartwich #localismNZ: Bringing power to the people (2019).

18 For example, in providing escalation pathways for particularly complex or difficult regulatory functions (eg climate change adaptation measures), Compare Local Government New Zealand A “blue skies” discussion about New Zealand’s resource management system (2015) at 39.

19 These could even continue to be called “councils” or “territorial authorities”.

20 Although regional councils can also impose regulatory controls on land for reasons relating to their functions.

21 Housing Accords and Special Housing Areas Act 2013.

22 Urban Development Act 2020 (see Chapter 11).


24 As in the Auckland Unitary Plan model.


28 Some have suggested that process changes could be targeted at places where there are growth issues: see S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016) at viii.


30 Acknowledgement: Aidan Cameron, barrister.

31 G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 226.

32 Extensive mediation and expert conferencing was held for each topic, facilitated by Panel members and other experienced practitioners, in an attempt to refine the matters and/or receive submission points prior to hearing.

33 The champion of the process was the Panel Administrator, who co-ordinated hearing time with numerous parties and juggled various and often difficult requests.

34 Aided by legislative changes, the Panel met its brief by reducing its quorum from three to two for the final topics, allowing three additional members to be appointed, clarifying that it could hold concurrent sessions with alternative Chairs, and by enabling the delivery of its recommendations in stages.

35 Just weeks before the rezoning hearings were due to be held.

36 The Panel was required to give non-binding “interim guidance” to assist submitters in giving evidence on other topics of the Auckland Unitary Plan, which relied on higher-order direction.


38 Compare Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper (February 2020) at 8: “The single change that can transform the pace of resource management policy making is to remove recourse to the Environment Court on policy matters”. Contrast, however, other commentators who are “not persuaded by arguments that removing or significantly limiting the access to appeals would improve the quality of District Plans or land use regulations.” New Zealand Productivity Commission Using land for housing (2015) at 6.

39 For completeness, we also consider there would no longer be a need for a separate “streamlined” planning process in the RMA.

40 For example, would it be feasible for freshwater that flows through a city to be subject to a different planning process?

41 This would not be instant, and would need to be sensitive to context (eg recognising the enormous cost and effort of the Auckland Unitary Plan process that has yet to bed in fully).


43 What a “regional” scale would look like would not necessarily reflect existing regional council boundaries.

44 See also the alternative proposed by the Productivity Commission: New Zealand Productivity Commission Better urban planning (2017) from 389.


49 Currently, there is a fairly reactive approach to ensuring national direction is implemented, in that there is no obligation to work with councils in actual plan development. Some have gone so far as to say that “the Crown has taken almost no interest in local plans” (New Zealand Productivity Commission Using land for housing (2015) at 272) and that “the Ministry has virtually withdrawn from this role altogether” (A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 12, 16). See also G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 174. In California, non-voting members from government agencies are involved in the work of the Coastal Commission to ensure it links well to other initiatives.


51 To avoid the EPA taking over the making of regulations relating to local matters like detailed questions of zoning.

52 Which is not the same thing as having final decision-making power. That would be a role for the more nuanced processes already described. On the tension between council and judicial roles in planning, see M Williams “Resource management system: Reform or transform?” (April 2018) Resource Management Journal 3 at 9.

53 On the dangers of this, see New Zealand Productivity Commission Local Government Insights (2020) at 16.

54 Compare Local Government New Zealand A “blue skies” discussion about New Zealand’s resource management system (2015) at 39; Resource Management Act 1991, s 33 (which allows that agreements to be reached on the transfer of functions and powers, including to “statutory authorities”, but could not require the EPA to take on a function).
54 As in the Auckland Unitary Plan process, cross-examination should be available (acknowledging that the process effectively supplants the ability to appeal de novo to the Environment Court), but it should be the exception rather than the norm. Parties would not need to cross-examine witnesses in order to put their cases to the Panel.

55 Recommendations on the plan would be released after each stage, so that there is no need to give interim or non-binding guidance halfway through the planning process.


57 See D Sadler “Problems with one-step RMA decision-making” (2014) <www. adls.org.nz>

58 G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 206-208. In particular, participation is useful for gathering information, encouraging community ownership and therefore durability, providing a safety valve for conflict, giving participants catharsis, promoting social learning, and reflecting a fair process.

59 Ibid, at 212. This model is already available for Environment Court litigation at the discretion of the Court under s 278 of the RMA.

60 Ibid, at 207, 212. Compare the Australian civil society model of an Environmental Defender’s Office: Environmental Defenders Office NSW Annual report 2016/17 (2017). The “public” interest would include the interests of nature itself, as well as future generations of people. The role could, however, be broader than the Department of Conservation’s advocacy role, and there would be further independence and a sharper focus on litigation.

61 S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016).


63 See New Zealand Productivity Commission Local government insights (2020) at 16.

64 Compare G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 214, where we noted that the rationale for appeals to the Environment Court is partly to ensure a national level perspective is taken of local issues.

65 On this tendency, see Beca Enabling growth – Urban zones research: Key observations, findings and recommendations (2019).

66 S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016) at 112.

67 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 76.

68 For example, by enticing developers through the prospect of non-notification; see K Palmer Separating regulation of the built and natural environments – Legislative options (Working paper produced for the New Zealand Productivity Commission, 2017) at 4.

69 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 68.

70 Ibid.

71 Ibid, at 76.


73 See generally G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 45. See also N Elmi and N Davis “How governance is changing in the 4IR” World Economic Forum (18 January 2020) <www.weforum.org>.

74 B Crown, J Goldingham, Newsom and O Hackett #ocaliNZ: Bringing power to the people (2019) at 53. Compare New Zealand Productivity Commission Using land for housing (2015) at 295, citing submissions by Hamilton City Council (at 12) and Waipa District Council (at 9).


77 R Crawford What can complexity theory tell us about urban planning? (research note 2016/2) for the Productivity Commission’s Better Urban Planning inquiry, 2016 at 8.

78 New Zealand urban design protocol (Ministry for the Environment, 2005) at 15.


81 Citizens’ assemblies can still run the risk of presenting the views of current residents and seeking to entrench existing preferences (eg low density development) over the interests of future residents. This is why a role for an independent Future Commission would be important.

82 See M Bennett and J Colón-Ríos “Public participation and regulation” in S Frankel (ed) Learning from the past, adapting for the future: Regulatory reform in New Zealand (LexisNexis, 2011) at 21.

83 R Crawford What can complexity theory tell us about urban planning? (research note 2016/2) for the Productivity Commission’s Better Urban Planning inquiry, 2016 at 11.

84 P Gluckman and A Bardlsay The future is now: Implications of Covid-19 for New Zealand (Ko Tū Centre for Informed Futures, April 2020) at 3.

85 Auckland could be an exception, or could be transitioned later, given its recent turbulent changes to both institutional arrangements and the Unitary Plans.

86 There is a question as to whether that should be required where plans were reviewed on a rolling basis, as is becoming commonplace under the RMA. See Resource Management Act 1991, ss 79(1) and 79(4). Under s 79(4), whole of plan reviews are optional.


88 One option would be for private plan changes to be allowed only a few years after a combined plan had been made operative, giving it a chance to “bed in”.

89 An important thing to note is that plan changes are not all alike. In particular, some will need to be given effect to changes to national direction (in a National Environment Plan). For some of these it would be appropriate for the normal plan change process to apply, such as where general policies in national direction need to be implemented over time. For others (such as regulatory components or policies of more specific or urgent application), it would continue to be important for national direction’s provisions to have the ability to be directly inserted into council plans, as is possible now under s 55 of the RMA.

90 There could usefully be a standing national pool of independent planning commissioners department for this purpose, perhaps under the umbrella of the independent Futures Commission.

91 Who have to have gone through the Ministry for the Environment’s “Making Good Decisions” programme.

92 If local government structural reform came later on, other councils within a region could have observer status or, for cross-boundary proposals, could have representatives on the panel.

93 However, at a minimum, there should be an expectation that parties will attend mediation and submit any experts who intend to give expert evidence on a particular topic to expert caucusing before any hearing.

94 A Panel (not dissimilar to the Commercial Panel currently operated by the High Court) could be established to hear High Court appeals on plan reviews. Judges with a background in resource management and local government would be ideal candidates for appointment to an Resource Management Panel.

95 Compare the new freshwater planning process outlined in the Resource Management Amendment Act 2020, from s 23. Another interesting model is presented by the COVID-19 Recovery (Fast-track Consenting) Act 2020, where a judicial “convenor” appoints panel members without necessarily sitting on the panel himself or herself.

96 Regional transport committees under the Land Transport Management Act are one example where different levels of government work together in a structured way. Similar cooperative arrangements can be seen in the boards of entities set up under Treaty settlements, such as the Waikato River Authority. Also compare the California Coastal Commission model, where half the members are elected and half are appointed.

97 Members may not necessarily need to hold warrants as Environment Court commissioners and may have local experience in technical or other local government matters.

98 For example, see Plan Change 2 to the Hamilton City District Plan (Te Awa Lakes).

99 For example, Private Plan Change 84 to the Kāpiti Coast District Plan (Airport Zone).

100 Some have suggested that objectives and policies be removed from the purview of independent oversight by the Environment Court for this reason.

101 As opposed to on particular issues, where power can be delegated by councils (Resource Management Act 1991, s 34).

102 See ibid, ss SRO 54-68.

103 Presently, agreements are reached between councils and iwi authorities/hapū.

104 Compare the role of Māori in the RMA’s collaborative planning track, where iwi authorities select at least one member of a collaborative group (Resource Management Act 1991, sch 1, cl 40(1)(a)).


107 On the nature of consultation, see Welllinton International Airport Ltd v Air New Zealand (1993) 1 NZLR 671.

108 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 189.
119 See Resource Management Act 1991, s 33; Resource Management Review

120 See R Joseph “The Treaty, tikanga Māori, ecosystem-based management, the

117 This is a bespoke institution, with planning and consenting powers under the RMA,

118 Compare Waitangi Tribunal

115 Compare Local Government Act 2002, ss 14(1)(d) and 81, which requires

112 Ngā Aho and Papa Pounamu

111 Compare M Wright, S Gepp and D Hall

110 Ngā Aho and Papa Pounamu

125 See G Severinsen

124 See submission by Hill Young Cooper, cited in New Zealand Productivity

138 New Zealand Productivity Commission

137 Benefits include agglomeration economies that increase productivity.

136 Using land for housing: Issues paper

135 Compare R Chapman and others Submission by the NZ Centre for Sustainable Cities on

134 Contrast RMA, ss 76(4A)-(76(4D)


132 Resources include complex sets of public policies including tax settings and funding for

131 Urban limits are often criticised as removing people’s ability to choose to live


127 For example, the Productivity Commission has pointed to Australian experiences


125 Chapter 8 - Council Planning under the RMA

124 An evidence-based approach: Does the rural urban boundary impose a price premium on land inside it? (Auckland Council, Chief Economist Unit, February 2020).

123 S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016).


120 Such a basic policy choice should not be left just to continual political

119 For example, it could develop through Mana Whakahono ā Rōhe participation agreements on a council by council basis, which have been described as a promising way forward if resource properly. Generally, see R Joseph “The Treaty, tikanga Māori, ecosystem-based management, the RMA and power sharing for environmental integrity in Aotearoa New Zealand – possible ways forward” in G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 3 (EDS, 2018) at 35.


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councils to foster the ability of Māori to contribute to local government processes. On the need for capacity building within iwi authorities and councils, see Waitangi Tribunal The stage 2 report on the national freshwater and geothermal resources claims (Wai 2358 report, 2019).

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119 See Resource Management Act 1991, s 33; Resource Management Review

118 Compare Waitangi Tribunal

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established under the Waikato-Tamui Rauaputa Claims (Waikato River) Settlement Act 2010. See the spotlight on the Authority in G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 189. On suggestions to roll out this model more broadly, see Office of the Auditor-General “Appendix 1: About the Waikato River Authority” <www.oag.govt.nz>


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112 Ngā Aho and Papa Pounamu

111 Compare M Wright, S Gepp and D Hall

110 Ngā Aho and Papa Pounamu

184 S Knight Leslhi and K Scaran “Climate compatible development in New Zealand” (2016) 43 Policy Quarterly 43 at 46.


186 For example, in the context of a project consent, see New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand (2015).


188 Compare Resource Management Review Panel Transforming the resource management system: Opportunities for change - Issues and options paper (2019) at 15: “Matters that should be addressed in plans are left to the resource consenting process to resolve, generating unnecessary uncertainty.”

189 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 142, 213.


191 G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 235.

192 See Auckland Regional Council v North Shore City Council (1995) 3 NZLR 18, where it was determined that regional policy statements can contain “rule-like” policies.


198 See K Counsell “Privacy versus views: A law and economics approach to balancing conflicting interests values” (2018) 22 NZIL 147.

199 Resource Management Act 1991 ss 26A.

200 For example, EDS takes court action on behalf of the environment and the public interest. On the difficult distinction between dispute resolution and planning, see G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019), ch. 7.

201 Although some, like trade competition disputes, are effectively abuses of public process and are easier to ringfence. Recent decisions have helped in this regard, which may go some way to addressing delays in plan changes. See Sheffield Properties v Kapiti Coast District Council [2016] NZHC 3290, [2019] NZRMA 368; Bunnings Ltd v Queenstown Lakes District Council [2016] NZEnvC 125 (procedural) and [2019] NZEnvC 45.

202 For example, the Environment Court practice note requires the Court to be satisfied that consent orders (from agreement between the parties) still comply with Part 2.


204 Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [35].

205 One measure could be for some activities to be permitted (no consent is required) but for a formal notification to council to be made that an activity is being undertaken to trigger monitoring and compliance requirements.

206 Compare the proposal for an NES on freshwater relating to particular agricultural activities in New Zealand Government Action for healthy waterways: A discussion document on national direction for our essential freshwater (2019).

207 Compare Queenstown Lakes District Council’s approach: see New Zealand Productivity Commission Using land for housing (2015) at 149.

208 Compare the recommendation of the Land and Water Forum that additional use of water above an allocated limit is to be a prohibited activity (Land and Water Forum Advice on improving water quality: preventing degradation and addressing sediment and nitrogen (May 2018) at 12). Compare A Haero “Taking rules seriously” (1999) 42 ARSP 180.


210 Compare the Christchurch District Plan, which includes an “enhanced development mechanism” that enables higher density if criteria are met. Criteria could be made to embrace standards for eco-friendly development that goes beyond minimum ones.

211 The fast track model for Covid-19 consenting offers an opportunity to explore how that could be done.


213 Rates of non-notification are extremely high at present.

214 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 155.


216 Ibid.

217 On the implications of "efficiency" for access to justice, see L Newhook, D Kirkpatrick and I Hassan “Issues with access to justice in the Environment Court of New Zealand” (2017) Resource Management Theory & Practice at 52.

218 Most recently, see Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [37].

219 Compare Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [37].

220 See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 215.

221 Ibid.


223 Compare New Zealand Productivity Commission Using land for housing (2015) at 143, where it is said that multiple points of contact within a single council raise issues.

224 The EPA already has a role in managing resource consent applications for nationally significant projects: see Resource Management Act 1991, s 145.

225 See the Ministry for the Environment’s National Monitoring System, data for the year 2017/18.


227 On the value of independence in consenting, see ibid. at 171. See also MA Brown Last line of defence: Compliance, monitoring and enforcement of New Zealand’s environmental law (2017); MA Brown Independent analysis of the 2017/18 compliance monitoring and enforcement metrics for the regional sector (The Catalyst Group, 2018), Compare New Zealand Planning Institute Submission, RMA Review Panel issues and options paper (2020). See also New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand (2015) at 72, 74 and 7.

228 Although they are not the same thing. Compliance, monitoring and enforcement are relevant not just for compliance with specific authorisations, but also for compliance with permitted activity standards. General state of the environment monitoring and policy evaluation across the system is also crucial. On reform options here, see G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 177.

229 See ibid, ch 12; G Severinsen Reform of the resource management system: A model for the future (EDS, 2019) at 134-141; M Brown Last line of defence: Compliance, monitoring and enforcement of New Zealand’s environmental law (EDS, 2017).


231 Although this has become more nuanced under the Court of Appeal decision in R v Davidson Family Trust v Marlborough District Council [2018] NZCA 316, [2018] 3 NZLR 283, there is still no clear directive to actually give effect to national direction (as there is with plans and plan changes). This distinction is quite odd, given that small-scale plan changes can effectively have the same effect as a land use consent.


233 It is interesting to contrast the experience of the United Kingdom, where a proposed expansion of Heathrow Airport was declined partly based on climate change considerations.


235 In particular, the pre-eminence of Part 2 of the RMA, EDS made a submission on the Bill calling for stronger environmental safeguards, which is available at <www.eds.org.nz>.

236 On the potential role of Kāinga Ora here, see New Zealand Productivity Commission Using land for housing (2015) at 300.


238 Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010).


240 Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010) at 17.
9. INFRASTRUCTURE PLANNING AND FUNDING

9.1 Introduction

A new Environmental Stewardship and Planning Act would be central to resource management in urban areas, both for planning sustainable land use and protecting and enhancing elements of the natural environment like water, air and soil. But the timely provision of good quality infrastructure for transport and three waters is also vital to enable land (eg newly zoned residential land) to actually be used for its intended purpose; a house is not much use if a person cannot access transport links or have water connections. That is particularly important where there is rapid growth. Quality infrastructure is also essential to the broader economic and social wellbeing of existing urban dwellers, and in some cases to address environmental impacts (eg from wastewater). Currently, infrastructure is planned, funded and delivered largely through the Local Government Act and the Land Transport Management Act, not the RMA.

Although infrastructure and associated issues are by no means confined to urban settings, it makes sense for transport and water infrastructure to be provided by public authorities in cities, because it can be hard to exclude people from them (eg roads), there is an ethical expectation of free or low cost access (eg drinking water and sewerage), population densities make public provision efficient, and network coordination challenges demand holistic, city-wide planning. Planning and investment also need to be inter-generational in outlook, and there needs to be confidence that responsible institutions will exist over long periods of time. Of course, other types of essential urban infrastructure exist and are provided both publicly and privately, including for electricity, telecommunications, ports and airports as well as social infrastructure like public parks, libraries and museums. But these have not tended to raise the same kinds of issues and we do not focus on them here.

The consequence of transport and water infrastructure being publicly provided is that a robust legal and institutional framework is required around its funding and delivery. Infrastructure needs to be planned, delivered and funded by public entities in a way that is effective (it achieves its goals), timely, fair, transparent and accountable. In contrast to the expenditure of private money, public expenditure needs to have a firm legal basis.

A number of infrastructure problems and challenges were identified in Chapter 4. There are two broad kinds of issues in play. First, the RMA (especially its role in planning for land use change and urban growth) is not well coordinated with frameworks for deploying the infrastructure necessary for land use change to actually happen in practice. Coordination issues, and the potential solution of spatial planning, are explored in Chapter 10.

The second set of issues – and the focus of this chapter – is that our frameworks for funding and planning infrastructure are themselves in need of improvement. There are many aspects to this.

State Highway 1, Auckland
New infrastructure supporting urban growth is extremely expensive, and there can be funding and financing constraints for councils in some places. There can also be difficulties with the incentives facing councils to make adequate investment in a timely way. While it is not the only cause, a lack of infrastructure is delaying the supply of new residential land on which people can actually live, contributing to higher housing prices.

There are problems with the adequacy of existing infrastructure. A lot of it is growing old – notably three waters infrastructure – and in some cases is at risk of failure. An alarming amount predates the first world war. This causes risks to both people’s health and to the environment (drinking water and wastewater overflows). There has in some places been inadequate investment in upgrades or replacements of water infrastructure, and a lack of information on the condition of assets. The Office of the Auditor General has stated that, as a result, some water infrastructure is deteriorating to the point that it may be unable to meet service requirements. Widespread failure of water suppliers to meet safe and high standards of drinking water has been identified as a significant issue by the inquiry into the Havelock North contamination incident, as well as the government’s ongoing three waters review. Most recently, water failures in Wellington have highlighted the perils of underinvestment, while Auckland’s ongoing drought shows the importance of water security.

The country’s ability to plan and fund robust infrastructure systems that can cope with climate change, emergencies and natural hazards is highly constrained. Urban communities face substantial costs to move, replace or create infrastructure to adapt to or protect communities from the effects of climate change.

Transport infrastructure (notably roading) is under significant pressure from congestion in some urban centres, particularly Auckland. This impacts on social wellbeing, environmental and human health, and economic productivity.

The construction and ongoing use of infrastructure, and its design characteristics, can have significant impacts on the environment and climate. Infrastructure choices made today can lock in risks for decades to come.
A future system needs to have the ability to raise sufficient money, and the incentive to spend it in a timely way, for essential infrastructure supporting urban growth, the needs of existing communities, and the challenges posed by a changing climate. Infrastructure choices made today will also cast a long shadow over our ability to improve environmental and climate outcomes. Those choices need to be carefully considered.

There are four key types of system reforms we are floating in this chapter: legislative design, normative change, institutional reform, and funding reform. Institutional and funding reforms are intimately related and are in our view of most importance.

9.2 Legislative design and normative change: A Local Government and Infrastructure Act

In our view, it would be appropriate for infrastructure funding legislation to continue to remain separate from a new Environmental Stewardship and Planning Act, just as the Local Government Act and Land Transport Management Act are separate from the RMA at present. This approach would better ringfence environmental bottom lines,6 and reflect the fact that the regulatory and funding processes under each type of statute look quite different and are there for quite different reasons.

However, as signalled earlier, we see merit in a simpler, more integrated statute dealing with both local government and infrastructure, which would subsume the Local Government Act and Land Transport Management Act (and potentially others, such as a proposed Water Services Act). This more integrated statute – we could call it a Local Government and Infrastructure Act – would be particularly appropriate if central government were to take a more active role in the planning and funding of a wider range of urban infrastructure (eg for water services). As explored further below in terms of institutional reform, a greater role for the Crown seems likely (and appropriate) given constraints and shortcomings of some councils and the imperatives of a post-Covid New Zealand.

A Local Government and Infrastructure Act would not be any less about local government, but it would more strongly recognise the intimate connection between the infrastructure funding responsibilities of central and local government for both transport and water. An integrated partnership across levels of government is needed. A single statute could also simplify the planning environment. Fewer cross-references would need to be made between an Environmental Stewardship and Planning Act and other acts (the Local Government Act, the Land Transport Management Act, a proposed Water Services Act7 and the recently enacted Infrastructure Funding and Financing Act, among others), reversing the trend of legislative fragmentation and complexity we have seen in recent times.8

We see merit in integrating the Local Government Act, Land Transport Management Act, and other infrastructure-focused legislation into a single Local Government and Infrastructure Act.

The purpose and principles of a Local Government and Infrastructure Act would need to be considered closely. The broad focus of councils on community wellbeing that was recently inserted back into the Local Government Act – not just the provision of core infrastructure – would remain central to an integrated Act.9 A lot of that is beyond the scope of the resource management system. But while considerations of sustainability and climate change are already present in the Local Government Act and Land Transport Management Act, we see potential for them to be made much more directive (eg with respect to the importance of deploying green and climate sensitive infrastructure),10 rather than relying on discretionary policy direction in subordinate instruments to set the tone. For example, while the government policy statement on land transport speaks of climate change, the purpose of the Land Transport Management Act under which it is made and changed seems unambitious and non-committal in its focus on “an effective, efficient, and safe land transport system in the public interest”.11 Where is the recognition that infrastructure funding choices have substantial implications for specific objectives around climate change and environmental wellbeing, including our ability to meet international climate targets? And where is the specific link to the firm targets and budgets envisaged in the Climate Change Response Act?

In particular, climate change adaptation measures need to be strongly expressed in legislative principles guiding investment choices for new urban infrastructure (eg in Long Term and Annual Plans, a National Land Transport Programme, and other frameworks for the expenditure of public funds).12 Simply put, the system should not allocate funding for new public infrastructure in vulnerable places (unless it can be easily relocated and where that is an actively planned feature of its design), just as we should not allow new activities to be established in places where there is any expectation of public support for compensation or relocation.13 If we fail to address this, we will be locking in additional risk for decades to come, and it is far more expensive and disruptive to change things in the future than it will be to address them in advance.14 Furthermore, the fact that so much ageing infrastructure is now in need of renewal or replacement is an opportunity to future-proof it against a changing climate (eg so it is able to cope with more extreme weather events). For all infrastructure funding decisions, there needs to be a strong link to the national risk assessment and adaptation plan developed under the Climate Change Response Act as well as new national direction under an Environmental Stewardship and Planning Act.
**A spotlight on infrastructure spending in a post-Covid world**

The importance of having clear, intergenerationally fair criteria for infrastructure investment choices has been brought into stark relief in the wake of Covid-19. To ease the economic and social impact of the virus and lockdown, the government is set to spend billions of dollars. Much of this is earmarked for infrastructure, although at the time of writing many specifics have not been made clear. A lot of investment will be in and around urban areas. It is an unprecedented chance for one-off, transformational capital investments to be made, rather than maintenance of or incremental improvements to what we already have.

The fact that so much of this money will be financed through debt, and is therefore a burden that will fall heavily on young and future generations of New Zealanders, has meant there has been intense debate as to how it should be spent. There is a cogent argument that future generations should not be burdened twice by investments that they will both need to pay for and that exacerbate the environmental and climate problems they will face. A splurge on new roads would be a myopic 20th century mode of thinking, since it is unlikely to solve mobility problems (“every new road, every lane added to a motorway, magically fills up with cars”) and will exacerbate climate, environmental and social impacts. We cannot repeat the mistakes of the Muldoon era where economic and energy security concerns led to infrastructure projects riding roughshod over environmental safeguards. We must remember that we have an even more brittle biosphere now than we did then.

Special Covid-19 legislation has recently been enacted to fast track certain public and private projects through the RMA consenting process. Alongside a number of public projects that have been deemed to be in the public interest and worthy of fast tracking, there is a process provided by which the Minister applies a set of criteria to determine if private projects should be fast tracked as well. Many things can be said about the Act. But the key thing for present purposes is the recognition in the Bill that legislated criteria are important to determine which projects should proceed and which should not. It is not left to market or government choice.

This debate highlights a broader point, too. Infrastructure investment choices, even in normal times, have powerful intergenerational effects. Yet to a large extent they are left to be driven by the political priorities of governments that are held accountable across short three yearly election cycles. Covid-related government expenditure and fast-tracking legislation is also an opportunity to show how the system as a whole could work differently, and to embrace the many synergies between short-term economic imperatives (eg maintaining employment) and the interests of future generations and nature.

We need a green “New Deal”. For example, there is significant scope to invest heavily in green infrastructure (including for electrified mass transit and water services) that improves environmental outcomes, reduces greenhouse gas emissions and increases resilience to climate change. We need to stop focusing just on mitigating the adverse effects of infrastructure, and look at embracing choices that provide synergistic improvements. For example, we can build a new generation of eco-homes to house New Zealanders in a healthy, sustainable, energy efficient and affordable way. Electrified public transport, ecological restoration activities, distributed energy generation (eg rooftop solar) and drinking and wastewater services are all opportunities to make New Zealand a better place to live. So too is electric vehicle infrastructure (see further below). And it is important to remember that urban infrastructure is not just about metal and concrete. Thus, improvements can be made:

- through riparian planting and re-establishing or creating wetlands to filter out contaminants, along with other ecologically-based design features aimed at significantly reducing storm water run-off. This opens up opportunities for riparian and wetland planting to also contribute to both climate change adaptation and mitigation, as well as biodiversity enhancement.
- There would be significant amenity and recreational benefits to this, too. There is a growing body of evidence around the synergistic benefits of working with nature in built environments, for example through design choices that use wetlands, indigenous planting and on-site water management rather than hard infrastructure. That principle could be formalised in a Local Government and Infrastructure Act, and not just be implicit in Covid recovery legislation.
- Around the world there have been many efforts to grasp the nettle. For example, the OECD has proposed a sustainability checklist for guiding Covid recovery measures. Milan, heavily hit by the pandemic in its early stages, has reserved more space for pedestrians and active transport, with the deputy mayor saying that “we want to reopen the economy, but we think we should do it on a different basis from before.” This kind of thinking needs to flow through to post-Covid funding frameworks well beyond the shorter-term economic recovery (“lolly scramble”) phase.

Overall, while legislation should not pre-determine government budgetary decisions, it can legitimately
be expected to influence it in order to steer us towards common goals that are not politicised. Future generations have a strong interest in us doing the “right project”, not just “doing the project right”.\textsuperscript{23} We have an historic opportunity to kick start a plan for fixing our infrastructure deficit and creating a modern, low carbon economy that delivers essential services for all New Zealanders. In future, we need more than just the investment predictability provided by a pipeline of projects and construction accords, or platitudes about the public interest. We should demand strong normative provisions in legislation about what features those projects should have. While the position is untested, some have even gone so far as to claim an existing legal obligation on the government to spend stimulus money in a way that takes into account climate change.\textsuperscript{24} If it does not already, a future system will need to do that and more.

**A spotlight on electric vehicle infrastructure\textsuperscript{25}**

A future system needs to actively support a change towards an urban vision for something better, rather than just focusing on preventing harmful activities. That will require money. Among other things, public investment in the electrification of our vehicle fleet – including public transport – provides an opportunity to achieve many synergistic benefits. Air quality would be a winner. The transport sector also produces around one-fifth of New Zealand’s total greenhouse gas emissions and almost half of our carbon dioxide emissions. In fact, as the Productivity Commission notes:\textsuperscript{26} Transport has been by far the biggest contributor to the rise in New Zealand’s gross emissions since 1990. As a result, CO\textsubscript{2} emissions have risen much more than other gases. Between 1990 and 2016, transport emissions increased by about 70%. Over this period, New Zealand’s vehicle fleet increased in size by 1.5 million vehicles. New Zealand’s vehicle fleet is among the oldest (and lowest in terms of fuel efficiency) in the developed world, therefore exacerbating the emissions impact of having additional vehicles on the road.

The successful deployment of electric vehicles in Norway shows how a suite of supportive incentives – both carrots and sticks – is critical. Norway’s incentives are underpinned by the rationale that “it should always be economically beneficial to choose zero and low emission cars over high emission cars”.\textsuperscript{27} Investment in well-organised charging infrastructure, including fast charging stations, has been substantial, with the government itself financing the establishment of at least two multi-standard fast charging stations every 50 kilometres on all main roads. But this is only one part of a wider package. Drivers of electric vehicles have enjoyed the following carrots:\textsuperscript{28}

- No purchase/import taxes (from 1990) and an exemption from the country’s 25 percent VAT on purchase (from 2001)
- No annual road tax (since 1996) and no charges on toll roads or ferries (1997–2017)

Electric vehicles, Norway
A maximum charge of 50 per cent of the total amount on ferry fares (from 2018) and on toll roads (2019)

- Free municipal parking (1999–2017)
- Parking fees were introduced locally, with an upper limit of a maximum 50 percent of the full price (from 2018)
- Access to bus lanes (from 2005)
- A 50 per cent reduction in company car tax (2000–2018), now 40 percent (from 2018)
- Exemption from a 25 percent VAT on leasing (2015)
- Fiscal compensation for the scrapping of fossil fuelled vans when converting to a zero-emission van (2018)

Together with these carrots, a progressive green tax system calculated according to vehicular weight and emissions profile (the stick) has also been influential in Norway. Overall, there is an extensive package of coordinated incentives, which has met with considerable success. Electric and plug-in hybrid vehicles command a 50 percent market share in Norway, and the government’s goal is that all new cars sold by 2025 should be zero emission.

Decarbonising New Zealand’s domestic transport system, especially in cities where shorter range electric vehicles are viable, would result in significant emissions reductions and contribute meaningfully to reaching our legislated climate change targets. There are many policy levers to pull, and we need to be mindful that electrification of private vehicles will not solve all our issues (e.g., road congestion, dispersed urban form, battery disposal, a need for active transport). But the benefits of investment in electric vehicle infrastructure – as well as supporting policy measures – speak to the need to have much broader legislative criteria about how public authorities spend money in pursuit of inter-generational and strategic goals in our cities. Such principles could extend beyond a Local Government and Infrastructure Act and be embedded in broader legislation like the Public Finance Act.

### 9.3 Institutional reform

Infrastructure frameworks are, in essence, about how and when public institutions spend their money in the pursuit of public goals. They involve significant discretion and are quite different to regulatory regimes like the RMA. The characteristics of our institutions, the practical incentives they face, and the funding tools available to them are at least as significant as the purpose and principles of the legislation under which they operate. For example, it appears that the brief removal of the four wellbeings from the purpose of the Local Government Act (in favour of a narrow focus on core services) did not make too much difference in practice to how councils operated, whereas structural reforms in Auckland over the last decade have been much more significant.

Institutional arrangements vary depending on the type of infrastructure in question. At present, three waters infrastructure is largely the responsibility of local government to plan, fund and deliver (although that can be devolved to council-controlled organisations, and there is a bespoke arrangement in place for Auckland). Land transport infrastructure involves a more complex interplay of functions between central and local control, in that the government sets general policy direction that is implemented through the substantial funding role of the NZTA alongside council investment.

However, there are some general points about institutional change that should be made first. The fundamental role of local government is at the heart of such questions. As discussed in Chapter 8, we see merit in tackling issues of local government structural reform head on. This would see a move towards greater regionalism – in the form of councils becoming regional unitary authorities – although timeframes for change and the exact nature of regional boundaries would require deeper analysis and consultation with communities. Regionalism not only provides the integrated view required for effective urban land use planning, it also means that economies of scale and a wider perspective can be achieved for the delivery of expensive network infrastructure for transport and water.

Alongside local government reform, we envisage a much stronger and more formal partnership between different levels of government in the provision of core infrastructure. We already have this for land transport, but a more proactive role for central government in the provision of water services would be desirable.

Central government should have a stronger role in the planning, funding and provision of essential intergenerational urban infrastructure alongside new regional unitary authorities. This includes three waters infrastructure.
9.4 Institutional arrangements for three waters

The government is continuing to undertake an extensive review of the three waters sector, both in terms of (1) how it is regulated for its health and environmental risks and (2) how services are delivered to people. We discussed the first aspect in Chapter 7, noting our support for strengthened, nationally consistent regulatory standards for drinking water, wastewater and stormwater, and for the establishment of a dedicated water regulator. There have been suggestions that a lack of enforcement has been down to regulatory capture by local government suppliers – a “fox guarding the henhouse” argument – so an independent regulator is a positive step. We now have that in the form of Taumata Arowai. Further legislation is pending at the time of writing that will address strengthened regulatory arrangements (at least for drinking water).

It is worth reiterating, however, that the practical ability to meet stricter environmental and health regulatory standards (eg making sure infrastructure will not fail, or cause sewage overflow on our beaches) is intimately linked to institutional and funding arrangements for service delivery – who plans it and how they pay for it. The simple act of creating, or even enforcing, regulation is not enough to ensure compliance, nor is the establishment of a separate water regulator to oversee and enforce when failures occur. Concrete measures are required to create, upgrade or replace infrastructure, which will require significant sums of money. Institutional and funding settings will be crucial so that suppliers can actually achieve this, because:

- often water crises are water governance crises: managing water risks of too much, too little, and too polluted water is all the more challenging if the roles and responsibilities are not clearly allocated, stakeholders are not engaged, information is not shared and the capacities are not adequate to anticipate and tackle the risks.

On the question of water services delivery – who plans, funds, builds, maintains and operates the pipes, treatment plants, pumps etc – the government’s thinking is ongoing. Most concede that the existing system is in need of change. However, it has been signalled that, at least in the short term, this will see increased Crown funding for infrastructure upgrades being conditional on councils agreeing to some form of regionalisation of water providers, as well as encouragement for councils to work together across district boundaries.

We think a more fundamental shift is needed. Various suggestions have been put forward. Should we have national, regional or local providers of water services? Should there be a separation of regulatory, funding and operational tasks? What degree of subject focus is appropriate (an institution for all three waters or separate ones for drinking water, wastewater, and/or stormwater)? And how independently should service providers operate from accountable institutions like councils or ministers? We shone a spotlight on such questions in the Phase 1 report.

In short, there are compelling reasons for institutional change, which have been traversed by a number of reports already. For example, the Productivity Commission has pointed out that independence and expert management is necessary for water services, noting that:

Except for Watercare and Wellington Water, the governance of drinking water and wastewater suppliers is carried out directly by elected councillors and their officials. In many instances, this will be compromising supplier performance and muddying their accountability to councils.

The sector also lends itself to economies of scale and coordinated investment that have not been realised across most of New Zealand. A fragmented system, in which responsibility rests with 67 councils of vastly varying size and capacity, has meant the dilution of a limited pool of technical expertise. As Infrastructure New Zealand has pointed out, "larger organisations can employ, diversify and develop deeper expertise across everything from technical proficiency to project procurement, financial management and environmental mitigation." The trend throughout the OECD has been for fewer but bigger operators, but in New Zealand few councils even elect to "work across boundaries to manage their water assets, despite the benefits from scale that this could bring, such as access to specialist expertise."

Of even greater concern has been the institutional incentives to underfund core inter-generational water infrastructure (including spending less than the money specifically budgeted for the purpose), which is now at risk of failure and requires significant sums to replace or upgrade. Part of the reason has been a lack of capacity and capability, but a lack of accountability has also been highlighted. Substantial costs are also associated, in some places, with providing three waters infrastructure to service new urban growth.

More conceptually, we can genuinely ask whether there is actually an identifiably local community of interest, or any value-based question to be answered, in the quality and delivery of water services to the public. It is a core part of what councils have always done at a local level, but is there a compelling reason for that to be the case in a future beset with different challenges? Consistency across the country would not be a bad thing.

We need to fundamentally rethink our institutional arrangements for three waters service delivery.
A spotlight on Scottish Water

In the early 2000s similar criticisms to those being voiced in New Zealand were being made in relation to Scotland’s framework for the delivery of water services: the “bits don’t hang together”; there was too little strategy; the system was like a “string of beads without the string”.46 In 1945, Scotland was home to more than 200 council owned water boards. These were reduced to 13 in 1976 and then to just three in 1996. The final step was taken in 2002, when the three were merged into a single specialist provider, Scottish Water. This is a public corporation established by statute, and supplies drinking water to more than 95 percent of the population and wastewater services to over 90 percent.

The experience in Scotland demonstrates that improvements can be made across the board by embracing scale, including productivity gains, reducing costs to the community, a greater ability to fund investments from water charges, a greater concentration of expertise, and upgrades to water treatment facilities to achieve greater health and environmental outcomes.47 The reforms resulted in a 40 percent reduction in operating costs and an increase in customer satisfaction ratings from 63 to 90 percent.48 Compliance with water quality standards has improved steadily, and the number of pollution incidents has reduced.49 Commentators observe that removal of water and wastewater provision from municipal control also facilitated the regulator’s ability to obtain high quality data on assets, costs and income streams thereby improving accountability and transparency.50

The scheme operates on the basis of full cost-recovery. Scottish Water does not bill customers directly; to save money on implementation, charges are recovered by local authorities. Separate water and sewerage charges are banded, so that charges are lower for lower value residential properties. However, water is metered for business customers and an exemption scheme exists for charities.

Scottish Water is also a major stakeholder in the planning process as well as day to day service delivery. Strategic planning occurs according to multiple time horizons: it has a 25 year Water Resources Plan that enables long term planning to occur, including to identify and address long term impacts such as climate change, and a shorter 6 year plan also operates, with rolling reviews every 3 years.51 Interestingly, as of 2013, Scottish Water has enjoyed a statutory mandate not just to provide water services, but also to engage in any non-core activity that will “assist in the development of the value of Scotland’s water resources”, including environmental and non-monetisable values.52

The policy objectives of Scottish Water are set by the government in the form of a policy statement, with ministerial objectives constituting binding directions on Scottish Water and its regulators. There is strong national oversight, but operational independence.

Regulatory functions lie in separate institutions. An economic regulator, the Water Industry Commission for Scotland, has the power to set charges, while the Scottish Environmental Protection Agency authorises the use of water. A separate drinking water quality regulator was also established in 2002, and customer consultation panels or “Waterwatch” provides a consumer advocacy role and has powers to investigate and advocate for consumers. Thus, the regulatory process involves several regulators; for price setting, environmental protection, drinking water quality and consumer advocacy. The strength of the framework, however, is that all participants are working towards the same policy goals.
9.5 A new model

There are many lessons to take from the Scottish experience (notably the benefits of embracing scale, operational independence, and a focused mandate), although it should be applied carefully to the New Zealand context. For example, the Productivity Commission has pointed out that overseas “mergers have not always resulted in increased performance or efficiency. This points to the need for a careful assessment of costs and benefits before undertaking any merger”.53 That said, the benefits of some scale are compelling when compared to the status quo. For example, Watercare, as a regional water entity, has been able to socialise costs effectively and enable investments to be made in areas that otherwise may not have been funded.54

We see most merit in a model for three waters service delivery based not on a single national provider, but on one adopting jointly owned, regional level council/Crown controlled organisations.55 In some ways, this would be broadly reflective of the existing Wellington Water model (where councils jointly own a CCO), although over time this would become compulsory rather than voluntary.56 The model should build on, rather than undermine, the good work that many councils are already doing: not all areas are experiencing the same challenges.57

We do not make specific recommendations as to whether such entities should be asset owning or only asset managing,58 or whether they would encompass the management of stormwater as well as drinking water and wastewater. That question of scope might be something that requires further discussion on a region by region basis, although on balance it seems that stormwater management and flood control would be functions more suited to remain with councils.59 Furthermore, “regional” water entities would not necessarily have to align with the catchment-based jurisdictions of existing regional councils (or future unitary authorities). They could, instead, be focused on the boundaries that make most sense in the context of service delivery, which may be broader than regional council boundaries or cut across them.60 Existing cores of expertise could be leveraged by expanding and modifying existing entities like Watercare or Wellington Water.

Regional water suppliers would still have a significant degree of accountability to the communities which they served. They would be publicly owned, and continue to respect the role of local government in the three waters sector.61 However, they would be able to achieve efficiencies through economies of scale, would be able to socialise costs across a reasonably wide area, would have a commercial footing (albeit constrained by elements of the public interest),62 and would have operational independence. They would recognise that there is not just a local community of interest in drinking water and wastewater services, but also a regional and national one (highlighted by the imposition of national standards for both).

A balance between independence and accountability would be crucial.63 Water services are public goods (even if users are charged, or partially charged, for them) so decision-makers ultimately need to be answerable to users and communities. The expenditure of public funds also requires strong accountability to those who pay – potentially taxpayers and ratepayers, if CCOs were to be funded in this way (rather than just reliant on user-charging).64 Complaints over accountability seem to be one reason that Auckland Council has instigated an independent review of its CCOs (including Watercare).65

However, on the other hand, water utilities require significant independence. This is because, in our view, there are relatively few value judgements here to be made on behalf of communities.66 The relevant value judgements really occur when water quality bottom lines are set at the national level.67 We should not allow drinking or wastewater standards to imperil people’s health just because they are in one part of the country rather than another, and levels of service should also not vary wildly. The purpose of water providers is to meet those standards and service expectations, not to revisit questions about community values and trade-offs. As pointed out in the Phase 1 report, greater independence is valuable where an institution is implementing values rather than setting them.68 Provisions relating to CCOs in reformed local government legislation could usefully be amended to provide a more specific set of objectives for these institutions.

Others have pointed to the need for independence so that water suppliers can manage debt off council balance sheets, and take a long-term view of investment. Periodically there are calls for CCO activities to be brought back within direct council control (especially in Auckland), due to dissatisfaction with performance. CCOs are by no means always perfect. However, such criticisms often seem to be a kneejerk reaction to performance issues that could be dealt with in other ways. A CCO model offers valuable arm’s length decision-making on inter-generational issues, while still being accountable politically, and the organisations can be directed to pursue public interest outcomes alongside commercial efficiency.

Entities responsible for the provision water services need to be accountable to the public. However, this needs to be balanced with a strong imperative for independent management. This can be provided by a regional level CCO model.

We think that a key difference from a pure CCO model, however, should be direct involvement by the Crown, as a partner alongside councils.69 We see value in hybrid institutions where different levels of government come together in formal partnership, rather than in entirely separate institutions that interact (and can conflict) with each other.70 For example, the government could have a right to appoint members to a single board.71 Furthermore, a regional CCO’s statement of intent should outline how its activities would contribute to the
government’s objectives for water services, not just those of council owners.

Alongside the creation of regional CCOs, and a dedicated health/environmental regulator, an economic regulator could usefully be introduced. Although CCOs are ultimately accountable to councils (and, in this model, also the Crown), and there is an “Essential Services Benchmark” that must be reported against under local government legislation, that has not prevented underinvestment in infrastructure. A more robust economic oversight role would still be useful to ensure that (1) an adequate level of investment was being made for the maintenance and development of three waters infrastructure and (2) that any user charges imposed were both fair and sufficient when taking a long-term view. A similar model has been set up in Melbourne, where pricing and investment by multiple state-owned but arm’s-length utilities is overseen by an Essential Industries Commission. In the same spirit, the Productivity Commission has said that a regulatory regime should be administered by a credible and independent regulatory agency, with expertise in investment, service quality and pricing analysis. The Commerce Commission already regulates many other natural monopolies in New Zealand and is a natural candidate to do so for the monopoly parts of the water sector. It has the right culture, and is clearly a professional, independent and authoritative organisation, with a credible “industry watchdog” reputation. It has significant experience with applying supplier specific regimes, and with managing light-handed regulation for some suppliers and explicit price control for other suppliers.

We agree. Alternatively, the role of an economic watchdog could be performed by the Infrastructure Commission (if it had capacity), or even a focused branch of a new Futures Commission. The idea of a formal consumer advocacy body, as in Scotland, is also an intriguing one that deserves further attention, although it may be that existing civil society institutions could fulfil that function here.

At the same time, as with Watercare, the law should prevent the pursuit of profit or the payment of dividends to public shareholders. Making money is not the point of public water providers. The aim should be to achieve and maintain the safe, reliable and environmentally sustainable provision of water services but, within those constraints, to make services as efficient and affordable for users as possible.

The regional provision of water services through a jointly-owned CCO model would be made simpler by the regionalisation of councils themselves over time, as recommended earlier. Council shareholders would change from existing territorial authorities to one or more regional authorities. Especially for smaller councils where infrastructure comprises a significant part of what the institution does, removing water responsibilities from direct council control supports the need for local government structural reform. The Productivity Commission has pointed out that “some councils appear to be reticent about losing control of their water functions as it is regarded ... to a certain extent ... as justifying their ‘existence’.”

However, as discussed earlier, we find it best not to talk coarsely about “amalgamation” here. That unduly simplifies what reform would be doing. It is more appropriate to talk about which functions should lie where. Local autonomy is essential for truly local matters, and the shifting of some functions to a regional level should not mean that meaningful entities with sub-regional boundaries simply “disappear” or that everything suddenly becomes the responsibility of larger unitary authorities. Furthermore, a CCO would remain largely accountable to communities, but at a regional level and with independent oversight and a stronger central government voice. Community accountability remains strong when compared with alternatives (eg transferring functions to Crown-owned utilities or a single national water service provider, as in Scotland).

Jointly owned CCOs should be deployed at a regional level for the planning, funding and delivery of drinking water and wastewater infrastructure and services. A CCO model should be adjusted by allowing for/requiring the Crown to be a partner in these organisations alongside local government, with a corresponding degree of capital investment (and control).

An economic regulator should be established, with responsibility to ensure that investment levels and pricing are both sufficient and fair, and that a long-term and public-interest perspective is being taken.

A dedicated, independent regulator for water services is a good idea, and Taumata Arowai has recently been established by specific legislation to fulfil this function. This could be folded into a strengthened EPA to avoid adding complexity to the system, especially if Taumata Arowai were to take on a stronger role with respect to environmental standards for wastewater and stormwater as well as drinking water.

9.6 Land transport

A regional CCO model could also be used for the provision of land transport infrastructure in a future system, for similar (albeit, in our view, less pressing) reasons to water. Some have suggested a similar model to that used already in Auckland, where a single regional CCO (Auckland Transport) operates at arm’s length from council and takes on the planning role of a regional council under land transport legislation. We see merit in pursuing that model, and note that while arm’s-length operational decision-making has, at the national level, been carefully formalised through the separation of the NZTA from the Ministry of Transport (subject to general direction in a government policy statement), that separation has not been seen as necessary at a local level.
The use of this model for land transport would not mean that a transport CCO would be self-funding (as is Watercare), or act entirely independently. Councils would still be required to fund transport directly (costs cannot, realistically, be fully recovered by a CCO through direct user charging, so more general sources like rates are needed), alongside contributions from the NZTA through the national Land Transport Fund. Councils would therefore need to have the corresponding ability to appoint and remove directors, issue statements of expectation, and review performance. Compared to water services, investment in transport infrastructure is often a highly political subject. So, while operational independence is desirable, there will need to be a higher degree of democratic accountability to constituents for the value-based choices being made.

It makes most sense to manage land transport infrastructure (excluding the national network of state highways) through a regional lens, and that already occurs in a structured, albeit reasonably complex, way through regional transport committees. However, as with drinking water and wastewater, the interest in an effective and sustainable transport network is not just about the regional interest. There is a strong national interest as well. As the Productivity Commission has explained:

> The rationale [for central government involvement] is that the state highway network interconnects with local roads to form a secondary part of the national road system. While most use of local roads is by local people, out-of-district people and businesses also use them.

We therefore consider that it is appropriate for central government, through the NZTA, to continue to have a role in transport infrastructure planning, alongside regional CCOs. At the very least, active oversight by central government is crucial, and (in contrast to the three waters experience) is encouraged in the transport sector through a model that requires the NZTA to pay close attention to the details of investment choices at a local level.

That said, the relative degree to which effective control is exercised by central and local levels of government should, we think, be revisited in light of a clearer definition of subsidiarity in a future system. For example, there could usefully be a review of which revenue raising tools should feed into the Land Transport Fund or, instead, go directly to councils/CCOs. One study of European best practice, for example, found that regional or metropolitan authorities with their own budgets were most successful in delivering integrated transport, and that councils need substantial financial autonomy for reforms to be most effective. That deserves closer attention in a New Zealand context.

The future should also see the development of more bespoke partnership mechanisms between central and local government to deal with significant land transport investments. For example, while fraught in some ways, the Auckland Transport Alignment Project has been positive in bringing together various arms of central and local government to create a forum for the long-term planning and funding of Auckland’s transport needs. This begs the question whether broader frameworks like this should be formalised for deployment elsewhere, implementing lessons learnt from the Auckland experience. As explored in Chapter 10, a strategic spatial planning framework, where there is greater predictability of funding, may fulfil this role.

**A spotlight on the Auckland Transport Alignment Project**

In 2016, in order to bridge the gap between central and local government, the Auckland Transport Alignment Project was initiated. This was an effort by the Auckland Council and the government to create a bundle of priority transport projects for the region, and brought many relevant entities together. A revised deal was made in 2018 with the Labour-led government, resulting in additional funding and an agreed shift in priorities to focus more on public transport.

However, while funding is now committed, Auckland Transport must still apply for it, project by project. Lengthy delays in individual funding approvals remain common even where broad consensus and agreement has been reached. There has been an inability to obtain agreement on projects in advance or simultaneously with the planning process, and funding pressures remain. Some of that pressure has come from a mismatch in timing for longer running projects. And there can be considerable competition for national level funds between state highway proposals and local roadway/public transport projects. To some extent the project highlights how issues can emerge from having multiple levels of government, each with their own democratic mandates and policy priorities, controlling land transport investment and planning. But it also points to the value of moving towards a more formal, coordinated and predictable partnership model.

A future system should see a continuation of a partnership approach for land transport between central government (particularly the NZTA) and councils (to be regional unitary authorities). The arm’s length decision-making of the NZTA could usefully be mirrored by a move towards CCOs for land transport at the regional level (as is the case for Auckland Transport already).

It would be worth further investigating whether a greater proportion of funding levers (eg those currently going into the Land Transport Fund) should be directed towards regional rather than national control.
9.7 Infrastructure funding

Constructing, maintaining and renewing urban infrastructure costs a lot of money. Although it is not all urban, physical infrastructure tends to dominate council expenditure. In 2017, drinking and wastewater alone accounted for 25 percent of the capital expenditure of councils, and this figure is predicted to rise significantly. Indeed it already accounts for over 45 percent of the capital expenditure of five councils.

Many underlying infrastructure issues in the system appear not to be with institutional arrangements per se, but rather with the constraints and incentives provided by the funding and financing tools available to those institutions. Two types of incentive stand out as important: (1) a lack of funds or finance leads to an inability to deliver what is required in some situations; and (2) there are incentives to not invest in necessary infrastructure even if the ability to raise adequate funds exists (see below). There is a grey area between the two, as powerful political constraints can be seen, in practice, as an “inability” to raise funds.

Regionalisation of councils themselves, alongside a regionalised CCO model for water and transport, may relieve some funding pressures. There would be efficiencies to be gained from using a business focused governance model (eg with independent directors), economies of scale to be enjoyed from managing a network across a larger pool of customers and assets, benefits from concentrating a limited pool of expertise, and the ability to cross-subsidise some users (eg those with failing legacy infrastructure) from others to achieve a consistent standard of service to all. Larger councils with bigger populations and incomes are more able to spread their portion of the costs but many smaller councils and communities are not well positioned to do so. A new regionalised model would therefore be “capable of applying efficient scale and specialisation to help small communities meet the challenges of maintaining and upgrading their water, wastewater and stormwater infrastructures”.

However, the scale of the costs faced by the three waters sector in particular, including in the near future, means that much more will be required than just efficiency gains and economies of scale in ongoing management. For example, wastewater upgrades needed to give effect to the NPS for Freshwater Management have been estimated to cost $1.4–$2.1 billion, with ongoing operating costs at $60–$90 million. Those figures may be overly conservative, and costs will only increase as urban freshwater standards under environmental legislation become stricter (as we envisage under an Environmental Stewardship and Planning Act). Measures to ensure compliance with drinking water standards have been predicted to cost $305–$567 million. As early as 2014, the Auditor General pointed out that by 2022 the gap between local government expenditure on the renewal of assets and depreciation could be between $6 billion and $7 billion.

Transport infrastructure, particularly the large capital costs of new electrified mass transit systems, active transport projects, and electric vehicle infrastructure, are daunting too. The costs of infrastructure to service new growth in rapidly expanding urban areas are substantial, as they are for infill developments and complex brownfields sites. A multi-billion dollar funding shortfall is facing Auckland alone, in order to meet the vision in its spatial plan, get on top of congestion, and make up for historical underinvestment in passenger transport. Furthermore, urban infrastructure costs will be dramatically increased across the board by the need to adapt to climate change. How are we to meet these funding challenges if institutional reform is not enough?

The economies of scale generated by regionalising infrastructure providers through CCOs may help with daunting funding challenges faced by councils for transport and three waters infrastructure. However, they will not be enough. There is a need to revisit the funding tools available to our institutions, and the incentives for both raising and spending that money appropriately.
A spotlight on funding three waters

Above, we have suggested the rolling out of a model that would see three waters service delivery performed by regional CCOs. But the funding model associated with these entities should also be reformed. That would be in three key senses.

First, user-charging would be embraced more, including through (1) encouraging or requiring the use of volumetric charging and (2) fully internalising the cost of trunk infrastructure upgrades on new developers that cause increased load (through development contributions and connection charges). That would have the effect of driving the efficient use of what can often be a scarce water resource (brought into sharp relief by Auckland’s ongoing drought), as well as a fair distribution of costs. Some have pointed to poor outcomes generated by “under-recovery of costs and funding from council rates rather than water service charges and development fees” and that “those who benefit from, or cause the need for, a service should pay for its costs”.

There is also a possibility to charge “users” indirectly for stormwater services, through a property-level fee for stormwater management rather than provision through general or targeted (eg neighbourhood level) rates. This could help pay for infrastructure, but also encourage innovation by giving people incentives to manage stormwater onsite in innovative ways that can have water security, ecological, pollution-prevention, and other co-benefits (for example through the use of rain gardens, rooftop gardens or rainwater collection facilities where a site allows). In Germany, fees have been high enough to encourage residents to invest in rainwater harvesting facilities, both for new builds and for existing properties.

Messaging around user-charging is crucial for political and community buy in. In particular, there could be resentment from urban dwellers if they were charged for water services and yet much larger water takes for irrigation or bottling were not. Of course, the charge is for the infrastructure and services involved in water supply and removal rather than the water itself, but perception counts. We have elsewhere suggested that modest and scalable water rentals should be rolled out across New Zealand.

That said, we should not get carried away with an over-zealous approach to economic efficiency. User-charging should not be excessive or unduly burdensome, and water is still an essential public good that should be accessible to all. Thus despite concerns from some about a lack of full cost recovery, we still see a case for services to be subsidised, where necessary, by more general sources of revenue like rates and central government grants. That reflects a broader community (or national) responsibility to provide essential services for vulnerable groups. An economic regulator would play an important role in ensuring that user charges were not excessive, the use of more general sources of funding were transparent and justified, and overall investment was sufficient for achieving inter-generational outcomes.

A second key funding reform would be for the Crown to contribute in a structured and predictable way. This would recognise the national community of interest in the environmental and health outcomes that are influenced by funding and investment in water services, as well as the enormity of the costs faced. As in other areas of the resource management system (eg freshwater quality), this recognises that national level standards need to be met by a corresponding commitment by central government to actual implementation. Local government is not just a dumping ground for additional functions without the means to implement them.

A central government funding contribution could be linked to, and be proportionate with, representation on the board of a CCO (see earlier), and even targeted to the needs of particular regions. An interesting parallel can be drawn with the membership of catchment boards prior to the local government reforms of the late 1980s. These both had locally elected members and appointees of the Crown, and received significant central funding for erosion and flood control works.

We should not, however, treat central government funding in an ad hoc way through the creation of specific funds (eg a Housing Infrastructure Fund), or only for particular purposes (eg supporting urban growth but neglecting the renewal of failing assets). The need is more systemic and ongoing, and should be linked clearly to prioritisations to achieve health and environmental outcomes (targets) as well as deliver more housing and other forms of development. For example, the Productivity Commission has suggested that central government funding for water be deployed in a comparable way to transport – including applying criteria based on need and the ability of councils to fund in other ways (eg through rates). Earlier, we suggested a similar thing in relation to the government’s shorter-term Covid-19 infrastructure spend, which needs to be based on clear and transparent criteria rather than pork-barrel politics. These should be based on legislated principles in a revamped Local Government and Infrastructure Act, and the adequacy of both local and central funding for maintaining essential services needs to be overseen by an independent economic regulator (see earlier).
Alternatively, significant Crown involvement could be treated as a stopgap measure until legacy issues (e.g., failing pipes) or current challenges (e.g., urban growth or the need for treatment plant upgrades) have been resolved. How long the resolution of such issues will take may vary by water region, and there is an opportunity for substantial investment in such things as part of the Covid-19 economic recovery package. But costs could remain formidable and ongoing (especially in light of increasing climate change challenges). It might be that, as a country, we simply need to recognise the importance of central government capital investment in essential services like water.

A third element of funding reform would concern the ways in which local government itself, and associated CCOs, raise their core revenue. That is a much broader topic, and is explored below.

Aside from institutional change, we see merit in revisiting how the provision of water services is funded. In particular, there should be greater deployment of user-charging (including volumetric charging) and predictable, need-based central government contributions where required to meet adequate levels of service delivery and environmental and health standards. That would likely come with a corresponding level of control through representation in regional CCOs.

Councils would remain primarily or partly responsible for the operation of regional level CCOs (alongside the Crown) so may be required to fund them in part (alongside cost recovery measures by a CCO itself). Thus, there is a need to revisit how local government itself is funded.

9.8 Local government funding: expanding the toolbox

Local government funding reform is not so much to do with the financial planning process (e.g., the production of long-term and annual plans, infrastructure strategies, and regional land transport programmes). Rather, the key question here is about the underlying kinds of funding and financing tools that can be drawn upon through those processes to ensure that adequate infrastructure is delivered in a timely way.

The Productivity Commission has persuasively argued that the core of the system by which we fund and finance councils’ functions remains appropriate. The current main funding tools of local government in New Zealand measure up well against the principles of a good revenue-raising system, including simplicity, efficiency and revenue stability. The current framework provides councils with considerable flexibility in how they raise revenue, and this is reflected in the diversity of ways in which they do so.

Funds can be raised through, for example, rates, fees, user charges, and development contributions. The Commission has shown that, overall, rates have remained relatively stable when compared to per capita and household income, and they provide a reasonably fair and easily administered system for raising core revenue for council functions (especially infrastructure and related services). It has previously pointed out the desirability of removing exemptions for rates on Crown land, which in effect results in local communities subsidising central government despite the need for funding flows to be moving in the opposite direction.

Similarly, despite some public perceptions to the contrary, council debt remains a desirable mechanism to spread substantial capital investment across generations of people who benefit from it. Growing debt levels, say the Commission, are not of concern given corresponding population growth (and therefore the ability for the debt to be serviced over time). In fact, the concern is quite the opposite: in some cases, such as where there is a need to service new residential land in rapidly growing cities, there are excessive constraints on raising further necessary finance through debt, and.

It’s common to see councillors campaigning on a platform of low or no debt, as if a council has a budget to be managed like a household’s grocery bill. In fact, debt is an important instrument for sharing the high upfront costs of essential infrastructure across the generations who will benefit from it. Most councils are well below their debt limits, but their reluctance to take on debt can mean necessary investments in essential infrastructure (such as renewals or upgrades) are deferred. Deferring investment can help keep rates growth low in the short term, but passes the costs of inadequate and failing infrastructure down the line to future residents.

As shown in Figure 9.1 below, the Commission also suggests that we will need to expand the council toolkit to target particular problems where there are acute funding pressures and constraints. The use of tools in an expanded toolkit also needs to reflect what is fair, in that those benefiting from a measure should generally be expected to pay for it (if they can). We find this reasoning compelling.
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<th>Type of funding or financing pressure</th>
<th>Issues to be addressed</th>
<th>Tool(s) required to respond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rapid urban growth requires the timely provision of new infrastructure and/or upgrades to existing infrastructure.</td>
<td>Some councils are approaching their debt ceilings, so cannot use this to finance infrastructure in a way that spreads its costs over future residents or generations. Councils also take significant risks in making large capital investments up front based on growth forecasts that may underestimate or overestimate actual growth, and may ration the supply of infrastructure to minimise this risk.</td>
<td>Create “special purpose vehicles” to remove debt from the balance sheets of debt constrained councils and allow for greater private financing of infrastructure. These entities would be able to impose levies to recoup the costs of development over time. At the time of writing, legislation has just been enacted to achieve this (the Infrastructure Funding and Financing Act 2020).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Greater use of user-charging mechanisms (e.g., volumetric charging for wastewater, road congestion charges) and targeted rates to reflect that those who benefit should be those who pay.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The ability to capture value uplift (increased property values resulting from public investment in infrastructure or services, e.g., a new mass transit system).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Structured contributions from central government transparently linked to demand or need.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A centralised urban development authority - Kāinga Ora – could play a greater role in funding and financing new developments, de-risking large scale developments for councils.</td>
</tr>
<tr>
<td>The renewal and replacement of ageing or failing infrastructure.</td>
<td>Significant (and ultimately unknown) amounts of infrastructure are ageing and at risk of failure, particularly in the three waters sector.</td>
<td>Again, the use of “special purpose vehicles” to remove debt from the balance sheets of debt constrained councils.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Greater use of targeted rates to reflect that those who benefit from upgrades should be those who pay.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Need-based or principle-based contributions from central government to address large capital works.</td>
</tr>
<tr>
<td>Climate change adaptation</td>
<td>There are significant costs involved in moving, upgrading or increasing the resilience of existing infrastructure in light of climate impacts (e.g., rising sea levels, more frequent and severe weather events).</td>
<td>Some cost sharing mechanism between central and local government in the form of a dedicated fund, which could be capitalised in various ways. See the discussion further below.</td>
</tr>
</tbody>
</table>

Figure 9.1: New funding and financing measures suggested by the Productivity Commission for infrastructure
More needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure.

It is worth reiterating here that the context of reform has changed in the wake of Covid-19. As discussed in Chapter 4, uncertainties abound as to what funding pressures will be faced in urban settings over the coming years, and how they may differ across regions. In particular, the housing market may enter a period of decline, driven by a wider economic downturn (although we have not seen that happen yet). Migration-fuelled growth may slow, but urban growth may still be fuelled in other ways (e.g., large numbers of New Zealanders coming home, new home buyers taking advantage of low interest rates). Growth may manifest differently in different areas, too, as some seek to escape from larger urban areas like Auckland and Wellington and seek to work remotely in smaller centres. It is by no means certain that growth pressures will slow for long (if at all), and there remains an underlying issue with housing supply in New Zealand. A future system will therefore need to be prepared to cope with the kinds of funding issues we have seen in recent years.

Furthermore, what the pandemic has not changed is the need to upgrade ageing or failing infrastructure to increase its resilience to climate change. Yet it has further affected the ability of councils – especially smaller ones and those with local economies dependent on hard hit industries – to raise core revenue from (1) residents who will not be able to or will not tolerate rates rises, (2) charging for the use of amenities that are either closed or not well patronised, (3) fees for services, and (4) returns from commercial investments. Even Auckland Council has been forced to make significant cuts to its budget. A hit to local funding sources across the board suggests that there will be a need for an even more significant injection of debt financed spending by central government to fill gaps.

Funding and financing constraints on local government and residents in the wake of Covid-19 reinforces the need for a greater central government role in financing intergenerational urban infrastructure.

9.9 Deeper funding reform: engaging with institutional incentives

Rather than just expanding councils’ funding toolbox to increase available revenue, some commentators have pointed out the need to go further and rethink the
incentives that core funding tools can have on both raising money and spending it appropriately. At the core of this issue are questions about council rates as a revenue raising tool.

Perhaps the most alarming example of poor incentives can be seen in the systemic underinvestment in the maintenance and renewal of inter-generational urban goods like water infrastructure. Infrastructure New Zealand has highlighted an unacceptable backlog of investment starting at $2 billion, and echoing similar sentiments we have pointed out previously that.

Due to political constraints on rates increases and constraints on borrowing, there may be a temptation for some councils to prioritise spending on things the community wants at the expense of the renewal of some kinds of essential infrastructure – notably water infrastructure. Some councils have adopted a “run to fail” approach for underground assets, not investing in upgrades until there are problems (such as sewage overflows or public health problems such as with inadequate treatment of potable water).

This may seem puzzling, as communities have failed to invest in assets that directly benefit themselves; they are not just reluctant to fund assets that will benefit others (eg new growth infrastructure for future residents). Although the issue is by no means ubiquitous throughout the country, it highlights the risks of leaving decision-making and prioritisation on inter-generational issues by those accountable through three yearly election cycles, especially if failures only become visible to the public years after they should have been pre-empted (as with underground and unmonitored assets like water). As such, we have suggested a degree of institutional reform above (through a regionalised CCO model and close independent oversight for investment and pricing) as well as funding reform (including central government grants, starting with a large capital injection as part of the Covid-19 response).

9.10 Incentives to fund urban growth

A more explicable situation in which councils have lacked adequate incentives is where there is a need to pay for the infrastructure required to service rapid urban growth. Here, there is an argument that they have incentives to provide it on a “just in time” (or, indeed, too late) basis. This is particularly obvious for large scale greenfields expansion. New suburbs are expensive and investment in them is of little direct benefit to existing residents, yet they are perceived to be subsidised through rates or imprudent levels of debt. As we have pointed out previously,

there can be strong political incentives on councils not to increase rates, especially if they are being used to service new development and the benefits are not apparent to existing residents who are paying for it (and who are the ones voting in local elections). This can lead to an institutional bias in councils against growth, and therefore resistance to the timely and proactive provision of serviced land for [affordable] residential development.

The Productivity Commission agrees that there is at least a perception among ratepayers/voters that the community as a whole does not obtain net benefit from growth and yet is obliged to fund it. It describes this as an issue of political economy (as opposed to an economic reality). But it is the perception among constituents that ultimately matters in local decisions, because those people are the ones that establish political mandates for councillors.

The phenomenon also applies to infill and brownfields developments, in which case funding constraints – a reluctance of ratepayers to pay for new or upgraded infrastructure that benefits only some – can reinforce existing residents’ preference for amenity values associated with low density (preserving leafy green streets). Why pay for things that you think not only fail to benefit you, but also which you actively oppose? Furthermore, where urban growth pressures are large, significant financial risks need to be borne by local government, in that:

Councils that install new infrastructure ahead of housing demand may find themselves facing high borrowing and depreciation costs, particularly if growth occurs at a slower rate than anticipated. For this reason, many councils tightly control the supply of new infrastructure.

While it would be wrong to paint all councils negatively as being “risk averse” by nature, there are understandable political and financial incentives for prudence that may not produce the best overall outcomes. This has been described as “a broken system for financing infrastructure that delays or prevents developments going ahead” and a “serious social and economic problem” contributing to the housing crisis. We need to keep this firmly in mind when we hear hyperbolic suggestions that environmental protections in the RMA are to blame for housing unaffordability and must be removed.

According to Infrastructure New Zealand, the same basic problem underpins all of these phenomena: there is misalignment as to where the benefits and costs of investment fall. That may still be the case even if users were able to be charged fully for the services they use (ie if the costs were internalised), because there would still be little prospect of benefit for councils and therefore weak incentives (they would be neutral at best, and the risk burden would remain if cost-recovery had to happen after investments were made). For example, it is understandable that councils are reluctant to pay for rapid urban growth, because its presumed benefits (in the form of increased economic activity) accrue mainly to...
central government via income tax and GST. For example, Infrastructure New Zealand has pointed out that:

the major issue facing councils is that their primary source of revenue – rates – is detached from council or area performance and instead linked to constituent perceptions of need and affordability ...

Without a financial benefit from decisions which improve welfare, the dominant priority for councils is minimising rates increases for existing residents. [While] the government benefits directly from improved economic performance via growth in income, corporate and sales taxes... local government expenditure which improves economic performance requires an increase in rates with the tax windfall returned to central [but not local!]

The Productivity Commission has agreed that incentives to raise and spend money need to be corrected. However, it suggests fairly targeted measures to do so. Many of these are about shifting particular costs to those who enjoy associated benefits.

That would see councils charging users more directly to recover costs where feasible (eg volumetric charges for water), but otherwise through broader proxy measures, such as targeted rates or value uplift capture, where:

owners who enjoy “windfall gains” in the value of their property because of nearby infrastructure that the public has funded, would be required to pay a portion of this gain to the council. In turn, revenue raised would help the council fund future growth.

Value uplift capture is used extensively overseas and in our view is attractive from standpoints of both efficiency and equity. The Commission also envisages greater need-based or performance-based assistance from central government where there is a national interest.

Some degree of cost recovery from those who use, or benefit from, urban growth infrastructure would be appropriate. In particular, a future system should facilitate value uplift capture to help fund large projects.

However, others have gone further, arguing that instead of just shifting growth costs onto those who benefit (future residents and central government), we should embrace the other side of that coin: shifting the benefit to those who bear the costs (councils). Some have therefore suggested allowing local government itself to collect income tax, thereby providing an incentive for councils to invest in measures that will enhance people’s incomes. That particular measure may be difficult to implement at a local level, given the complexity of the system required and challenges with tying people’s incomes to small geographical areas within New Zealand.

Another potential solution floated by the Productivity Commission has been a system of central government grants to councils, proportionate to new building work (eg based on the value of building consents issued). The idea is that this would be a carrot for councils to increase the supply of serviced land, but through a mechanism that may be more easily and efficiently administered than others (eg a local income tax). That more systemic and predictable approach would, in our view, be a much better method for government assistance than a continuation of ad hoc funds that are parcelled out on a discretionary basis and can be vulnerable to politics. As Infrastructure New Zealand has observed, “Infrastructure funding and financing solutions for one council area risk opening an argument for similar assistance elsewhere, disincentivising central government from intervening”. This demand-driven funding could even be given directly to arm’s length CCOs (with Crown representation on boards) and earmarked for water and transport rather than councils themselves.

An alternative that we see considerable merit in is deploying a form of local GST (as long as it were met by a corresponding reduction in national GST), rather than relying on an extensive system of government grants to facilitate urban growth. There are many challenges and benefits of using GST, but the benefit we find most compelling is not a particularly technical one: it would provide communities with greater control over their own destinies and better reflect subsidiarity. As Infrastructure New Zealand has pointed out, regional economic development is currently, counterintuitively, a central government activity: “Successive Governments have sought to lift regional economic performance, but with little demonstrable success. Major central investments risk the appearance of backing winners.” Similarly, another commentator has pointed out the OECD’s view that: local governments need greater incentives to promote and accommodate economic development and growth in a way that best suits their region, not the current one-size-fits-all approach.... [and] once local governments in New Zealand are given more autonomy and incentives, they will offer a package of goods and services that meets the needs and demands of the residents of that region.

The assumption that localism is best clearly does not hold for all cases – we might think of the poor inter-generational outcomes produced by regulatory “services” that protect the natural environment in cities (freshwater pollution, biodiversity decline) and the systemic underinvestment we have seen in water infrastructure. But overall it does suggest the desirability of putting substantial fiscal control in the hands of local government, subject to strict environmental limits and national oversight. It would also continue the New Zealand tradition of recognising the fiscal autonomy of local government, which in turn reflects its position as a partner rather than a subsidiary of the Crown to be handed money when necessary.

Introducing a local GST, for example, could encourage the funding of growth, because it would generally be seen as a profitable thing for councils to do. But it may also encourage the funding of broader social and economic development measures that a narrower focus on building activities, funded directly by the Crown, may
not. Some have pointed out, for example, that "without a revenue stream linked to value creation, councils are ... disincentivised from investing in [economically] productive activities" more generally.157

That said, we do not see a local GST as a viable replacement for rates as a core funding tool. Increases in spending – and therefore GST revenue – would not correlate with the need to fund all public goods and services. In particular, we need to remember that funding is also about ensuring a sustainable standard of living for communities declining in population or economic activity. While declining urban areas are to be commended for efforts to attract more residents and visitors (and Covid-19 may see that succeed in some places), a decline is often due to factors beyond the control of communities (eg the attractions of a larger city). Managed decline may be needed in many cases to adapt to change rather than fight it.158

Yet the basic health and wellbeing of those remaining in a community (especially dependent on the quality of water and transport infrastructure), should not depend only on what people can spend. That can also vary considerably from year to year and make long-term planning challenging. Rates, fixed to an unchanging amount of land in an area, provide reasonable predictability of service because they are based on an assessment of community need rather than predictions of economic performance. This concern may be reduced in the event of local government structural reform (a move towards larger regional entities), and the ability to subsidise some parts of a region from greater economic activity in others.

Yet even with the restructuring of local government, over-reliance on local GST may still mean that fluctuations in the economic performance of different regions may unacceptably disadvantage some over others; one might think of urban centres in Northland or the West Coast as being particularly at risk.

Wholesale change in our funding model may also be "costly, disruptive and of uncertain benefit"159 and one needs to seriously question whether central government would have an appetite to voluntarily give up some of its own revenue raising capability.

Overall, we agree that the way forward is to expand our toolbox, not replace it. We see merit in including a local GST within that toolbox, among other things that spread costs more equitably, raise sufficient revenue in a timely way, address pressing short-term deficits, and provide systemic incentives to invest appropriately across all levels of government. The need for systemic institutional and funding reforms for infrastructure provision can be seen in the cautionary tale of the Mangawhai Community Wastewater Scheme. This highlights that urban infrastructure issues are not limited to large or rapidly growing centres, and that issues are often more to do with funding and institutional arrangements rather than RMA processes.

A spotlight on the Mangawhai wastewater scheme

A small community in Northland, Mangawhai historically had no centralised wastewater scheme. Instead, it relied on the use of septic tanks, package plants or long drop toilets. Aware of growing water quality issues, Kaipara District Council proposed a range of communally based wastewater schemes throughout the 1980s. However, residents consistently rejected all schemes, questioning the need for them and complaining that the costs were too high. Matters came to a head when the Council notified its District Plan in 1996 and the continuing lack of provision for wastewater was contested by the Minister of Conservation. More restrictive land use controls were sought in the Environment Court due to the adverse environmental effects that urban development was having on the Mangawhai Harbour. A study confirmed that reliance on septic tanks presented an increasing health risk, and was causing both groundwater and coastal contamination.

The Council identified three options, and it was decided that a centralised reticulated wastewater scheme was needed. Council funds were, however, constrained. There was limited ability to take on higher levels of debt (for every one dollar of debt, the council needed $2.50 of income under regulations at the time).160 The Council looked to the private sector for a solution, through the formation of public private partnership.

After an initial bidding round, the Council awarded Simon Engineering “preferred proponent status” in 2002, on the basis of a proposed contract they had negotiated with the company. The arrangement envisaged that Simon Engineering would build the wastewater plant and then operate and maintain it for a 25 year period, after which the asset would be transferred back to public control for no charge. The Council would be obliged to make annual payments during that period (“toll payments”), to cover the capital costs of construction (with a maximum total payment of $13.5 million), as well as the operating and maintenance costs for the scheme. A pricing structure was calculated on this basis. However the proposed arrangement proved problematic.161

- In December 2002, before an agreement was finalised, the Local Government Act changed the rules in play by specifying that arrangements with the private sector could last for up to a term of 15 years. This meant that the private partner would no longer be able to take advantage of taxation benefits from owning the assets over the anticipated 25 year period, so negotiations continued and the Council contribution had to be increased (alongside new public consultation).
The scheme required resource consent from Rodney District Council and Auckland Regional Council (since incorporated into the Auckland Council) to dispose of the effluent from the wastewater scheme to land. Only one option was seen as consentable, but it required the council to purchase land from a third party. That party had been subdividing other parts of their land and were themselves going through the consent process. When the vendor’s consent became conditional upon the upgrade of a road they threatened to withdraw from the sale if an amount was not added to the purchase price to cover that cost. Council agreed. Costs were snowballing.

The Council filed 13 separate resource consent applications with the regional council. All were publicly notified, 61 submissions were received, and several appeals were lodged. But consent was eventually granted following a mediation process that required the Council to (1) construct the wastewater treatment plant in a different location, (2) seal an additional road, and (3) cover the costs of connecting properties to the sewer network. Council bore this additional financial burden on top of its obligation to pay capital costs for construction of the plant.

The required capacity of the plant was based on past growth rates. However, subdivision in the area exceeded predictions. Between 2001 and 2006 the Council approved consents for an additional 875 new lots. Capacity at the plant had to be increased.

Matters became worse when the global financial crisis hit. Its impact on the property market reduced the Council’s projected income from rates and development contributions. By September 2004 the contract with Simon Engineering had still not been signed (although approval to proceed had been obtained). Then, in November 2004, the parent company of Simon Engineering failed, and negotiations had to be abandoned. The Council eventually entered into a contract with another company, at a “significantly higher” cost.

Between 2002 and 2005 the Office of the Auditor-General received five complaints about the scheme from residents and ratepayers, primarily concerned with affordability and the adequacy of consultation.

The scheme was eventually completed due to assistance provided under the government’s sanitary works subsidy scheme, which was designed to help small communities afford wastewater schemes. Yet by 2005, the debt accrued by the Council led to a proposed rates increase of 30 percent, and as a result ratepayers initiated legal proceedings against the council. An inquiry was launched into the matter. That inquiry highlighted broad, systemic challenges for small local government units in infrastructure funding, including a lack of capacity and expertise (engineering services had been contracted out to a private company and the Council only had one in house engineer), noting that:

it can be difficult for public entities to pay the market rate for scarce specialist expertise or to keep enough specialists in one location to make a particular function viable... There are also limits to what entities with limited funding bases can afford in terms of the number of staff and their skill level.

The project had also seen a range of different mayors and councillors come and go through that period, further affecting institutional capacity and knowledge.

The Kaipara District Council saga is particularly alarming and complex, but the underlying problems are not unique. Some issues were contractual or to do with a shifting regulatory landscape, but foundational institutional and funding reform – including local government structural reform, a more systemic role for central government, and an expansion of funding tools – is required to ensure urban infrastructure is fit for purpose around the country.

Innovative experiments require funding, too, beyond the “normal” framework. Some, for example, have put forward the intriguing idea of a satellite city to address Auckland’s population challenges. Rather than growth happening slowly and incrementally, we could create a new, compact urban hub (eg potentially through Kāinga Ora) in an area of low land productivity and low environmental value, and link it into plans for wider mass transit. Drury is seen as a potential location for this kind of development and is a good opportunity for substantial central government investment to showcase what a truly innovative, compact, healthy, connected and green urban area could look like in the future.
The incentives provided by the current system of funding infrastructure in the context of urban growth and renewal require correction. Targeted measures to shift the costs of infrastructure onto those who benefit will help. In particular, the Crown should be responsible for a much larger proportion of the costs (and control) of drinking water and wastewater infrastructure.

However, we also see merit in allowing councils to levy a local form of GST, which provides incentives for funding growth while allowing communities more control over their own destiny. That cannot be a replacement for rates, but would be a useful addition to the toolbox.

More bespoke funding arrangements may be required for particular projects over time, but ad hoc agreements between councils and Crown should not form the basis of funding for a base level of essential services. They should also be guided by a cooperative vision in a spatial plan (see Chapter 10).

9.11 Reducing pressure on infrastructure, and the importance of synergistic outcomes

A future system will not just be about planning and funding new and replacement infrastructure (supply). Infrastructure also needs to be used efficiently and responsibly, and we need to think about managing demand better.

Greater application of user-charging has been mentioned above as a way to equitably spread the costs of funding infrastructure. This cannot be absolute, as water and transport are public goods vital to the dignity of life for all. But some degree of user charging also provides incentives for people to make more efficient use of services, so that both monetary and environmental costs are minimised. It is a good example of economic efficiency approaches being used in the service of broader public policy goals, rather than being adopted for their own sake. In the Phase 1 report, we shone a spotlight on the merits of volumetric charging for drinking water. This approach has been very effective in driving more efficient use (which is increasingly important in light of Auckland’s water security issues and the looming threat of climate change), and we see a case for allowing volumetric charging for wastewater outside of Auckland as well as congestion charging.

Earlier, we also mentioned the incentives that charging for stormwater services could have, causing people to reduce the burden on public infrastructure by internalising their impacts onsite (eg through rain gardens, rooftop gardens, permeable surfaces, or rainwater harvesting systems) where that could be done in an economic and healthy way. This iterative change could be an efficient way to reduce the need for massive trunk infrastructure upgrades, and to make systems more resilient to more extreme weather events as climate change becomes more apparent. Incentives for onsite stormwater management could also have significant co-benefits if rolled out across an urban area, in terms of amenity, urban cooling, pollution-prevention, biodiversity and climate change. It would complement the outcomes sought by the RMA’s regulatory regime (eg targets for urban biodiversity) and climate change legislation (both adaptation and mitigation). Recycling rainwater and greywater rather than drawing on potable water (which in many parts of the country may become scarcer) for some activities – like watering the garden – makes a great deal of sense from both an economic and ethical standpoint.
As soon as you build a road, more demand. It has been shown time and time again that building more roads to accommodate increased demand is not really a problem. Most people probably think of traffic jams as bad things. Being stuck in a car for hours on end in a commute from the suburbs of Auckland or Wellington is no one’s idea of a good time. The answer for decades has been to build more roads to accommodate increased demand. It has been shown time and time again that this doesn’t work. As soon as you build a road, more cars will come.

The next cab off the rank has been to discuss congestion charging to reduce demand on our roads. That could be effective, and has the added advantage of raising revenue that can be recycled into much needed infrastructure investment. As long as impacts on the vulnerable are addressed, it is also fair because those who use a service are the ones paying. A 2014 discussion document found that, while it is more complex, congestion charging in Auckland would offer more benefits than raising money through increased rates and petrol taxes. Yet all of this suggests iterative rather than transformational change. What if we were to change our viewpoint more fundamentally?

Transport 2021 for Greater Vancouver adopted the concept of “insufficient congestion”. Rather than viewing congestion as an evil, the plan intentionally allowed for congestion to increase for single occupant vehicles. The incentive here to reduce demand was the pain of the congestion itself, rather than any financial penalty. So instead of building new roads, could we repurpose parts of existing ones as pedestrian or cycle friendly pathways to constrain private car capacity even further? A similar response is emerging through specific lanes for buses and multi-occupant vehicles.

Of course, the idea of “insufficient congestion” really relies on there being an effective and desirable public transport alternative, not just active transport options. In Vancouver, public transport capacity was expanded based on a clear community mandate. Increased road capacity was confined to freight routes and public transport was intentionally and strategically incentivised over new roads.

The Vancouver example highlights the idea that increasing the supply of roads primarily in response to demand from private motor vehicle users is not the answer. Truly future-proofing our urban transport system relies on heavy capital investment in new electrified mass transit coupled with quality urban densification. If there are better options available, should we really worry about those who still choose to congest motorways? That said, care needs to be taken. This approach does not allow for the co-benefits associated with congestion charging: the ability to raise money from road users to fund roads. That would have to be done in other ways. Furthermore, mobility should not be reduced for the disabled, and maintenance and safety enhancements would still require funding for all roads. In places like Auckland, even the costs of maintaining existing assets and keeping levels of service for new neighbourhoods is daunting.

User-charging should be deployed more in a future system both to provide a fair way to fund related services and to incentivise the efficient use of resources. A focus should be on the policy synergies this provides. However, charging and other forms of demand-based tools cannot be absolute and must carefully consider how impacts on the poor or vulnerable are to be addressed.

Furthermore, the existence of congestion can be its own disincentive to use roads. As long as attractive alternatives are provided (eg effective public transport supported by population density), continued road congestion might not be seen as a problem at all.

### 9.12 Funding and climate change adaptation

We know that the costs of adapting to climate change will be enormous, including in and around urban areas. Sea levels will rise, and weather events may become more extreme and frequent. There will be a need for large scale investment to be made in order to redesign, reposition and future proof infrastructure. In particular, there are significant implications for three waters management, in relation to wastewater treatment plants, piped water supplies and drainage infrastructure, as well as coastal road networks and areas prone to flooding damage. Many communities even face the prospect of relocating significant numbers of people, but lack the capacity to fund large scale relocation of assets and cover the construction cost of new infrastructure. The density of people and infrastructure in cities makes this particularly problematic. We face a challenge like we have never seen before.

As part of their infrastructure strategies, local authorities are already required to provide for the resilience of infrastructure assets to natural hazards, and to make appropriate financial provision for those risks. They must also refuse consent where the building work is on land subject to, or likely to be subject to, natural hazards such as flooding, overland flow, storm surge, tidal effects and ponding. However, the nature of the task ahead is beyond the funding capacity of local authorities (even if the political will exists to tackle it), and that seems unlikely to change even with the creation of regional unitary authorities with infrastructure responsibilities and an expansion of funding...
tools. We require a more systemic and forward-thinking approach by central government. We cannot take the same reactive and inconsistent approach that has been taken with other natural disasters.\textsuperscript{79} We know the threat, and now is the time to do something about it.

The most obvious step is to not make our risk exposure greater. To complement land use decisions made under a new Environmental Stewardship and Planning Act (see Chapter 6), a Local Government and Infrastructure Act needs to contain clear principles that new public infrastructure investments should not occur in places where risk is too great. A precautionary approach is needed, and a strong and directive link between the Act and an adaptation plan and independently developed risk assessment under the Climate Change Response Act. That is lacking at present. Even where risk is acceptable, a Local Government and Infrastructure Act must require new infrastructure to be resilient to future threats (eg increased capacity to deal with extreme weather events).

Even more difficult will be addressing challenges that already exist. That may prove to be by far the most expensive and daunting prospect of adaptation, especially in coastal cities containing dense populations and infrastructure assets. Some such challenges are faced by central government (eg in the need to relocate nationally owned assets), while most others are faced by councils (eg the need to strengthen flood protection measures or move three waters infrastructure). Others are shared (eg the need to reduce risks to the roading network).

We will have to be extremely wary about trying to “fight” rather than “adapt” to climate change by funding expensive but ultimately futile measures like seawalls and hard flood protection structures. We are not the Netherlands, where it makes a great deal more sense to construct substantial hard infrastructure to keep the floodwaters out,\textsuperscript{180} and risks are constantly changing and need to be managed adaptively.\textsuperscript{181} If we lock in short-term, path dependent choices, we may then “feel reluctant to abandon a policy … in which we have already invested heavily.”\textsuperscript{182}

There will be a role for protective measures during a transition, but the focus needs to be on measures that work flexibly with environmental change over the long term, like managed retreat and support for changing industries. For example, the Productivity Commission has suggested taking measures to “make room” for rivers rather than seeking to control them,\textsuperscript{183} and Judy Lawrence warns against creating public expectations of ongoing protection through increasingly expensive infrastructure.\textsuperscript{184}

A spotlight on Awatarariki

In 2005, an intense storm triggered a huge debris flow down the Awatarariki Stream catchment at Matatā, in the Bay of Plenty. Twenty-seven houses were destroyed and 30 percent of the properties in the township were damaged. The likely return period for a storm of that size was initially thought to be around 200 to 500 years. Between 2005 and 2012 the council investigated a range of options for mitigating further such events, and residents were given permission to repair and rebuild their homes in the same location.

By 2012, the Whakatane District Council had invested $7 million in building new retaining walls above affected properties and another $55 million had been set aside for improving stormwater drains over the following 10 years. The Council estimated the recovery costs would be $10 million, with around one third coming from Government.\textsuperscript{185} A new rail bridge and underpass were constructed and around $5.2 million was earmarked for a debris dam and flood channel.
However, all this expenditure was committed prior to an engineering solution being found to address future debris flow risk. Such a solution proved elusive and there remained the danger that any debris dam would fail. An updated meteorological report determined that, due to climate change, by the end of the century storms of the magnitude of the 2005 event would have a return period of closer to 40 to 80 years.196

A voluntary retreat package was investigated, and residents were made offers based on property valuations. This in turn led to several years of negotiations, with a number of residents appearing determined to stay. Eventually, the Council decided a plan change should be sought to extinguish existing use rights, on the basis the area posed a risk to the life of residents.

In 2018, an agreement was reached between the government and the Bay of Plenty Regional Council on a process to explore funding for a further acquisition package. Residents were also notified of a $15 million fund to voluntarily buy owners out of their properties,197 and changes were proposed to the district and regional plans to enable a forced retreat from the area.188 Independent commissioners came out in support of plan changes identifying the area as at significant risk, despite some objections from residents.189 They considered that protection of the health and safety of people should be the dominant concern in such high hazard areas.190

The Awatarariki example demonstrates the ultimate futility of fighting against nature, and the considerable costs associated with a reactive response to climate change, both in terms of time and money and the personal impact on the people and communities involved. It also highlights the need for more formal and systematic risk assessments to be undertaken so that high risk areas are identified and durable strategies put in place early on. It was pure luck that no lives were lost at Awatarariki, and similar situations are likely to become more common in future.

Although it is not publicly owned, we can also think of our urban housing stock as a form of intergenerational infrastructure. Some people may find their properties uninsurable as risk increases.191 Is there to be support for people who, without fault or prior willing blindness, now face the prospect of losing their homes and livelihoods? We agree with others that the answer must be yes; New Zealand has a proud history of social welfare and risk pooling, although politicians love to argue around the margins. As a society, we cannot tolerate the prospect of potentially thousands of people losing their homes due to environmental risks that they could not, when they made the relevant decisions, predict or mitigate. Resisting compensation may produce perverse political incentives, too. As Jonathan Boston and Judy Lawrence have pointed out:193

In the absence of a well-designed, principled and consistent system of compensation, there will be political pressures for governments to implement high-cost "solutions" to protect vulnerable properties (and also threats of legal action). Yet many of these potential "adaptations" will provide only temporary respite.

How do we fund all this? We support calls for a new national-level funding mechanism capable of both pre-empting and responding to the threat of climate change, including in cities: a National Adaptation Fund.194 This is not just about infrastructure – costs are much more wide ranging than that – and needs to be tied directly to a national adaptation plan addressing issues in a holistic way. Central government needs to be directly involved in implementation. Adaptation funding is not just about parceling out vast amounts of money to local government. It is about central and local government partnering, alongside Māori, to deploy funds in a coordinated way for common goals that have both local and national implications.

A fund could be capitalised in a variety of ways. Intergenerational equity demands that the current generation, who have helped cause the problem, bear a significant amount of the burden despite not having yet felt the full effects of change, although the cost needs to be spread. This is yet another reason why a short-term Covid economic response should invest heavily in climate adaptation and resilience measures.195 Furthermore, some have suggested that revenue from auctioning units under the emissions trading scheme could be directed to an adaptation fund.196 Risk-based contributions could also be imposed as conditions on resource consents that allow urban development in higher risk areas, or through the deployment of targeted rates.

There would need to be common principles for how money would be spent, so that it did not end up as a competitive lolly scramble.197 This could be similar to the Natural Disaster Fund administered by the Earthquake Commission, but would need to be deployed in a more pre-emptive way to promote resilience and avoid risk rather than respond to it.198 One potential model could be akin to that under the Land Transport Management Act (where regional level plans prioritise projects, inform a national programme, and seek money from a national land transport fund in accordance with common criteria). In that model, the government (ie the Ministry/Minister) can set policy expectations, but is not directly involved in fund management (which is done at arms’ length by a Crown entity). Prioritisation of funding in this model is therefore both bottom up and top down, which is what is required in the context of climate change adaptation. Some have pointed out that neither the Earthquake Commission nor the Public Works Act frameworks work well in the climate change context, so something new is needed.199 And the existing Land Transport Management Act framework is only focused on one type of infrastructure, so provides an interesting model but cannot perform the broader role itself.
Adapting to climate change in and around urban areas poses an enormous challenge from a funding perspective. We should not be investing in new infrastructure in vulnerable places, and there needs to be a clear link between a national adaptation plan, land use controls under an Environmental Stewardship and Planning Act, and infrastructure frameworks.

Even more difficult will be questions about how to fund the movement of existing infrastructure and people. We need a new funding mechanism in the form of a national adaptation fund, to be deployed according to clear and transparent principles and through collaboration between central and local government. There are different models for how that could operate and be capitalised.

9.13 The Building Act

A Local Government and Infrastructure Act would (among other things) provide a framework within which core urban infrastructure would be planned, funded and delivered. But a holistic view of urban resource management should not make a sharp distinction between (1) publicly funded infrastructure, (2) other built elements to which it connects, such as private homes and offices, and (3) broader land use patterns. In particular, we need to consider the role of the Building Act in a future system. Should it be doing more to support urban objectives? All aspects of urban sustainability need to be looked at, not just those within the scope of a regulatory framework like the RMA.200 We note with support recent indications from the government that the Building Act will be reviewed with sustainability and climate change in mind.

At present, the Building Act (and Code) governs how buildings themselves are constructed, rather than their impacts on the surrounding environment. It is designed, primarily, to ensure people can use buildings safely and without endangering their health, and it has no real spatial element (which things should go where). That said, while the Building Act recognises that buildings should have attributes contributing to the wellbeing of people, it also seeks that “buildings are designed, constructed, and able to be used in ways that promote sustainable development”.201

The Act requires building consents to be obtained, meaning that often the development of land requires authorisation under both the RMA and the Building Act. Misalignment can lead to delays and bureaucratic churn, and these processes could usefully be better aligned.

The idea of an integrated project consent could assist here (see Chapter 8). But there are more fundamental questions about where RMA style tools should stop and Building Act tools begin. In the Phase 1 report we noted that there is overlap:202

the RMA is also concerned with the potential impacts of activities on people’s health and safety, and restricts the use of land (including for building) partly for this purpose. Local government plays a significant role in decision-making and implementation under both.

Sustainable development is also one component of the Building Act’s purpose. This, as well as the preservation of heritage, are key principles of the Act. In short, the conceptual distinction between the acts is by no means a clear-cut one... [and] attempts by local councils to control the design of building interiors under the RMA has been seen by some to be crossing a firm philosophical line.

Managing questions of aesthetics – how interiors look and feel, ceiling heights, balconies and such – show tensions and overlap between the acts. But far more important are the potential environmental impacts that stem from building design and material choices. In particular, there is room for debate as to whether the environmentally-focused RMA (and its replacement) can or should be used to require stronger “green” measures than under the Building Act.203 The latter specifically states that building work is not required to achieve performance beyond compliance with the Building Code, in the absence of any express provision to the contrary.204

Yet if the RMA has a legitimate role to play in greening construction standards, its current purpose, principles and plan provisions do not really target that kind of thing and are currently ill suited to the task.205 The frameworks are meant to complement each other, not fill gaps where the other has failed.

It would be possible, but ultimately (we think) undesirable, for the two frameworks to be merged. A new Environmental Stewardship and Planning Act would be about urban design and form (which are inherently spatial) and the impacts of buildings on the environment, not about construction standards. In our view, the Building Act is the more appropriate place to tackle such questions directly.206

However, the Building Act should be aligned with the norms of an Environmental Stewardship and Planning Act.207 Instead of asking how we mitigate adverse effects from buildings, we really need to be asking how the built environment can proactively help to fix problems we are already facing, and pursue synergistic benefits. For example, the close relationship between questions of urban form under the RMA and building standards can be seen in the fact that “solar orientation for passive heating of homes depends on how streets and lots are laid out”.208 One commentator has also pointed out that:209

Ideally, all local authorities should implement practices that will promote sustainable construction and the interface between the [RMA and Building Act] in order to magnify the level of sustainability that might be achieved. There are no specific or clear statutory criteria presently in existence to achieve this aim.

Issues of design and spatial planning, water management, community heating systems such as local combined heat and power generation, waste
management and so on, all fall within the remit of the local authority. It seems clear that the synergies between the [acts] must be exploited to achieve truly sustainable construction and buildings.

Failing to take a coordinated approach to environmental issues not only locks in risks for decades or even longer (the lifespan of buildings), but also foregoes opportunities we may later regret (as we are forced to retrofit green measures, which may not always be straightforward or cheap). In particular, construction standards relating to energy efficiency, carbon neutrality, recycled materials, green infrastructure and living rooftops are crucial to the pursuit of urban environmental enhancement and resilience. This is echoed in the non-statutory Urban Design Protocol which characterises a successful city as one that utilises green technology in the design and construction of buildings, including renewable energy sources and passive solar gain.210

An Environmental Stewardship and Planning Act and the Building Act should not be merged. However, the statutes should be more closely aligned to coordinate permitting processes, achieve common urban objectives and pursue synergies in the built environment.

Of course, the Building Act is not inherently deficient. It already provides that buildings should be designed, constructed and be able to be used in ways that promote sustainable development.211 There are several relevant principles, too, relating to energy and water efficiency and conservation, the efficient and sustainable use of building materials, and the reduction of waste. This is a big improvement on the Act’s predecessor (even if embracing green principles directly has given rise to perverse questions about the ability of the RMA to require stronger measures to be taken).212

In practice, however, some have criticised this as leading to “a delineated range of acceptable solutions, or processes” to achieve standards, and many developers “adopt the specified ‘acceptable solutions’ to achieve compliance with the Code, as this is an easy route to take”.213 The New Zealand Green Building Council has also observed that “the energy requirements of New Zealand’s woefully inadequate Building Code have not been substantially updated since 2007”.214 And some have pointed to a missed opportunity in the Christchurch rebuild, where proposals for construction standards to reach higher star ratings (see the spotlight below) failed in the face of lower standards mandated in the Building Act, and where insurance clauses requiring “like for like” rebuilds meant innovation and improvements were stifled.

More broadly, the OECD’s 2017 Environmental Performance Review of New Zealand called on the government to modernise and strengthen the Building Code. We agree. Sustainable development in the context of the Building Act should not be used just “in the sense of durability and integrity of the structure in relation to site risk, structural integrity and water resilience”, but also to regulate buildings’ contribution to wider concerns of environmental sustainability.215

Grey Lynn, Auckland
In most cases, this further “greening” of the Act should not be prescriptive, in keeping with the performance-based ethos of the Building Act. We do not want to stifle innovation, a lot of which is happening anyway. However, the outcomes being sought could be much clearer and specific, especially in urban contexts. The Act seems a world away from the ambitions outlined in strategic plans like Auckland’s climate action framework, where there is a push not just for low impact homes but for specific outcomes like decentralised, renewable energy (eg rooftop solar). Climate change mitigation and resilience needs to be much more prominent in our decision-making criteria (eg to address flooding and urban heating), as do biodiversity outcomes. As with all other regimes, there needs to be a strong link between building standards and emissions reduction plans and adaptation plans made under the Climate Change Response Act.

Furthermore, recognising that people often take the easiest option, there should be active effort to develop more “acceptable solutions” (ie measures that are deemed to comply with the Building Code) that embrace new green technology. That could drive voluntary uptake of such measures. But if there are market barriers, Covid stimulus funding provides a chance to subsidise them, and for their benefit to be made more apparent to consumers over time. After all, crises present opportunities “for the trialling and innovation of new technologies and processes that are not … supported by the traditional regime”. An active public programme for retrofitting existing housing stock – for environmental and resilience purposes as well as health reasons – should be planned for.

There could also be measures to make the regulatory pathway easier (where appropriate) for green innovation. Some have pointed out that consenting process can be a barrier to better outcomes, and persuasively called for fast-track consenting measures and the implementation of stronger financial incentives (eg tax rebates, reduced development contributions). While we need to take care that fast tracking for some projects or methods does not turn into sectoral propaganda (eg a competition between forestry vs concrete to see who can shout the loudest), there are also bigger questions to consider here about what materials we should be using, and why. Timber construction, for example, has considerable environmental and climate benefits and could be encouraged where appropriate.

Policies made under a new Environmental Stewardship and Planning Act (eg in national direction) could even expressly recognise the benefit of complying with stronger green construction standards, thereby making higher performance a positive consideration (to which weight needs to be given) in consenting decisions about associated land use. That would not require higher standards than the Building Act or directly penalise those that failed to meet them, but could give policy incentives to developers to do so voluntarily. The RMA is no stranger to this approach, where the positive impacts of an activity (eg renewable electricity benefits for climate change) can be considered, but the negative impacts of an alternative (eg climate impacts of fossil fuels) cannot.

Formal performance standards under the Building Act could also be linked to, or gradually adopt, the more stringent certification requirements of the Green Building Council (eg in its Homestar or Green Star rating). Subsidies could usefully be deployed in a more systematic way as a “carrot” to support regulatory “sticks” for green building technologies, as they have been for other building performance measures.

**A spotlight on building certification**

The Homestar rating tool was developed by the New Zealand Green Building Council in conjunction with BRANZ, and allows certification of residential dwellings (including detached dwellings, terraced housing and apartments). To rate a home’s performance and environmental impact, Homestar awards points across seven categories: energy, health and comfort; water; waste; materials; site; home management; and an optional innovation category. The rating thus certifies the health, efficiency and sustainability of New Zealand homes. The Green Building Council explains that “most new homes built to the substandard Building Code will only achieve a 3–4 Homestar rating... [out of 10]... and most existing New Zealand homes only achieve a 2–3 Homestar rating”. It considers that homes should achieve a minimum 6 star rating to be warm, healthy and efficient.

The Green Star rating measures buildings’ environmental attributes, and can be applied to the design and as-built phases of non-residential construction projects as well. More specifically, the NABERSNZ tool (supported by the Energy Efficiency and Conservation Authority) benchmarks the energy performance of commercial offices.

We also see a case for the use of more specific and directive measures. Some design options are now being deployed overseas on a mandatory basis and should be closely considered in a future system. For example, France has enacted legislation making it mandatory for new buildings in commercial areas to have a certain proportion of green roof or solar panel coverage, and Dallas has enacted a plan that requires certain types of buildings to install cool or green roofs. A climate change citizen’s assembly in France has suggested making energy efficiency renovation of buildings compulsory by 2040. Ireland is seeking to integrate planning for green infrastructure into the preparation of regulatory land use plans (ie district plans). At the very least, there should be requirements to design buildings to enable the retrofitting of green infrastructure at low cost later (eg so they are wired to support solar panels and batteries, and plumbed to support rain water harvesting).
Instead of just focusing on region-wide pollution regulation and infrastructure investment, a lot of synergistic benefits can be achieved for urban water management by implementing measures at the individual building or property scale (whether new or existing builds). Such measures include living roofs, rain gardens, rainwater harvesting systems, and permeable ground cover.

There can be significant benefits for stormwater and flood control. For example:

A long-running council programme in Portland, Oregon, paid a small financial incentive and provided on the ground support to help individuals disconnect downspouts and redirect the water safely to lawns and rain gardens. The programme resulted in 56,000 disconnections and the removal of 5 million cubic metres of stormwater from the piped network each year.

On-site water management can therefore reduce the need for costly infrastructure upgrades, or free up capacity for additional connections (eg for infill or brownfields developments) where urban growth is rapid. The use of rainwater harvesting and storage tanks can also be used to improve households’ water security and take pressure off public supplies particularly in times of drought (and natural disasters), as well as diverting stormwater and mitigating flooding in high rain events. Rain gardens and living roofs relieve pressure on stormwater systems too, but also provide amenity value, urban habitat, climate change mitigation, temperature regulation, and natural filtering of contaminants that are otherwise likely to enter stormwater pipes, urban waterways and the coastal environment. Urban runoff has an enormous impact on water quality. Capturing runoff from industrial or older rooftops and plumbing for low-grade reuse (eg toilet flushing) also allows for untreated contaminants that would otherwise end up in waterways to instead be redirected to wastewater systems.

However, such measures are still relatively uncommon on private property in urban areas, despite strong policy support in some places. The market is unlikely to provide them by itself. It has been reported that one engineer has said:

If the regulations aren’t there in the first place no one’s going to do it … ethically it’s pretty poor as a professional, but you can also see where your client is coming from, you don’t want to spend money if you don’t have to.

There are persuasive reasons to provide further incentives for uptake across New Zealand’s urban centres. These could be regulatory (requiring the use of particular methods on new developments where possible, or setting performance standards requiring some kind of measure). They could be financial, in the form of a subsidy and practical support for installation (as in Portland) for new or existing builds, or some form of charge for the use of public stormwater services. They could appeal to the environmentally conscious through formal certification schemes. Or they could be educational, as many may be unaware of potential benefits, including personal ones (for example, rain gardens are low maintenance and self-irrigating).

New Zealand could look to some Australian centres like Sydney for inspiration in terms of policies for living roofs and water sensitive design.

Construction and infrastructure standards should be strengthened to recognise the essential contribution that “green” construction will make to environmental outcomes in a future system. There are different ways in which this could be achieved, including through performance-based subsidies, stronger certification programmes, charging, and incentives.

There is more that the Building Act could do to support the wide range of objectives sought by a future system, especially when it comes to improving environmental outcomes. Its relationship with a new Environmental Stewardship and Planning Act will be important, but so too will be a strengthening of its own standards and a push towards synergistic design solutions. Regulation may need to be complemented by significant funding and other measures to provide incentives for uptake.

The Building Act is not the be all and end all when it comes to construction standards and building design. For example, the government itself, as it gets its hands dirty in urban development through Kāinga Ora (see Chapter 11), should have an even stronger legislative mandate for new developments to be resilient, efficient, and eco-friendly. It can be held to higher standards for both state housing and for housing to be commercially sold. The installation of solar panels and a high standard of insulation on state housing may, for example, significantly reduce the need for ongoing government subsidies (eg for electricity/heating). That should apply also to social infrastructure across the public sector (eg eco-schools) and be a contractual prerequisite to the deployment of public private partnerships and Covid-19 support funding.

From a slightly different perspective, we can also ask what role the Building Code might play in the wake of Covid-19 to make future cities more resilient to disease transmission. There have been interesting proposals overseas for things like self-sanitising elevators in apartment buildings, and new ideas should be monitored closely for feasibility. Mitigating risks is vital not just to protect people’s health, but also to provide people with the confidence to live safely in the higher density urban environments desirable for sustainability reasons.
1. Transport infrastructure includes things like cycleways, streetlights and rail, while water infrastructure includes drains, outfalls, treatment plants (for drinking and wastewater) and pumps.

2. For example, under the Electricity Act (and related legislation), Gas Act, Telecommunications Act, and so on, infrastructure New Zealand has pointed out that telecommunications and electricity infrastructure is performing reasonably well in New Zealand; see Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 15. However, all infrastructure, including social infrastructure, is important in the context of spatial planning.

3. See Chapter 4.


5. Strengthening the regulation of drinking water, wastewater and stormwater (Regulatory impact assessment, Department of Internal Affairs, 1 July 2019).


7. See Strengthening the regulation of drinking water and wastewater and stormwater (Cabinet minute CAB-19-MIN-0332, 1 July 2019); and updates as of February 2020 at <www.dia.govt.nz/Three-waters-review>.


11. Section 3.


13. For example, all new dwellings will need to be designed so as to be easily relocatable.


16. The dominance of roads and motorways has its ultimate origins not in any kind of rational public policy, but rather the early influence of the automobile industry in a time very different from our own. See generally C Montgomery Happy city (Penguin, 2013); E Glaeser Triumph of the city (Pan, 2011).


24. See Reviving the economy and the environment – Climate change as a mandatory consideration (Letter to the Prime Minister from Lawyers for Climate Action New Zealand, 30 April 2020).

25. Acknowledgement: Olivia Granger, EDS.


28. Ibid.

29. Ibid.

30. For example, a feed-in scheme is being proposed for conventional vehicles. Investment in a government fleet of electric vehicles could create a large second-hand market within a few years, and education is important to make people aware of improvements like the increased range and performance of electric vehicles. See generally B Barton and P Schütte “Electric vehicle policy: New Zealand in a comparative context” (Centre for Environmental, Resources and Energy Law, University of Waikato, 2015) at iii.

31. Ibid at 38.

32. Including amalgamation and the place of the Independent Hearings Panel for the production of the Auckland Unitary Plan.


34. See Strengthening the regulation of drinking water wastewater and stormwater (Cabinet minute CAB-19-MIN-0332, 1 July 2019).


36. New Zealand Productivity Commission Local government funding and financing (2019) at 290. That said, we note that in most places there is institutional separation between territorial authorities having operational responsibility, and regional councils having environmental enforcement functions for water quality.


39. See also the model floated in New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand (2015) from 56.


41. Ibid at 242.

42. Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 23.


44. New Zealand Productivity Commission Local government insights (2020) at 16. There are some obvious exceptions, such as in the Greater Wellington region and some shared service arrangements between Auckland and the Waikato.


47. C Hansen How funding and financing affects productivity: Implications for three-waters reform and for local government funding and financing (Case study prepared for the New Zealand Productivity Commission, 2019).

48. Ibid.

49. Ibid.


51. The six-year period was set to match the timescales for river basin planning and flood risk management planning under European Union directives, ensuring the frameworks were aligned.

52. Water Resources (Scotland) Act 2013, s 23.


54. See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 184.


56. Although there could be a tailored process for different regions according to different timeframes, depending on complexity and particular issues arising.

57. New Zealand Productivity Commission Local government insights (2020) at 27.

58. For example, the assets managed by Wellington Water are owned by several different councils at both regional and local levels. Watercare in Auckland owns water assets. Part of this question is about who should have the ability to borrow against those assets (local government for a variety of purposes, or a water utility for a narrower range of purposes). At least in some cases, the latter may be preferable to ensure that money raised is earmarked for the renewal and maintenance of essential water infrastructure.

59. It might make sense for stormwater systems, so intertwined with land use planning and related flood control measures within catchments, to remain with councils. This integration could be further served through the regionalisation of stormwater, catchment management, and land use planning functions in a unitary authority (see Chapter 8).

60. Including the ability to cross-subsidise, an equitable distribution of population (and therefore funding), connection of infrastructure networks, fair distribution of legacy issues (eg historic underinvestment or significant upgrade costs), and growth pressures etc.

61. For example, Watercare as a CCO acts independently of Auckland Council, but has responsibilities to give effect to relevant aspects of any other plan or strategy of the Auckland Council to the extent specified in writing by Council’s governing body. Furthermore, it must provide a statement of intent, including a narrative on how
the organisation will contribute to Auckland Council’s and (where appropriate) the government’s objectives and priorities for Auckland.

For example, an obligation not to make a profit, to be guided by a statement of expectation and council/Crown policy, and considerations of fairness and public interest.

A balance would be struck through the internal design features of the institutions (elements of independence and accountability), rather than having separate institutions with different features (one accountable, one independent).

See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 164.

Although Watercare, as an asset owning CCO, is not dependent on funding from Auckland Council.

A report is pending at the time of writing. See www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/council-controlled-organisations/Pages/review-of-council-controlled-organisations.aspx

See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 165, 183.

For example, reflected in a proposed NES on wastewater discharges and overflows. See New Zealand Government Action for healthy waterways (2019) at 54-56.

G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019), ch. 9.

Indirect, we note again the proposal for central government funding of water infrastructure to essentially be conditional on councils accepting the need for institutional reform of water providers.

One can compare the Productivity Commission’s concept of a “partners in regulation” protocol, where expectations are clear about engagement and cooperation between levels of government, although that does not go as far as suggesting hybrid local-central entities.

An alternative, although one that is more fragmented, would be to mirror the land transport settings where a central government entity (the NZTA) controls significant funding and where council and NZTA priorities are hashed out through regional transport committees informing the Land Transport Programme. That, however, is more complex.

See Local Government (Financial Reporting and Prudence) Regulations 2014, reg 20 (1). The Productivity Commission has pointed out that the Auditor-General has expressed concern that councils appear not to be meeting the benchmark for their assets. New Zealand Productivity Commission Local government funding and financing (2019).


New Zealand Productivity Commission Local government funding and financing (2019) at 293.


The geographical boundaries of a regional water services provider should not necessarily be constrained to the catchment-based boundaries of existing “regions”, and they may be significantly broader or cut across regional boundaries. For environmental reasons, it would be important for a catchment-based jurisdiction to remain for regional authorities. This would mean that a water CCO may well require multiple regional authority shareholders even in the event of local government restructuring.

New Zealand Productivity Commission Local government funding and financing (2019) at 287, citing the submission of the Hamilton City Council.

Land transport has tended to receive greater investment, and has not operated on a run to fail basis - perhaps due to its higher visibility to users and the oversight role of the NZTA.

See Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 44.

Although water transport also has its moments, often at times of failure or crisis, transport is experienced more directly by people on a daily basis and tends to be the subject of greater frustration among residents.


New Zealand Productivity Commission Local government funding and financing (Draft report, 2019) at 178.

And through the Ministry of Transport in the development of a Government Policy Statement on Transport.

Note the alternative proposal of Infrastructure New Zealand, which advocates for the complete regionalisation of transport (including the state highway network). Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 48.

See Chapters 7 and 8.

Infrastructure New Zealand has also suggested giving funding powers to the NZTA that are linked to use or demand: Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 27.


<www.stuff.co.nz/auckland/11274528/auckland-transport-projects-face-big-funding-gap>

Local Government New Zealand’s “Water 2050” project has stressed that funding considerations are key to success in this area. Local Government New Zealand Water 2050: Cost and funding – Meeting the costs of water infrastructure: A stocktake and analysis of actual and potential funding options for local authorities (June 2018) at 10.

C Hansen How funding and financing affects productivity: Implications for three-waters reform and for local government funding and financing (Case study prepared for the New Zealand Productivity Commission, 2019) at 9.

Compare New Zealand Productivity Commission Local government funding and financing (2019) at 100, 289.

Ibid at 243, 270.

See ibid at 242: “Currently, the scale of water suppliers matches the size of each local council’s jurisdiction – which is often very small. This leaves some local councils with inadequate in-house specialisation and expertise”.

The Productivity Commission has pointed out that rates as a proportion of median income has risen considerably in predominantly rural council areas compared to metropolitan areas (see ibid at 7). This points to the need to socialise costs across wider scales.

Ibid at 265.

Ibid at 271.


See A plan for three waters reform (Cabinet paper, July 2019).

H Wyn “Funding pressures affecting three waters infrastructure” (Paper presented to the Local Government New Zealand Water Summit, 30 May 2018).

See Funding Auckland’s transport future (2014).

New Zealand Productivity Commission Local government funding and financing (2019) at 4, 291. An independent and ringfenced source of revenue has been said to lead to more sustainable business decisions being made.

Stormwater fees might not be “user” charging specifically, as it is hard to measure the volume of water being managed from a property when compared to water meters used for drinking water or wastewater. It could instead be a fee based on general criteria or property features.

V Southworth “Increasing the uptake of building-scale water sensitive urban design stormwater management options in Christchurch, New Zealand” (Masters thesis, University of Canterbury, 2019) at 130.


Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 4.

The Productivity Commission has suggested the use of separate redistribution policies to make it more transparent (a national scheme of rates postponement, rather than rates rebates).

Compare New Zealand Productivity Commission Local government funding and financing (2019) at 4.

Councils can apply to access interest free loans, but the criteria in place limit the availability of funding to councils in high growth urban areas. Infrastructure projects must also support the building of new dwellings and the fund only covers proposals that relate to the capital cost of building or procuring infrastructure.

Under a 27A of the Health Act local authorities may also apply for grants and subsidies for refuse disposal works, sewerage works and water supplies. However, this source of funding is based on government policy and the Minister’s discretion as to what he or she “may think fit in the particular case”. No set criteria are provided so it is difficult for local authorities to secure or rely on this funding source when planning infrastructure development.

New Zealand Productivity Commission Local government funding and financing (Draft report, 2019) at 10. Whether that would require a separate government agency to determine such questions in an arm’s-length way – like the NZTA – is an open question.

On cost challenges, see Becca Cost estimates for upgrading water treatment plants to meet potential changes to the New Zealand drinking water standards (2018), GHD and Boffa Miskell Cost estimates for upgrading wastewater treatment plants to meet objectives of the NPS Freshwater final report (September 2018). See also G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 44: “[T]he need for large scale replacement of water assets around the country is most likely to
occur between 2040 and 2060, at the very time that population increases will be peaking.” See also Office of the Auditor General Water and roads: Funding and management challenges (2014).


117 As well as many other mechanisms: see G Severinsson and R Pearl Reform of the resource management system: The next generation (EDS, 2019) at 249–251.

118 That said, rates as a proportion of median income in rural areas has grown much more than in metropolitan centres.

119 New Zealand Productivity Commission Local government funding and financing (2019) at 159-160.

120 Ibid.

121 Ibid at 10.

122 Ibid at 2.

123 New Zealand Productivity Commission Local government insights (2020) at 15.

124 New Zealand Productivity Commission Local government funding and financing (2019).

125 For example, to preserve their credit rating and comply with binding debt to revenue ratios: see ibid at 161. The independent nature of credit rating means one cannot simply regulate all constraints out of existence. Under the Local Government Borrowing Act (2011) the Local Government Funding Agency can assist councils with funding but only if the proportion of their income spent on interest payments is less than 20 percent. This means that the borrowing potential of local government increases as its income increases but also that it is constrained by its income generating capacity. In short, council income rather than infrastructure needs drives infrastructure funding.

126 New Zealand Productivity Commission Local government funding and financing (2019) at 156, ch. 7.

127 Ibid at 175.

128 Ibid from 150.

129 Which could be achieved by expanding the concept of a targeted rate to link it to increases in unimproved land value.

130 In our view, only where needed to give effect to a spatial plan, not as a central government planning override. On the urban development authority model, and the need to meet strengthened national standards.

131 As the Productivity Commission points out, there may also be a related need to enable, through legislation, the placement of debt-servicing obligations on existing residents if this mechanism is to be used for brownfields or intensification of existing residential areas; see New Zealand Productivity Commission Local government funding and financing (2019) at 185. That would need careful thought for reasons of equity, as existing residents would not have signed up to the provision of infrastructure when they purchased a property.


133 New Zealand Productivity Commission Local government insights (2020) at 27.


135 Compare Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 32.


137 New Zealand Productivity Commission Local government funding and financing (2019) at 175.

138 New Zealand Productivity Commission Local government funding and financing (2019) at 32.


140 New Zealand Productivity Commission Local government funding and financing (2019) at 10.

141 There is an interesting relationship between population growth and economic growth, and they are not necessarily always correlated in a positive way. Having more people requires more economic growth to “grow the pie” and ensure no decline in overall living standards, but it is by no means guaranteed to generate it. See Yovel Noah Harari Homo Deus: A brief history of tomorrow (Vintage, 2016).

142 Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 19.

143 New Zealand Productivity CommissionLocal government insights (2020) at 27.

144 New Zealand Productivity Commission Local government funding and financing (2019) at 6. Compare Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 26. This could be done through a new tax, or by changing targeted rates to allow them to be levied on changes in land value due to public investment in infrastructure or amenities (New Zealand Productivity Commission Better urban planning (2017) at 334).

145 It would be possible to do so, but it would be expensive and complex, and no doubt cause jurisdictional issues.

146 New Zealand Productivity Commission Local government funding and financing (2019) at 182. Compare B Craven, J Goldingham-Newsom and O Hartwich #localismNZ: Bringing power to the people (2019) at 42.

147 New Zealand Productivity Commission Local government funding and financing (2017) at 196. Compare the Provincial Growth Fund or Housing Infrastructure Fund.


149 Although government grants seem necessary for some things, such as correcting historical underinvestment deficit in three waters infrastructure and the need to meet strengthened national standards.

150 For example, the Productivity Commission has pointed out that GST and some forms of income tax (eg pay as you earn) are less painful than mechanisms like rates, because it is less visible and people are not faced with a standalone bill. However, they are also complex to design, implement and enforce.

151 New Zealand Productivity Commission Local government funding and financing (2019) at 25.


153 New Zealand Productivity Commission Local government funding and financing (2019) at 297.

154 Compare New Zealand Productivity Commission Local government funding and financing (Draft report, 2019) at 265: “Central government should not expect local government to act simply as its regulatory agent. Rather, the two levels of government should seek a regulatory partnership based on mutual respect and an agreed protocol.”


156 Compare New Zealand Productivity Commission Local government funding and financing (2019) at from 204; J Holland and others Planning shrinking cities (2009) 72(4) Progress in Planning 223. Contrast the more optimistic view of the New Zealand Initiative in B Craven, J Goldingham-Newsom and O Hartwich #localismNZ: Bringing power to the people (2019) at 40.


158 Under the Local Government Act 1974 (largely repealed).

159 For a detailed discussion of the project and issues surrounding see R Mulgan Transparency and the performance of outsourced government services (Research paper commissioned by the Queensland Office of the Information Commissioner and the Australia and New Zealand School of Government, 2015) at 15. See also Controller and Auditor General Inquiry into the Mangawhai community wastewater scheme (2013).

160 One News “Kapara District Council faces another day in Court” (4 February 2014).


162 New Zealand Productivity Commission Local government insights (2020) at 15.

163 New Zealand Building regions: A vision for local government, planning law and funding reform (2019).

164 It has been pointed out that “where applied, volumetric metering and pricing appears to have reduced peak water consumption and waste by up to 30%...[and]peak daily water use decreased by about 25% in the two years after universal metering was put in place”, see New Zealand Productivity Commission Local government funding and financing (2019) at 283.

165 Compare also New Zealand Productivity Commission Local government funding and financing (2019). Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019).

166 Separate redistributive policies could be used as long as they were effective (eg rates relief), but equally we do not see a problem with an element of free provision (eg first X number of litres provided for no charge).


168 See ibid. at 175.


170 Funding Auckland’s transport future (2014).


174 R Bell and others Coastal hazards and climate change: Guidance for local government (Ministry for the Environment, 2017).

175 Local Government Act 2002, a 101B.

176 Building Act 2004, s 71.


178 There, the need is existential, given the amount of land that is below sea level.
181 See New Zealand Productivity Commission Local government funding and financing (2019) at 239.
182 J Diamond ‘Collapses: How societies choose to fail or survive’ (Penguin, 2017) at 432.
183 New Zealand Productivity Commission Local government funding and financing (2019) at 249.
185 M Watson ‘Still struggling a year after devastation’ (The Dominion Post 22 May 2016).
186 Report and decisions of the hearing commissioners in the matter of proposed plan change 1 to the Whakatane District Plan, and proposed plan change 17 to the Bay of Plenty Regional Natural Resources Plan (26 March 2020) at [19].
188 N Macdonald “Mismanaged retreat? The life-limiting limbo of Matata’s red zone” (Stuff, 13 July 2019).
189 Their decision was made in line with objective 5 and policy 25 of the New Zealand Coastal Policy Statement. Objective 5 is to ensure that new developments are located away from areas prone to climate change risks and to consider responses, including managed retreat. Policy 25 encourages redevelopment or changes in land use to reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation, removal or abandonment.
190 Report and decisions of the hearing commissioners in the matter of proposed plan change 1 to the Whakatane District Plan, and proposed plan change 17 to the Bay of Plenty Regional Natural Resources Plan (26 March 2020) at [240].
192 New Zealand Productivity Commission Local government funding and financing (Draft report, 2019) at 268.
194 Compare J Boston and J Lawrence The case for new climate change adaptation funding instruments (Institute for Governance and Policy Studies and New Zealand Climate Change Research Institute, August 2017); New Zealand Productivity Commission Local government funding and financing (2019).
195 Investment in an adaptation fund would not support other COVID-19 recovery objectives like economic stimulus and employment, which require actual projects on which to spend the money. It is therefore essential that money that could otherwise have been used to capitalise a fund is spent on projects that would have been eligible under it at a later date.
196 New Zealand Productivity Commission Local government funding and financing (2019) at 254.
197 Compare New Zealand Productivity Commission Local government funding and financing (Draft report, 2019) at 268: “Formulating a set of principles about funding the costs of adaptation to climate change is a helpful place to start.”
198 Questions would need to be answered as to what it would cover: for example, would it be used to compensate landowners for reduction in property values due to the identification of hazard zones?
200 Compare R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, “opportunities for change” (2019) at 1.
201 Building Act 2004, s 18.
202 G Severinssen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 151.
203 See for example C Warnock “Sustainable construction in New Zealand” (2005) 9 New Zealand Journal of Environmental Law 337, at 356, summarising the effect of Christchurch International Airport Ltd v Christchurch City Council [1997] 1 NZLR 573 at 579 (per Tipping J) and 594 (per Chisholm J).
204 Building Act 2004, s 18.
205 The notion of a “quality urban environment” in the proposed NPS on Urban Natural Hazards Risk Management is integral to understanding the urban planning process. It is primarily about managing the spatial aspects of land use, not buildings themselves.
207 G Severinssen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 150. On the importance of the frameworks being complementary, see C Warnock “Sustainable construction in New Zealand” (2005) 9 New Zealand Journal of Environmental Law 337 at 376.
208 People, places, spaces: A design guide for urban New Zealand (Ministry for the Environment, 2001) at 21.
210 New Zealand urban design protocol (Ministry for the Environment, 2005) at 23.
211 Building Act 2004, s 3(a)(vi).
212 In other words, the Building Code truly becomes a code, including in terms of sustainability (not just health and safety) measures. This is because specifically including green performance measures in the Act suggests there are no longer any sustainability “gaps” to be filled by other frameworks. See C Warnock “Sustainable construction in New Zealand” (2005) 9 New Zealand Journal of Environmental Law 337 at 360.
213 Ibid at 348.
216 For example, light coloured roofs and rooftop greenery can help to regulate urban micro-climates: see <www.stuff.co.nz/environment/climate-news/121008357/climate-explained-how-white-roofs-help-to-reflect-the-suns-heat>.
220 New Zealand Business Council for Sustainable Development Better performing homes for New Zealanders: Making it happen (November 2008); M Howell Local government incentives to promote sustainable building (SBIO New Zealand Paper 478) at 1; <www.brezn.co.nz>.
221 Some have proposed that instruments under the RMA provide specific provisions concerning “building design and materials (driving energy efficiency)”;
222 For example, supporting insulation for warmer homes.
225 Government of Ireland Project Ireland 2040: National planning framework at 166.
226 V Southworth “Increasing the uptake of building-scale water sensitive urban design stormwater management options in Christchurch, New Zealand” (Masters thesis, University of Canterbury, 2019) at 140.
228 Ibid at 137.
229 For example, in Christchurch the “district plan restricts the council to motivating uptake of sustainable building, including water efficiency, through non-regulatory methods only (District Plan policy 14.2.4.8)”; see ibid at 135.
232 See City of Melbourne Green our city strategic action plan 2017-2021 (2017); City of Sydney Green roofs and walls policy (2014, reviewed 2017).
233 Which should remain legally durable through covenants.
234 Compare Panuku Development Auckland, which “insists on Homestar 6 rated homes” in many of its projects. See <https://www.panuku.co.nz/about/what-we-do>.
235 REFORM OF THE RESOURCE MANAGEMENT SYSTEM: THE URBAN CONTEXT
10.1 Introduction

So far, we have considered the role of a new Environmental Stewardship and Planning Act and a Local Government and Infrastructure Act in a future urban resource management system. We have also pointed to the very real need for those two frameworks to be well coordinated, because urban land use change is intimately connected to the infrastructure required to make it happen. In particular, water and transport connections are essential to service new residential land and must be delivered fast where there is rapid growth to ensure that constrained supply does not exacerbate housing unaffordability issues. Currently, there is poor alignment between land use and infrastructure plans, processes (including public participation) and funding, and the system “does not promote or encourage integrated decision-making to provide the right infrastructure in the right place at the right time” where land uses change.

While some have recommended integrating the land use components of the RMA with infrastructure legislation to achieve better coordination through a “Planning Act” (a single process by which all decisions about urban growth were made), in Chapter 5 we flagged risks with that. We also noted that coordination can be achieved in other ways, which is the focus of this chapter.

10.2 A Local Government and Infrastructure Act

In Chapter 9 we proposed merging the Local Government Act and Land Transport Management Act, along with some other infrastructure focused legislation like the proposed Water Services Act and the Infrastructure Funding and Financing Act. A proliferation of infrastructure legislation requiring a complex web of cross-references and new processes will not help efforts to simplify and coordinate the system. It is not hard to imagine, for example, that new institutional arrangements for three waters could see yet another process as complex as that for land transport, and links would need to be made to existing Local Government Act and Land Transport Management Act processes as well as the RMA regime. It is hard enough to align the multiple processes that currently exist, especially in situations of rapid urban growth.

Care would be needed to ensure that an integrated infrastructure statute would not weaken the importance of wider local government principles (the four wellbeings). The Act would not just be about infrastructure. But it would recognise that there is an increasing need for both local and central government to coordinate their infrastructure funding and planning activities (for three waters as well as land transport) in an integrated way and in pursuit of common statutory objectives. Local infrastructure is no longer just about local government. Of course, reorganising things into one statute does not magically resolve the question of how to integrate or connect quite separate processes for different kinds of infrastructure and different levels of government (eg for council long-term plans/infrastructure strategies, regional land transport plans/land transport programmes, and any separate process for three waters). The process for funding and planning three waters may need to look quite different from the process for funding and planning land transport, because institutional settings would be quite different for each.

For example, we cannot have a single process for funding and planning wastewater infrastructure and local roads if the former requires only council funding (through long-term and annual plans), but the latter requires a more complex process by which the NZTA apportions funds from a national fund alongside local council contributions. Some simplification should be possible by establishing regional unitary authorities with infrastructure responsibilities, as there would be (1) fewer local government funding plans (a single long-term plan and annual plan across a region) and (2) fewer institutions coming together at a regional level (instead of multiple district councils and a regional council, there would be just one operating alongside the NZTA in regional transport committees).

A more integrated system for urban infrastructure funding and delivery could be supported by local government structural reform and a single Local Government and Infrastructure Act.
10.3 Aligning infrastructure with land use decisions: processes and norms

Perhaps more important will be the coordination of infrastructure legislation with land use decisions made under an Environmental Stewardship and Planning Act. There are several ways we envisage this happening.

First, processes and timeframes should be more formally aligned across statutes. If multiple plans are developed at the same time (eg a plan change and an annual plan, or a combined regional plan review and an infrastructure strategy/long-term plan), a more integrated approach to community consultation would be possible. Duplication and cost could be avoided, and communities could see more clearly how different aspects of urban proposals are expected to work together.2 There would also be a reasonable degree of certainty that land use change would be facilitated through the funding of supporting infrastructure, and that infrastructure expenditure would not be wasted or under/overestimated by failing to provide for complementary land use change. At present, timeframes can vary wildly:4

- Under the RMA, regional and district plans must be reviewed at least every 10 years (although it is often done on a rolling basis).

- The Local Government Act requires councils to prepare and adopt an annual plan, as well as a long term plan/infrastructure strategy that covers at least a 10 year period. Local board plans are adopted on a 3 yearly basis in alignment with the election cycle, and CCOs may also be required to adopt asset management plans, long term plans or thematic plans on specific issues (the timeframes for these are left open for shareholders to determine). The Act also allows for open-ended, discretionary strategic planning to occur with no set timeframes.

- The Land Transport Management Act requires a national land transport programme to be prepared on a three-yearly basis, and for regional councils to prepare and approve regional land transport plans every six years. Long-term and annual plan processes are expected to feed into these.

For infrastructure projects, misalignment is complicated even further by different timeframes for authorisations required under other legislation like the Public Works Act, the Reserves Act and the Conservation Act,6 and for obtaining further site-specific authorisations under the RMA (eg designations and resource consents).

A need for greater process alignment across statutes poses some significant challenges, however. Regulatory processes under the RMA (which would be more agile under a new Act, but would continue to include some scope for appeals in relation to plans and consents)8 will always need to look fundamentally different to the funding processes under infrastructure focused legislation (eg plans for funding a new wastewater treatment plant). The processes perform fundamentally different roles and involve different actors (albeit with some crossover).6 and because of tailored checks and balances on each kind of decision we cannot simply prescribe that all processes reach decisions at exactly the same time.

Planning appeals under an Environmental Stewardship and Planning Act, for example, may or may not occur, depending on whether disputes arise.8 But there are very good reasons for more robust checks and balances under the regulatory provisions of that Act, which can effectively limit private property rights, than for the expenditure of public moneys by elected authorities, which cannot. Timeframes for resolving appeals and mediation may be uncertain, even if they have a maximum time limit, and different provisions may become operative at different times.

Similarly, infrastructure funding decisions under a Local Government and Infrastructure Act may or may not need to be revisited, perhaps because of decisions from an economic regulator (see Chapter 9), or simply because an annual plan needs to differ from a long-term plan due to the availability of funds in any given year. We cannot just artificially declare that one process will do everything, because different decisions need to be designed in different ways. The funding focus of the Land Transport Management Act is quite different to the sustainable management focus of the RMA, and processes have been “specifically and carefully tailored to the requirements of the role of each plan” as well as the mandates of the institutions involved.2 That would continue to be the case in a reformed system.

Different processes should, however, be concluded within a reasonable temporal envelope, so that they combine to produce outcomes in a timely way.10 This does not mean that there needs to be a single decision, or that the outcomes must be reached on exactly the same day. It is simply to say that the effectiveness of one decision (eg rezoning land as residential) should not be stymied by the need to wait interminably for a different decision (eg funding the infrastructure needed to service it). That is partly what a more agile planning process for regional combined plans would be designed to achieve, as planning delays are most noticeable under the RMA (due to more formal consultation arrangements and appeals).11 Specific cross-references should also be made between statutes so that one instrument or process is taken into account when undertaking another (some cross-references exist, but they are by no means comprehensive or effective in practice).12 For example, Ireland’s national planning framework is clear that any rezoning of land needs to be accompanied by a reasonable estimate of the cost of infrastructure required to service it, and that land should not be rezoned at all if it cannot be serviced within the life of the plan.13 Steps have been taken towards this under the NPS on Urban Development, which requires areas identified for growth to be “infrastructure-ready” (ie funding for supporting roads and water infrastructure is at least signalled in a long-term plan). However, it does not align the processes by which those things are done.
A future system should see greater alignment between processes under an Environmental Stewardship and Planning Act (especially for land use change) and infrastructure legislation, although they will need to remain distinct. Related decisions should be reached within a reasonable time of each other.

There also needs to be close alignment of the purpose and principles of an Environmental Stewardship and Planning Act and the Local Government and Infrastructure Act. While they cannot be identical – they do very different things, after all – they should at least be oriented towards the same kinds of big picture strategic goals. At present, there is some common ground between the RMA, which aims to “promote the sustainable management of natural and physical resources” and the Local Government Act, which provides for the “social, economic, environmental and cultural well-being of their communities, taking a sustainable development approach.” This recognises that local government is about much more than just providing roads and pipes.

However, the Land Transport Management Act remains out of step. Its original purpose was to contribute to an integrated, safe, responsive and sustainable land transport system. It also referred to the improvement of social and environmental responsibility in transport planning. However, this was significantly amended in 2013 to a focus on “an effective, efficient, and safe land transport system in the public interest”. The point was to narrow the role and scope of local government and provide for greater fiscal accountability and economic efficiency. And while broader social, environmental and sustainability goals were reinserted into the Local Government Act in 2019, the same has not happened with the Land Transport Management Act. This does not prevent subordinate instruments taking a wider view; the environment is listed as one strategic priority in the government’s most recent policy statement on land transport. But it does mean that instruments may not always align well. Some have pointed out that a concerning normative disjunction has occurred over time between the RMA, Local Government Act and Land Transport Management Act, and legislated goals are now quite different.

Furthermore, the Land Transport Management Act continues to follow a mode neutrality approach to transport planning and investment – it has principles, but it doesn’t pick winners – and it is not always clear how tensions are to be resolved between strategic priorities (eg value for money and environment). A mode neutrality approach was initially introduced in order to help shift priority away from private vehicle transport and roading to ensure there was a level playing field (for modes such as public transport, walking and cycling). Yet the imperative is now to elevate those modes above traditional ones.

Some have argued, for example, that central government has been able to continually prioritise “its own political agenda of economic development over furthering local democracy” and pursuing broader goals for the environment, though a focus on motorway expansion project and roads of national significance aimed at stimulating national growth. In our view there should be explicit legislative preference for investment in public transport, mass transit and electrification to support strengthened objectives under other legislation like an Environmental Stewardship and Planning Act and Climate Change Response Act.

There should be closer alignment between the principles underpinning an Environmental Stewardship and Planning Act, infrastructure legislation, and the Climate Change Response Act.

Thirdly, and perhaps most importantly, both combined regional plans and plans for supporting infrastructure should be guided by a higher-level spatial plan. Aligning processes at a development by development level will not be enough without a strategic vision for what we want our urban areas to look like over time.

This common vision is important both in the short-term (eg funding for roads to service an area rezoned as residential under the RMA should not then be diverted to other priorities in an annual plan unless there are good reasons) and also in the longer-term (strategic planning-horizons should be consistent). The Productivity Commission has pointed out, for example, that the planning horizon of the New Zealand Coastal Policy Statement under the RMA is 100 years, under the Building Act it is 50 years, and under the Local Government Act it is 30 years. Spatial planning will be essential in aligning land use and infrastructure decision-making under different legislation.
10.4 Regional spatial planning

There have been many advocates for spatial planning in recent years. Yet a “spatial plan” is not defined in any legislation, and is often used in different senses. One general definition is “a high-level strategy for developing a region that relates to its geography, and seeks to achieve desired broad outcomes.” In practice, calls for spatial planning have been driven by the need to make sure the sequenced release of land, associated infrastructure provision and the delivery of public services occur in a coordinated and timely way to facilitate urban growth, especially where that relies on multiple institutions and pieces of legislation or plans. It aims to provide a clear spatial skeleton in light of which other decisions are made.

Spatial planning is not just about providing more housing or increasing the efficiency of infrastructure investment, though. It demands a holistic view of where and how cities should grow and change over time so that synergies can be pursued, not just a reactive approach based on assessing the adverse effects of new developments and then providing the necessary roads and pipes. It is strategic. One commentator has said, for example, that “integrated spatial planning is critical so that new greenfield urban areas do not exacerbate unsustainable transport or other infrastructure demands, occupy elite soils or diminish other important ecosystem services.”

The climate change and health implications of urban form need to be prominent too.

This vision then needs to be implemented through various other frameworks, including for land use (eg district plans may provide for future urban areas, subdivision restrictions in peri-urban areas, and greater density in existing suburbs) and infrastructure legislation (under which long-term plans, infrastructure strategies and government investment plans support those choices). A proper spatial plan provides investment certainty (a pipeline of planned infrastructure around which the private sector can align its own capital investment), no go areas for environmental protection and to protect areas of cultural significance, provision of open space, and a sustainable plan for urban form.

Urban spatial planning is about outlining a future-focused vision for how and when a city or town will grow or change over time. It is not just about ensuring there is sufficient development capacity and infrastructure, although those things are important aspects.

Some might say that we already do a lot of spatial planning. That is true, but not in the ways we need.

For one, the current system has lacked strong urban strategy. Overall, it is not firmly focused on the future or the need for change. Some have characterised this as a system that is reactive or (adverse) effects based, rather than one that is geared towards positive change and is outcomes focused. That is not uniformly the case, of course. For example, some have pointed out that the Local Government Act and the Land Transport Management Act are already strongly future focused, even if the RMA is not. Iwi/Māori organisations are making progress developing strategic plans, most without any formal legislative framework. The same is true of councils and central government often produces strategic documents. As part of wider institutional reforms, there is a legislative requirement for strategic planning in Auckland (the Auckland Plan). However, urban strategic planning at a system-wide level can be patchy, overlapping, and not well integrated. We are used to operating in strategic silos (eg for economic development, energy, conservation, population growth, housing, local and regional infrastructure, climate and so forth).

So, we do some strategy. But is it spatial? Not all elements of a strategy are spatial (eg a strategy to reduce homelessness might involve first home grants, tax relief, and monetary settings, none of which have real spatial aspects). But many aspects are. For example, an urban growth strategy is dependent on knowing what (infrastructure, houses, businesses, public services) goes where over time. Equally, not all spatial plans are strategic. That is what Infrastructure New Zealand means when it points out:

Spatial planning differs from conventional land use planning as practiced in New Zealand. Land use planning under the RMA is not strategic. It is effects based and reactive. It is designed to minimise the impacts of physical development on other residents, activities and the environment. It is not designed or set up to proactively promote outcomes.

Horticulture NZ has also highlighted that the protection of productive soils would best be determined at a strategic level rather than at a more limited, property-level consenting or plan change process. That strategy needs to be expressed in reasonably specific spatial terms – to give everyone a sense of what goes where – rather than just providing general policy wording in an NPS to be weighed up and challenged in court when applications are made for land use change.

Complaints about RMA plans are usually not so much that they are not spatial (eg zoning provisions in district plans are spatial by definition) or even that they cannot be strategic (there is nothing in the RMA that prevents an instrument being future focused – indeed, some provide for “future urban” zoning). A regional policy statement could also be a highly strategic, spatially focused instrument. However, RMA plans do not have to be strategic (and in practice they tend not to be). Under an Environmental Stewardship and Planning Act, that would no longer be the case. A new purpose and principles, and the mandatory setting of targets, would be much firmer about driving positive social and environmental change across the board.

A lot of planning under the RMA is inherently spatial. However, although they can be strategic, often RMA plans are not.
However, there are other senses in which the system as a whole does not provide for adequate strategic spatial planning in cities, and where a better replacement for the RMA would not be enough on its own. In particular, better integration across institutions and statutory frameworks is required, including:35

(1) Horizontal legislative integration: the ability for one spatial planning framework (e.g., land use under the RMA) to influence or be aligned with another (e.g., infrastructure planning/funding under the Local Government Act, or non-statutory strategies). The Biodiversity Collaborative Group has pointed out, for example, that there is currently “a plethora of documents which do not consider biodiversity in a holistic manner, and there is no clear mechanism to ensure alignment and compatibility” across them,36 while the government’s independent reform panel has stressed that:37

Introducing spatial planning at a regional level across [multiple Acts] might assist with better integrated resource management. It would also provide an opportunity to rationalise some aspects of regional and local planning, as high-level policy matters would be decided jointly through spatial planning processes.

It could, for example, remove the need for some public participation at a later stage.38

(2) Vertical legislative integration: the ability for a higher-level spatial plan to have meaningful influence on lower level decision-making. Even the Auckland Plan, our only example of a legislative requirement for spatial planning, is not binding on the Auckland Unitary Plan made under the RMA. One independent international review found that it lacked clear direction, which hampered decision-making on the provisions of Unitary Plan.39 The ability of a strategic plan to influence funding and operational decisions is particularly crucial where there is rapid urban growth.40 But if they are not well linked, spatial plans can simply add another layer of complexity to a framework without corresponding benefit.

(3) A requirement to do spatial planning: while many councils (and other agencies) have engaged in cross-district spatial planning under the Local Government Act to manage urban growth,41 that is not mandatory. Such efforts also tend to be responsive to rather than pre-emptive of pressures.
(4) Institutional coordination: formal structures whereby multiple layers of government are compelled to work together, which is largely voluntary and ad hoc at the moment. This needs to include a national effort at spatial planning, or at least a consistent and predictable national level role – a seat at the table – in regional planning. Hamilton City Council has pointed out, for example, that “to be effective there needs to be inter-agency governance structures and integration with service and delivery” across a region. Central government is responsible for a lot of infrastructure to make urban areas work well (transport, hospitals, schools, social services and, increasingly, housing), but there is no formal place in which that is aligned with local strategic planning.

In Scotland, a national planning framework takes a much more holistic view of the spatial aspects of “economic development, regeneration, energy, environment, climate change, transport and digital infrastructure to provide a coherent vision of how Scotland should evolve over the next 20 to 30 years.” The Irish national planning framework is similarly visionary, integrating a wide variety of strategies including for environmental, health and social outcomes. In New Zealand, we see some recognition of the national interest in Auckland’s spatial plan (in that it must address the “role of Auckland in New Zealand”), but that falls far short of the permanent joint planning effort – a seat at the table – in national level – a seat at the table – in regional planning. Hamilton City Council has pointed out, for example, that “to be effective there needs to be inter-agency governance structures and integration with service and delivery” across a region. Central government is responsible for a lot of infrastructure to make urban areas work well (transport, hospitals, schools, social services and, increasingly, housing), but there is no formal place in which that is aligned with local strategic planning.

The government’s independent resource management system reform panel has since expressed similar sentiments that have been supported by a wide range of stakeholders. The Panel has identified a range of barriers to the implementation of effective spatial planning that need to be overcome:

- Insufficient legislative weight for spatial plans
- Lack of linkages between spatial plans and frameworks under which funding is secured
- Fragmented governance and decision-making arrangements
- Insufficient central government involvement
- Infrastructure funding constraints (see also Chapter 9)
- Poor incentives for local authorities to coordinate their efforts.

The existing system lacks a layer of strategic urban planning that (1) can align plans across different legislation for land and infrastructure; (2) has legal influence over other instruments; (3) is mandatory; and (4) compels different institutions, including central and local government, to work together towards a common vision.

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**A spotlight on future development strategies**

In the absence of a formal spatial planning framework, national direction under the RMA has attempted to provide one through the concept of future development strategies. Urban centres experiencing significant growth pressures have been required by the NPS on Urban Development Capacity (and now by the broader NPS on Urban Development) to create such a strategy to inform the future release of land for development. These are mandated by the RMA, but they are not really an “RMA” document in the same sense as a district or regional plan. In fact, they are allowed to be incorporated in plans not made under the RMA, and existing non-statutory strategies can even be deemed to “be” them if they already do the same things. This reflects the fact that some councils already have developed similar strategies through less formal means, for example under the Local Government Act.

The point of future development strategies is partly to influence decisions made under frameworks other than the RMA, in an effort to coordinate legislative arrangements. However, they are, as a product of an NPS concerned with urban development, primarily concerned with the timely provision of development capacity (driven by a desire for housing affordability). They are a far cry from an integrated approach to spatial planning.

For one, future development strategies are triggered by urban growth, not a broader range of concerns, and therefore do not apply to all urban areas. It is by no means clear how tensions between quite firm directives for urban growth and other important matters like the protection of productive land and ecosystems are to be resolved (see Chapter 7), although future development strategies seem to be envisaged as a place in which other national direction can be implemented too, at least where growth pressures allow that.

Furthermore, despite being the product of national direction that must be given effect to, future development strategies themselves have only weak influence over RMA plans (they must only be had regard to). And while they might try their best to extend their influence to infrastructure funding frameworks, they lack statutory authority to do so. Thus, national direction is reduced to rather hopeful instructions that councils are “strongly encouraged” to use future development strategies to inform long-term plans, infrastructure strategies, regional land transport plans, and other relevant strategies and plans.

Instruments under the RMA also lack the ability to require the alignment of processes under different legislation (see earlier). A recent discussion document...
underpinning the NPS on Urban Development therefore concedes that a proper spatial planning framework is needed, and that there are systemic limitations with the current arrangements.51

Other regimes are also trying to bridge the gap, but similarly lack the real ability to do so. For example, the proposed government policy statement under the Land Transport Management Act calls for investment decisions to “shape land use, urban form and street design in a way that reduces car dependency, makes walking, cycling and micro-mobility safe and attractive travel choices, and reduces emissions from transport.”52 Yet the mechanism for achieving that remains opaque, because it has limited influence over RMA plans dealing with land use. Similarly, some have said that a National Infrastructure Plan will not necessarily have a large impact on RMA policy statements and plans “as there is no strong legislative requirements for it to be taken into account or for regard to be had to it.”53

Future development strategies, required for some fast-growing urban areas under the RMA, try to link up multiple frameworks. However, they lack legal weight and are focused on the supply of development capacity and housing. Other instruments have similar constraints and are not a substitute for a higher level of spatial planning.

We recommend a new framework for spatial planning. Because spatial plans would be designed to influence multiple other frameworks and institutions (both central and local), we think it would be most appropriate for them to be developed under a separate, overarching piece of legislation rather than retrofitted into existing frameworks. In previous work we have called this a “Future Generations Act”.

A proper spatial planning framework in a future system would, above all, need to ensure that environmental bottom lines were given effect to. It would be made clear how environmental targets were to be pursued (eg for enhancement of urban biodiversity, climate change and so forth). It would work around those constraints, pursuing synergies between transport, land use and other objectives.54 For example, plans may need to provide for public transport nodes (eg light rail) to be funded and delivered in a timely way around areas slated for residential density.

Since infrastructure, labour markets and people’s movements traverse regional boundaries, spatial planning must also be able to take place at multiple scales,55 including across regions. In some highly connected urban areas, planning around roading, rail, mobility, housing and growth require a cross-regional approach to be taken.56 “Regional” spatial planning may therefore be something of a misnomer if taken literally.

A spotlight on inter-regional spatial planning

One of the key drivers for strategic spatial planning has been the desire to take an integrated approach to urban growth in areas that span local authority boundaries like Auckland, Hamilton, and Tauranga.57 These metropolitan areas are growing rapidly, but in a highly interconnected manner; people, goods, services and natural resources frequently travel across boundaries. What happens in one area affects the others.

In response, one of the most significant inter-regional spatial planning exercises in New Zealand is underway to manage growth and development along the corridor between Hamilton and Auckland. This is an ad hoc partnership under the leadership of central government. There have also been agreements between local government and the Crown to align planning and funding responsibilities for key infrastructure (eg through the Auckland Transport Alignment Project), and more general ad hoc measures to fund infrastructure to support urban growth (eg through a competitive Housing Infrastructure Fund).

Attempts have also been made to connect up decision-making across council boundaries through specific statutory frameworks (eg the NPS on Urban Development Capacity has talked about the need to consider related decision-making processes), even though that has no real ability to require it.58 Similarly, the Local Government Act requires councils within a region to agree to protocols for communication, co-ordination and dispute resolution (triennial agreements) to avoid duplication of services or functions.59 But decisions under one act cannot bind decision-makers under another, and there is still a risk that:60

A regional spatial planning process involving a formal partnership with central government would be a good start, but in some places that needs to extend to cross-regional spatial planning. The need for inter-jurisdictional cooperation in managing linked urban areas is an increasingly common theme overseas.61

Spatial plans could also operate at a much finer scale as long as they fitted within the parameters of a regional level vision. For example, some have suggested that a neighbourhood level plan, as used in Brisbane, could be used to provide a vision of both
A new legislative framework should be established to provide for mandatory spatial plans to be created. These plans would outline a vision for how urban areas would grow, contract or change over time. Spatial planning will need to occur at different, or multiple, scales – including across regions that are highly connected.

10.5 The legal effect of regional spatial plans

The new spatial plans we are envisaging would not have direct regulatory effect. However, they should not just be another level of wishful thinking or nice words on paper. If we bother to do this kind of thing – which we think is well worth the effort – it needs to have real influence on other legal frameworks by which more targeted decisions (including regulatory and funding decisions) are made. At present, “the lack of legal weight and disconnection with RMA plans means that the full benefits of strategic planning are not being realised throughout the system” and “there is clear evidence of a disconnect between the aspirations of some councils as expressed in high level documents, and the detailed land use rules that are designed to give effect to those strategies” under the RMA. Particular infrastructure projects may not always align with broader strategies due to fundamental changes made through the RMA consenting process (including through negotiation and mediation with affected parties). The same is true of funding, where a strategic vision involving multiple institutions does not always flow through to budgeting decisions.

This is one reason why discretionary spatial plans produced under the Local Government Act are useful, but not enough. A number of commentators have concurred; for example, Wellington City Council submitted to the Productivity Commission that strategic land use planning undertaken outside of the RMA (eg the Northern Growth Management Framework, and the Urban Development and Transport Strategies) and more recently through the release of the (draft) Wellington Urban Growth Strategy... do not have any regulatory effect and often are ignored or downplayed by the Environment Court as significant policy documents.

Even in Auckland, the mandatory spatial plan adds a layer of complexity but due to its weak links to other frameworks does not fully achieve coordination. And while it has been done, it can take a long time for non-statutory spatial plans to be translated into regulatory and policy instruments under the RMA. A similar story has been observed overseas. In Ireland, it has been said that a 2002 national spatial strategy proved ineffective partly because it had no statutory backing and because central government did not follow through on the funding to make it work.

However, it is by no means clear how new spatial plans should fit specifically within our existing ecosystem of plans. This is in two senses: (1) how much influence they should exert on others, and (2) the extent to which other plans could be integrated within them, thereby simplifying what has become a highly fragmented system.

In terms of (1), we can even ask more fundamentally about the direction of influence. Should, for example, a spatial plan be required to give effect to national direction or a regional combined plan under an Environmental Stewardship and Planning Act? Or should those things have to give effect to a spatial plan?

This is a question that played out in the context of the Auckland Plan. That plan was designed to provide a high-level blueprint for Auckland which other instruments – especially the subsequent Unitary Plan under the RMA – would achieve on the ground. But the legal direction was always weak; the latter was only obliged to “have regard” to the former. The Unitary Plan, where the rubber really hit the road for many things (including regulatory restrictions and zoning decisions affecting people’s property) had a robust process involving an accountable council, an independent hearings panel, and the courts, and was designed to implement the more focused purpose of the RMA. It was important that this could not be overridden by a more aspirational spatial plan created, in many ways, in a less formal manner and covering a wider range of goals.

Equally, we can ask: should expenditure decisions under long-term plans and annual plans be required to implement the infrastructure envisaged by a spatial plan? Or, instead, should that strategy itself have to change based on the funding that councils and ultimately communities are willing or able to stump up in any given year? How to spend ratepayer money goes to the heart of local democracy, even if there are legitimate concerns that too many candidates campaign myopically on a platform of lower rates.

It would be even more clearly beyond the pale for long-term central government funding decisions to be bound by a long-term spatial plan. The budget process is the preserve of a democratically elected government (and, ultimately, Parliament), and the need for agility can come into sharp relief when the makeup of the government changes or when there is a national health or economic crisis, as at present. For example, a spatial plan made last year would not have envisaged the redirection of government funds towards pandemic recovery. One commentator has concluded that a...
spatial plan should certainly inform and shape an RMA unitary plan, but they should not be confused as to purpose. A spatial plan should be a flexible document, readily reviewed, particularly relating to currency of projects and priorities for action... The RMA unitary plan is a regulatory plan which in particular governs and integrates the management of natural resources, and land use and development. Its pre-eminent role should not be a land use plan or strategy, or an infrastructure investment plan.

We agree that the legal weight of a spatial plan cannot be absolute, and influence needs to flow in both directions. The relationship with combined regional plans and funding plans generally needs to be one of complementarity, not dominance.74

What this means in practice remains unclear. There is something of a chicken or the egg scenario here. For example, future development strategies required under the NPS on Urban Development (which can be thought of as very constrained spatial plans) are required to be informed by things like long term plans and infrastructure strategies under the Local Government Act.75 And yet they must also be drafted in time to inform long term plans.76 The New Zealand Planning Institute has made the good point that if a long term plan is adopted before a spatial plan, then the spatial plan “may become irrelevant, as infrastructure investments could effectively supersede the land use strategies developed in the spatial plan and fail to be integrated into the land use planning framework”.77 Some have suggested that spatial plans could be developed in tandem with, or just prior to, long-term plans. In our minds, careful co-development of all these things may be needed, as long as a wider spatial vision was always front of mind.

That said, because the purpose of new spatial planning legislation would itself need to stress the primacy of environmental bottom lines, there should be no objection to strategies giving effect to those bottom lines first imposed under more specific frameworks like an Environmental Stewardship and Planning Act. Things that are environmental limits, and things that are not, would be more clearly articulated under that Act than they are presently under the RMA (see Chapters 6 and 7), making that job easier. For example, it would be important for a spatial plan to embrace transport routes needed to support an urban form that made the achievement of environmental and climate limits likely (eg avoiding particular routes rather than mitigating their effects, and planning for some transport modes over others).

Aside from that, the law could require that spatial plans be given effect to in other frameworks unless there were good reason not to. “Good reason” could be defined as, among other things, being inconsistent with the purpose and principles of the more specific act, or where funding was unavailable (rather than diverted). This shows the importance of the purpose and principles of separate acts being well aligned even with a spatial planning framework in existence. For example, narrow transport priorities should not have excessive influence in a spatial plan, in the same way that RMA plans are quite rightly not required to give effect to plans under the Land Transport Management Act.78 Integrated urban planning is much wider than that, and should be reflected in the principles governing new spatial planning legislation (a Future Generations Act).
Alternatively, lower level instruments could be required to be “consistent with” or have “particular regard to” spatial plans. Some novel alternative could even be drafted (eg “be guided by” or “generally adhere to”). All of these options represent stronger relationships than those between the Auckland Plan and the Auckland Unitary Plan (“have regard to”), but none is absolute. On balance, we tend towards a stronger formulation.

Plans under an Environmental Stewardship and Planning Act or Local Government and Infrastructure Act would therefore not just be about blindly implementing spatial plans. They would be primarily about implementing the purpose and principles of their own governing legislation. Indeed, that is a key reason why a framework that sets environmental limits needs to be separate from others that actively encourage or require development. But spatial plans would have significant legal weight. It would be a bit like having a strategic meeting in an office, where everyone meets to outline a shared vision and then different teams go away to achieve their part of it. The idea is that they should all adhere to the vision that was agreed, unless there were persuasive reasons not to. Predictability, rather than absolute certainty, is the aim.

Regional spatial plans would not be directly binding in a regulatory sense. However, they should have real legal influence on decision making under more targeted frameworks (eg for land use and infrastructure). It would not be feasible for them to be given effect to in these other statutes, but a reasonably strong legal direction should be put in place to ensure strategic planning is worth doing.

10.6 Integrating spatial plans with other instruments

Even though it would provide better coordination, a regional spatial planning framework would add a layer to the resource management system. In our view, that is worth it. Any added complexity could be reduced in other ways. Structural change for local government (fewer councils, in the form of regional unitary authorities) and the production of far fewer RMA style instruments (regional combined plans and a single National Environment Plan) would assist. But there is also considerable potential for some existing strategic instruments to be absorbed by regional spatial plans, further simplifying the planning landscape.

There are some obvious candidates. For example, we see future development strategies (required under the RMA in some places) as an attempt to do urban spatial planning within the confines of the existing system. There would be no compelling reason for them to remain. Some existing strategic plans developed under the Local Government Act or other partnership approaches could also be reimagined within regional spatial plans to avoid reinventing the wheel, so long as they reflected the intent of the legislation and incorporated environmental limits. A review of those might be necessary. It might even be possible to integrate long-term plans, infrastructure strategies and regional land transport plans within a regional spatial plan, although the detail of that would need to be worked through carefully.

Perhaps the biggest question is whether regional policy statements should remain within a regional combined
plan under an Environmental Stewardship and Planning Act, or instead be integrated into a separate spatial planning framework. In our view, this is a very finely balanced question. On the one hand, there would be a lot of overlap. The Resource Management Law Association has suggested that the two instruments should be combined, so as to avoid another layer of planning in the system. Some have questioned the continued rationale for regional policy statements if spatial plans had legal effect and there were to be a combined plan for a region.

However, existing regional policy statements are not just spatial, and they contain objectives and policies that are vital to achieving the more specific purpose and principles of the RMA. In the context of Auckland, it was seen as important to retain the regional policy statement layer within a unitary plan, despite the existence of a higher-level spatial plan. The Auckland Plan was not seen to be a meaningful substitute for an instrument made under the more focused and robust processes and purpose of the RMA. On balance, we would therefore suggest retaining a regional policy statement element as part of a regional combined plan, and for these to be reviewed in tandem with spatial plans. However, we also note that there are powerful arguments in favour of integration.

On balance, we think that regional policy statements should be included within regional combined plans under an Environmental Stewardship and Planning Act. They should be reviewed alongside regional spatial plans.

Other existing instruments could be subsumed within regional spatial plans (eg council infrastructure strategies) or removed entirely (eg future development strategies required under RMA national direction).

10.7 The process for developing spatial plans

The trigger for regional spatial planning should not just be about the pace of urban growth and the need for coordinated infrastructure. It is categorically not just a vehicle for driving economic growth. Given the broad rationale for the system discussed in Chapter 6, we consider that many other kinds of pressures warrant a meaningful strategic and spatial assessment of how we are using and protecting resources, including slower urban creep, urban decline, implications for productive (food producing) land, the resilience of our population to disease and other health threats, biodiversity enhancement, energy use, tourism, and active measures to address (and adapt to) climate change. Enhancing the natural environment "must be at the core of what any spatial plan would be seeking to achieve" and while we need to "accept that our cities will develop … their development needs to be guided strategically, to protect other values than growth." One commentator has cautioned that:

spatial planning in Australia has taken a very infrastructure based focus, and is at risk of relying solely on large scale urban infrastructure development, with a risk of undermining the role and intent of spatial plans in helping to coordinate actions across the range of issues.

We therefore think spatial plans should be mandatory, rather than applying just to some areas (eg medium or high growth councils). And the link between adaptation and emissions reduction plans under the Climate Change Response Act and spatial plans needs to be particularly clear and directive (and supported by appropriate institutional capability).

Reduce our carbon footprint by integrating climate action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions.

However, spatial plans could have varying levels of detail, and this should not be prescribed. Every place is different. Some areas may require quite elaborate provisions (including detailed mapping), whereas others may not. Indicative land uses should be identified at a reasonably specific scale to provide a degree of certainty, but this should not be at a “zoning” level and would not have regulatory effect. Some wriggle room would be needed to allow for innovation in private developments through plan changes, and for detailed land, transport and other assessments to be made and change over time. But the big picture should remain consistent.

If spatial plans are to have real legal influence, the process for creating them needs to be robust (see Figure 10.1). We envisage that councils within a region (and, following local government restructuring, one or more regional unitary authorities) would lead the development of these instruments, but it would be a collaborative exercise alongside mana whenua, CCOs, local boards and central government.
Regional Spatial Plan

Development led by council in collaboration with mana whenua and CCOs

Advice from Infrastructure Commission, infrastructure providers, Crown

Public notification, submissions received

Review and recommendations from Futures Commission and Tikanga Commission/commissioners

Mandatory council and mana whenua response, providing reasons for rejecting or accepting recommendations

Sign off by councils and mana whenua

Sign off by Crown if funding or other central government measures required to implement

Figure 10.1: A process for producing spatial plans

The defining feature of this process is the need for a strong, enduring and predictable partnership approach between central and local government and others. Central government’s role in co-development will be particularly vital, given that: 

many areas of central government action such as housing, transport, infrastructure, economic development, environmental management, and social development, play out in cities. In particular central government owns, and makes decisions about, a range of infrastructure assets which include vast networks of schools, hospitals, prisons, roads, railways and other transport facilities as well as electricity transmission lines.

This has been recognised in the Irish national planning framework, where one objective is to strategically align population and employment growth with investment in things like education facilities and the infrastructural needs of an ageing population. In Ireland, a list of national strategic outcomes is explicitly linked to strategic investment priorities.

Central government also needs to speak with one voice, rather than different ministries or portfolios pulling in different directions. There has historically been a lack of cross-cutting urban-focused policy. National concerns also need to be specific and targeted to the right spatial scale, not just dealt with by general policy guidance. As the New Zealand Initiative has pointed out, “A blanket policy set by the central government can never adequately cope with the specific requirements of the regions.”

Specific provisions targeted at the needs of particular urban areas would be much preferable to what we have had under RMA urban national direction, such as:

Policies PC12 to PC14 apply to all local authorities that have part, or all, of a high-growth urban area within their district or region. Local authorities that have part, or all, of a medium-growth urban area within their district or region are encouraged to give effect to policies PC12 to PC14.

This kind of provision occurs many times throughout the NPS on Urban Development Capacity, despite containing only 6 pages of policies.

While targeted regional input by the government would be vital, it may also be useful to require the government to prepare a national spatial plan to coordinate its own responsibilities (eg nationally significant infrastructure like state highways, big picture strategic decisions about renewable energy, significant land use changes like forestry). For example, Ireland’s central government has much stronger and integrated policy input through its national planning framework, which contains a broad suite of objectives ranging from landscape and water efficiency through to the protection of city-scale greenbelts, housing provision and compact urban form. While it is heavily reliant on regional level strategic planning to implement (and it is not prescriptive), this sees central government set strong policy expectations at a national level. New Zealand should look to do the same.
A spotlight on special housing legislation

A good example of a top down and centralist (rather than integrated and cooperative) approach to urban development can be seen in the Housing Accord and Special Areas Act. The Act was introduced in 2012 and aims to enhance housing affordability by facilitating an increase in land and housing supply in high growth areas. Under the scheme central government has been able to negotiate accords with councils in order to fast track development, but the Act has also allowed for the government to step in directly where an accord cannot be reached. It also shortens the timeframe for consultation (3-6 months), can override existing RMA plans (they must only be had regard to), and can largely ignore local authority strategic plans for growth (eg a desire for compact urban form and sequenced supply of infrastructure).

The ability to override council land use planning arguably hinders rather than encourages the alignment of existing frameworks, and undermines rather than fosters an integrated and cooperative relationship between central and local government. Ironically it was the operation of a very similar planning device that drove the introduction of the RMA.

The immediate domestic reason why a large law reform effort of this type was undertaken flowed from the National Development Act 1979. That Act promoted a fast track for big development projects. ... [T]he fast track for large developments could easily result in adverse environmental effects... (and) removed the checks and balances contained in many statutes and allowed ministerial decisions to predominate. Had it not been for the National Development Act it is very unlikely that the Resource Management Act would have occurred.

Special housing legislation received widespread criticism and opposition from councils, many of which considered the solution lay with greater empowerment, resourcing and funding of their own activities (see Chapter 9) and increased cooperation between central and local government. Auckland Council has noted that although the release of land is important, more critical is that it be released in the right places and at the right times through coherent and strategic spatial planning. Collaboration is important, not just a top down imposition of rules to achieve narrow policy goals. For example, Auckland Council has worked towards a vision for a compact city, envisaging that 40 percent of new housing will take place on greenfield sites. In contrast, central government has tended to highlight the negative impacts of restricting greenfields development and focused on greater release of land to developers. Such disconnects can create misalignment in planning and highlights the importance of partnership across different levels of government in creating spatial plans that are targeted to the needs of a region.

Regional spatial plans should be mandatory, but may vary in detail and need to respond to the context/ issues of a particular place. Central government involvement in the development of regional spatial plans would be important.

Alongside collaboration with central government, a partnership arrangement with Māori is also essential for successful spatial planning, both to honour Treaty obligations and to address potential conflicts and opportunities early on. For example, a spatial plan would be a valuable place to identify high level, place-based cultural landscapes through a tikanga led process, and to weave this into the fabric of a strategic city-shaping exercise. If spatial plans had meaningful legal influence over regulatory plans under an Environmental Stewardship and Planning Act, this should avoid the ad hoc urban growth that risks cumulatively impinging on cultural landscapes, provide a more efficient use of Māori planning capacity that is currently diluted across multiple plans in a region, and to some extent prevent the need for extensive litigation (which is often based on allegations of inadequate consultation). It would identify big picture issues earlier in ways that more detailed and fast tracked processes may not. As with planning processes under other legislation, central government resourcing and support will also be necessary for a proper partnership to occur (as has been noted repeatedly by the Waitangi Tribunal).
Ownership of the land at Ihumātao has been under dispute since mana whenua were expelled from it by force and the land granted to settlers under the New Zealand Settlements Act 1863. The Waitangi Tribunal has said that its inhabitants were “attacked, their homes and property destroyed, and their cattle and horses stolen, but then they were punished by confiscation of their lands for a rebellion that never took place.” Such grievances go well beyond the power of the general resource management system to resolve, but it is a cautionary tale about the perils of inadequate engagement with Māori, the risks of fast tracking process, and the benefits of a partnership approach to urban development from an early stage.

In an effort to resolve issues over Ihumātao, the former Manukau City Council attempted to purchase the land, but their offer was rejected by its owner. While the site, at that time, remained protected against development under zoning provisions in the district plan, its zoning was contested and in 2012 it was reclassified as “future urban”. Although preventing development would have provided for Māori and heritage values, the Environment Court held that there was a countervailing need to “enable the landowners to provide for their social and economic needs in accordance with Section 5” of the RMA. The assumption was, of course, that there would be adequate safeguards imposed through normal RMA processes. A developer entered into a conditional agreement with the landowner to purchase the land in 2014.

The land was then designated as a special housing area under the Housing Accords and Special Housing Areas Act. This enabled the more rigorous consultation requirements and protections of the RMA to be bypassed, and significantly reduced Māori and community input. It also meant that the heritage and environmental values associated with the land were treated as “informing elements” rather than matters of national significance as they are under the RMA. Perhaps not surprisingly, the situation led to a claim being lodged with the Waitangi Tribunal in December 2015, challenging the creation of the special housing area.

In 2017, the United Nations Committee on the Elimination of Racial Discrimination also weighed in, recommending a review to consider compliance with the Treaty of Waitangi, the United Nations Declaration on the Rights of Indigenous Peoples, and other relevant international standards. The United Nations Special Rapporteurs on the Right to Adequate Housing and the Rights of Indigenous Peoples wrote to the government raising concerns about the processes under special housing legislation and highlighting the importance of aligning law, policy and practice with international human rights commitments. Protests featured in national headlines. And the courts acknowledged that the initial decision to rezone the land had not been able to “foresee the process that would be initiated under [the special legislation]”. The case of Ihumātao demonstrates how attempts to circumvent early checks and balances on decision-making can actually increase the risk of litigation and delay. Proactive identification of significant sites and issues is crucial.

We envisage that advice on a draft spatial plan would be proactively provided by the Infrastructure Commission and infrastructure providers. It is important that its vision can actually be delivered, and much implementation relies on actors beyond councils and even beyond the public sector.

A draft spatial plan would then be publicly notified, and submissions received. Effective public engagement, including from the bottom up, would be crucial. If a community is on board with a broad vision for their city and space, then it may smooth the pathway when that vision is translated into regulatory and funding instruments under other legislation. There would be an independent review by the Futures Commission and Tikanga Commission/commissioners (see Chapter 7), which would make recommendations. An alternative would be for this independent institution to appoint an independent hearings panel to perform this role.

Final sign off would be needed from councils and mana whenua. It is worth noting also that some countries also have a much stronger decision-making power for central government in regional spatial planning. For example:

- the Melbourne metropolitan strategy is prepared by the Victorian State Government and it can only be changed by Act of the State Parliament. In Queensland, the State Government prepares the regional plan for South East Queensland. In Canada, the Ontario Provincial Government prepares the growth plan for the “Greater Golden Horseshoe” centred on the city of Toronto.

We see most merit in a collaborative approach rather than a hierarchical one in which power rests with central government. Substantial leverage would rest with government anyway, as elements of a spatial plan are likely not to work without a commitment to central funding (eg for land transport). Bringing together multiple institutions in a single forum has been highlighted as one of the biggest benefits of spatial
planning exercises, even if they are non-statutory (like Smart Growth in the Bay of Plenty).121 That said, sign off by a responsible Minister could be one way in which central government could then be required, to some degree, to follow through on its commitments (notably funding promises).122 This could be a statutory version of the concept of negotiated “city deals” between central and local government.123 While one government could not absolutely bind a later one, some degree of long-term consistency and predictability is required over time for effective spatial planning, based on apolitical legislative principles and not sharp policy swings.124 Some have even said that “without the Crown’s active involvement and commitment to the spatial plan we seriously question the justification for statutory direction to prepare a spatial plan.”125 This is backed up by the example of Omokoroa:126 in 2002 Omokoroa was planned as an urban growth area in part because NZTA had designated an upgraded state highway from Tauranga to Omokoroa which at the time was projected to be completed by now. Thirteen years later this [had] not yet occurred and it [was] having a negative effect on the development of this area, resulting in unused capacity in utility network infrastructure and significant holding costs for the local authority as development to fund the up-front cost ... stalled.
A spotlight on transport in Auckland

Auckland Council has set out a vision to radically transform the city away from a car dominated system in order to provide for a more integrated public transport network. Many infrastructure projects have been proposed, including rail links from the central city to the airport, light rail to the North Shore and an additional harbour crossing. The creation of a unitary council in 2009 through local government reform provided an opportunity for the development of a more integrated transport network.

Auckland’s need for a more efficient and integrated public transport system has been a consistent issue in local government elections. When the Council consulted on the Auckland Plan in 2011, the discussion paper *Auckland Unleashed* saw 600 responses calling for the public transport system to be prioritized and for an increased focus on walking and cycling infrastructure. This was reflected in the city’s spatial plan, which acknowledges the need for an efficient transport system that reduces greenhouse emissions and moves away from traditional motorway focused sprawl in favour of encouraging more compact, higher density development and associated public transport.

However, local funding sources are insufficient to meet the Council’s vision. While the Auckland spatial plan came into effect in 2012, in practice the ability of the plan to influence and implement transport changes has been limited by heavy reliance on central government contributions.

The City Rail Link is an example of a project that has been attempted multiple times over many decades. The previous government regarded the rail link as cost-inefficient and showed limited interest in the venture. Even once support was obtained in 2013, the start date was postponed to 2020, the time when the project was originally intended to have been completed. Funding to deliver the largest spatial planning exercise in the country between Auckland and Hamilton also depends on commitment from the government of the day.

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The conflicting political agendas of central and local government in relation to transport has proved problematic. Despite the benefits of central and local agencies working together through the Auckland Transport Alignment Project, the city continues to struggle with a long list of projects, with funding primarily secured for motorways and only conditional for mega public transport projects. An injection of post-Covid-19 stimulus money from the government may play a part in providing capital for key transformative projects. But most of all we need a spatial vision for our urban areas – particularly those under growth or other pressures – that is agreed between local and central government under a common set of principles and is not subject to changes in political will.

The importance of ongoing central government commitment is not just about infrastructure, either. If a spatial plan provided for significant enhancement of urban biodiversity, for example, that might require considerable funding through the Department of Conservation and others to achieve restoration and pest control. Overall, the prospect of a legal obligation to implement a spatial plan should see financial discipline and realism built into its creation for all levels of government. Its vision should be within reach, not just an aspiration. Indicative funding sources should therefore be clearly indicated, including where costs are envisaged to be shared between agencies. If the financial component of a plan falls through then the remaining regulatory component may not be enough to achieve the objective sought.

Spatial plans should be accompanied by a description of anticipated costs, and should signal where funding is envisaged to come from. Final sign off should be by councils and mana whenua, and it would be important for an ongoing Crown commitment to implementation to be reflected in formal ministerial sign off as well. If parties could not reach agreement, some form of dispute resolution process would be required.

Tensions between central and local control are also mirrored in tensions between accountability and independence. While we see independent review by a Futures Commission as vital (especially if there is to be meaningful legal influence over regimes like the RMA), we agree with commentators like Local Government New Zealand that spatial plans are too value-based to be subject to merits appeals to a judicial body. As long as...
they comply with environmental limits as a matter of law (and do not have regulatory effect), we concur that spatial planning is “not the place for the courts”.132

Finally, spatial plans would need to be reviewed periodically (e.g. every three or four years), potentially to align with, or respond to, a strengthened framework for environmental reporting.133 Across all of this, timeframes need to allow for meaningful public participation. Many have said that the Auckland and Christchurch Independent Hearings Panel processes under the RMA were far too rushed, and this holds lessons for a spatial planning process too.134 Cultivating community buy-in for a strategic vision may reduce tensions (and resources) when it comes to implementation of plan changes, consents and infrastructure funding down the track.

A spotlight on strategic planning in Vancouver

In Vancouver there has been close integration of land use and transport decision-making through its Liveable Region Strategic Plan. Good urban planning principles come first; in fact, provincial government proposals for new highways were even able to be rejected if they worked against the community’s plan objectives.135

The plan was prepared through a bottom up collaboration of local municipalities, facilitated by a regional planning agency. This was a substantial six-year long process involving thousands of people.136 It involved an extensive multicultural outreach strategy, employing translators so that planning information was available in multiple languages. Workshops and widespread advertising publicised the initiative. A range of commentators have credited the extensive consultation and planning process as a reason for the strategy’s continuity, despite changes in political leadership.

In comparison to Auckland, public transport boardings per capita are three times greater in Vancouver. Interestingly, the focus in Vancouver was not on expensive large scale projects but on micro-level transport and land use integration, applying relatively small fixes to better integrate the transport network. The system relies on more heavily used buses that are able to operate at higher speeds and so are viewed as more efficient. The Vancouver experience with integrated transport demonstrates what a strong forum for public engagement, alongside an empowered and well-funded partnership between different levels of government, can achieve.

10.8 Concluding comments

In this chapter we have looked at how an Environmental Stewardship and Planning Act and infrastructure legislation could be better aligned. This is particularly important in areas of high urban growth, where housing cannot be delivered without both land use change (e.g. rezoning) and the services required for residential activities to occur. Those things must occur in a timely way. But alignment is important for other reasons, too, including to ensure synergies between development and environmental objectives. We have outlined several ways in which our frameworks could be better aligned: through the creation of an integrated Local Government and Infrastructure Act; by coordinating processes under different legislation; and by aligning principles across legislation.

Most important, however, would be the creation of an overarching statute under which spatial planning would occur. This would see the collaborative development of regional or cross-regional strategic instruments that would outline a vision for the growth or change of urban (and other) areas over time, and have real legal influence over decision-making under other frameworks, including the Environmental Stewardship and Planning Act and Local Government and Infrastructure Act. The point of spatial planning would be to integrate aspects of what has become a fragmented system for urban development and change, notably land use planning and infrastructure provision.

Spatial plans will be values-based instruments (guided by clear statutory principles) and should not be subject to appeal. However, independent review by a Futures Commission and Tikanga Commission/commissioners would be important to ensure an inter-generational view is taken.
Resource Management Review Panel's "Transforming the resource management system - Opportunities for change - Issues and options paper" (December 2019).


5. See also Local Government New Zealand A "blue skies" discussion about New Zealand's resource management system (2015) at 40; Resource Management Act 1991, sch 1, cl 3C (which makes aligned consultation possible, but does not require it).


7. See generally Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010).

8. Appeals would still be possible on points of law in the "hybrid" plan change model outlined in Chapter 8, and limited merits appeals would be possible in the Auckland Unitary Plan style model to the extent that councils rejected the recommendations of a Futures Commission.


10. The Productivity Commission has suggested that more detailed structure plans outlining the basic form of new developments should be made before land is rezoned, to allow for specific infrastructure funding to be considered. Infrastructure costs will vary widely depending on the type of development envisaged, not just its general zoning. See New Zealand Productivity Commission Using land for housing (2015) at 277.


22. Compare Auckland Council Submission to the Governance and Administration Committee on the Local Government (Community Well-Being) Amendment Bill (May 2018).

23. S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016) at vi.

24. Some have called spatial plans "spatial strategies" which may reflect their true nature better. See New Zealand Productivity Commission Better urban planning (2017).

25. R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, "opportunities for change" (2019) at 7.


27. Often under the general authority of the Local Government Act. See A Dormer and others Report of the Urban Technical Advisory Group (July 2010): “councils can and do carry out spatial planning as a core activity supporting district planning, infrastructure planning and the development of [Local Government Act plans].”

28. Many strategic documents are produced under the current system in a fairly fragmented way. For example, we have a Biodiversity Strategy, Government Tourism Strategy, Energy Efficiency and Conservation Strategy and Energy Strategy, Waste Strategy, and so forth.


33. Ibid.

34. On the need for vertical and horizontal integration, compare Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper (February 2020) at 2.


36. Although care would need to be taken, as general consultation on strategic direction is no replacement for legal participatory rights in relation to more specific decisions under the RMA (which can impact on specific properties and people).


38. Hamilton City Council Submission on transforming the resource management system: Opportunities for change: Issues and options paper (10 February 2020) at 5.

39. For example, in greater Christchurch, the Western Bay of Plenty, and around Hamilton.


41. For example, by supporting "the objectives of public health policy" and planning "for a more diverse and socially inclusive society". See Government of Ireland Project Ireland 2040: National planning framework at 163.


43. See Infrastructure New Zealand Submission on transforming the resource management system: Opportunities for change: Issues and options paper (3 February 2020); Horticulture New Zealand Submission on transforming the resource management system: Opportunities for change: Issues and options paper (3 February 2020) at 9.


45. Under the NPS on Urban Development, their purpose has been extended to include the achievement of "well-functioning" urban environments, but that concept is defined without reference to environmental outcomes.

46. They apply to “tier 1 and 2” councils identified in the NPS on Urban Development.

47. NPS on Urban Development at 20.

48. Ibid at 20.

49. Ibid at 22.


52. See People, places, spaces: A design guide for urban New Zealand (Ministry for the Environment, 2001) at 21.

53. Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 37.

54. Compare S Shepherd Proposed modifications to urban plan-making: A report to the Productivity Commission (Sapere research group, 2016) at vi.


56. One objective talks about the need for “coordinated and aligned planning decisions within and across local authority boundaries”. We can compare the general (and somewhat hopeful) direction in the RMA itself to “take into account management plans and strategies prepared under other acts” (s 66).


R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘opportunities for change’ (2019) at 2.


Compare R Chapman and others Submission by the NZ Centre for Sustainable Cities on the RMA issues and options paper, ‘opportunities for change’ (2019) at 4.

Government of Ireland Project 2040: National planning framework at 166.

Compare A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 37. If spatial plans could have regulatory effect and impact directly on property interests, there would need to be a much stronger role for the courts.

In the event of a cross-regional planning exercise, Regional utilisation should reduce tensions and misalignment between the land use planning preferences of regions and districts. See generally K Palmer Separating regulation of the built and natural environments – legislative options (Working paper produced for the New Zealand Productivity Commission, 2017) at 3.

Compare the reasonably wide involvement of various parties in the development of the Auckland Plan.


Government of Ireland Project 2040: National planning framework at 163.

See Local Government Think-Tank Submission to the Governance and Administration Committee on the Local Government (Community Well-Being) Amendment Bill (24 May 2018); Local Government New Zealand Transforming the resource management system: Opportunities for change – Local Government New Zealand Submission on the issues and options paper (February 2020).


B Craven, J Goldringham-Newsum and O Hartwich #localismNZ: Bringing power to the people (2019) at 38.

NPS on Urban Development Capacity at 15. This kind of provision occurs many times throughout the NPS, despite containing only 6 pages of policies.

Government of Ireland Project 2040: National planning framework at 160-168. Some have recommended that regional spatial plans be consistent with a new government policy statement, rather than a separate national spatial plan: see A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 42; Ministry for the Environment Building competitive cities: Reform of the urban and infrastructure planning system (2010) at 27.


There was significant political controversy and conflict between Auckland Council and central government over the application of the Housing Accords and Special Housing Areas Act 2013. For a detailed account of the history and background to the Act see, Murphy “The politics of land supply and affordable housing: Auckland’s housing accord and special housing areas” (2016) 53(2) Urban Studies 343.

See Auckland Council Submission to the New Zealand Productivity Commission’s using land for housing issues paper (2015) at 5. As mentioned earlier, there is also a need to address potential land banking and monopoly issues with sequence release, such as a tax on undeveloped land.


For example, see Waitangi Tribunal Ka Oaeorea tenei: A report into claims concerning New Zealand law and policy affecting Māori culture (Wai 262, 2011). See also Papa Pounamu Submission on the comprehensive review of the resource management system and draft terms of reference of the Resource Management Review Panel (September 2019). The need for a partnership approach has been acknowledged in the Kāinga Ora – Homes and Communities Act 2019.

Acknowledgement: Deidre Kloen-Bourke.


Gavin H Wallace Ltd & Qrs v Auckland Council & NPS (2019) NZEnvC 283.

A more detailed discussion of the history and issues at Ihumātao can be found in T McEwan, F Hancock and N Short “The mounting crisis at Ihumātao: A high cost special housing area or a cultural heritage landscape for future generations?” (2018) 6 Counterfutures 139.


119 There is a question here over what would happen if no agreement could be reached, and the potential role of central government or the courts. For example, a 2010 report recommended that the government sign off on spatial plans for compliance with national direction, but also stressed the relationship should be one of partnership, not dominance: see A Dormer and others Report of the Urban Technical Advisory Group (July 2010).
120 Ibid at 14.
121 New Zealand Productivity Commission Using land for housing (2015) at 278.
122 On the need for the government to sign off regional spatial plans, see Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019).
123 On city deals, see <www.newsroom.co.nz/2018/03/06/94600/government-lukewarm-on-wellington-city-deal#>
124 Compare Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 32.
125 A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 40.
126 New Zealand Productivity Commission Using land for housing (2015) at 283, citing the submission of Western Bay of Plenty District Council at 7.
127 This requirement was introduced by s 14 of the Land Transport Management Amendment Act 2013.
128 Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 36.
129 Including potentially private sector and civil society groups alongside councils. This is showcased by Nelson City Council’s regional biodiversity strategy, which is implemented by the wide variety of groups making up the Nelson Biodiversity Forum.
130 G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019) at 268; Infrastructure New Zealand Building regions: A vision for local government, planning law and funding reform (2019) at 3.
133 Environmental Reporting Act 2015.
136 While it may create robust buy-in, six years would be a long time to develop a regional spatial plan, and timeframes should be more ambitious than that. Ongoing reviews of spatial plans should be even more agile.
11. AN URBAN DEVELOPMENT AUTHORITY MODEL: THE URBAN DEVELOPMENT ACT

11.1 Introduction

There have been many efforts to address urban resource management issues in the past few years. Among the more significant and persistent ideas has been the establishment of a publicly owned urban development authority with special planning and consenting (and other) powers.

In 2019 a single, national level statutory urban development authority was established in New Zealand (Kāinga Ora – Homes and Communities).1 More recently, separate legislation – the Urban Development Act – was passed to confer special development powers on Kāinga Ora.2 This chapter focuses primarily on critiquing that significant legislation and its relationship with the RMA (and, by extension, its replacement: the Environmental Stewardship and Planning Act).

The basic idea of an urban development authority is that a publicly owned entity – potentially in partnership with the private sector – can master plan, fund and deliver large-scale (eg neighbourhood level) urban development that the private sector may be unable to do on its own due to scale, financial limitations, or regulatory constraints. The authority is there only to push through a development. Its role comes to an end once a project is complete (ie things return to “normal” settings). In New Zealand this is, above all, a response to the housing crisis.3 An urban development authority would be empowered to free up land and build new housing to increase supply at affordable price points.

To help it in this role, an authority can be given powers to cut through existing laws and regulations (eg for the compulsory acquisition of land, or for streamlined decisions on plans and consents), and to integrate aspects of planning and development that are otherwise fragmented (eg decisions about land use, investment in infrastructure, reconfiguring roads and reserves, etc). The model is therefore another way of addressing the coordination issues discussed in Chapter 10. It also aligns actual development activities with regulatory land use decisions and infrastructure investment. Kāinga Ora would not just create policies, rules and zones; it would also design a new built form and put shovels in the ground. But instead of land and infrastructure decisions being coordinated at a general, regional level using strategic spatial plans (outlining where and when growth and change should occur), the model aligns those things on a project by project basis.

Urban development authorities have been used overseas with some success, notably in regenerating former industrial land,4 but they have also been subject to criticism for being undemocratic and undermining community wishes. The basic concept is also not new to New Zealand. In fact, several authorities already exist, notably in the form of CCOs (eg Panuku Development in Auckland). A big part of these entities’ purpose is to provide coordinated development. For example, Panuku aims to:5

- contribute to the implementation of the Auckland [spatial] Plan and encourage economic development by facilitating urban redevelopment that optimises and integrates good public transport outcomes, efficient and sustainable infrastructure and quality public services and amenities.

The Hobsonville Land Company is another example of a publicly owned urban development authority that has been responsible for delivering a new neighbourhood on a former Defence Force base at Hobsonville Point in Auckland.6 However, these entities do not have special powers under the RMA or other legislation, and do not operate across the whole country. Kāinga Ora’s mandate and new statutory powers therefore create something quite different. The agency now has the ability to override planning restrictions under the RMA, plan, fund and build infrastructure, and assemble parcels of land for development, including through compulsory acquisition.

The basic idea of an urban development authority is that a publicly owned entity can master plan, fund and deliver a large-scale urban development using special powers, after which the area reverts to “normal” settings. The Urban Development Act endows an existing government entity (Kāinga Ora – Homes and Communities) with such powers.
11.2 Positive features

A 2001 government discussion paper stated that "large, state-funded redevelopment schemes are a thing of the past". In light of the Urban Development Act, that no longer rings true. But should this legislation have a place in a future resource management system? Or should we get rid of it?

The Act certainly has some positive aspects and we think the basic idea has a place in a future system, if used appropriately. While spatial planning and the introduction of a new Environmental Stewardship and Planning Act would be a better way to address more systemic urban problems in the current system (such as poor coordination or a lack of urban-focused principles), the Urban Development Act has other benefits. In particular, it provides for central government to have a stronger role in urban planning on the ground (not just general policy, or the provision of public housing and infrastructure). Having a large public agency taking on projects at scale can provide a valuable catalyst for private sector investment, attracting international investment partners, generating economies of scale, and de-risking large projects. It can be a way of taking significant infrastructure debt off the books of councils that may be nearing financing constraints (see Chapter 9).

A single entity like Kāinga Ora can also bring together a pool of expertise and perspectives in a cooperative approach where previously operational expertise was spread thinly across multiple entities. The model can ensure that public interest outcomes like eco-friendly design and construction are more easily injected into decisions from the outset, rather than development preferences conflicting with regulatory regimes only after a project has been conceived. It is therefore positive that Kāinga Ora is overseen by a Board of 6 to 8 members who collectively bring perspectives relating to local government, public housing tenants, Māori and New Zealand’s housing and urban development sector more broadly. Its operating principles are also, in some ways, more progressive than the norms under existing legal frameworks like the RMA, including in relation to the Treaty of Waitangi and climate change. Overall, this recognises that the public interest, and not just profit, should drive development decisions.

Compulsory acquisition powers are also provided for in the Act. These are, understandably, highly contentious. However, as long as they are accompanied by robust safeguards, they could be necessary to ensure that projects in existing urban areas can actually be delivered. It can be much more complex (due to the fragmented ownership of land, an existing built form and high costs) to redevelop existing urban areas at scale than to develop a large site which is mostly publicly owned or largely vacant (as at Hobsonville Point). Yet these large scale densification projects will be important to achieve a vision for compact urban form. We have already noted that there is no point creating a vision for densification and associated mass transit investment if it is not likely to be realised in practice. For example, while Auckland’s targets for density could physically be achieved within the urban boundary, expert modelling has previously projected that a much smaller percentage may actually be economic from a developer perspective. The urban development authority model may be one way of catalysing this form of regeneration.
The Urban Development Act contains positive aspects, and we see a place for an urban development authority model in a future system. In particular, it is positive that central government will have an active role in development activities to provide housing and catalyse urban renewal.

Powers to acquire land compulsorily will be intensely controversial (especially without offer back rights) and will require robust safeguards. But we think that some powers will be useful to achieve the regeneration of complex brownfields sites at scale.

11.3 Issues with the Act

Despite some positive aspects, we have significant reservations about other elements of the Urban Development Act. Notable among these concerns is its relationship with the RMA, and the implications of this for urban environmental outcomes. Our concerns are mostly about the ability to ride roughshod over the RMA once “specified development projects” are established.

Once a specified development project is put in place, Kāinga Ora has wide ranging planning, consenting and other powers in order to achieve development at pace and scale. It is tasked with producing a “development plan” that can override the RMA in many respects. At present, powers are wide ranging and risk treating many essential environmental safeguards as obstacles to be overcome rather than protections to be maintained. Perhaps most importantly, the role of Part 2 of the RMA is undermined.

11.4 Relationship with Part 2 of the RMA

The purpose and principles in Part 2 the RMA contain important normative directions for environmental wellbeing. Section 5 contains various biophysical bottom lines, and section 6 contains matters of national importance that must be recognised and provided for. Under a new Environmental Stewardship and Planning Act (see Chapter 6), a new set of principles would do much more than the RMA in recognising the importance of positive social outcomes in urban areas (including those relating to housing affordability, urban renewal, and the benefits of density). But its principles would also contain much clearer environmental limits with which any development would be required to comply, and to which all other principles would be subject. It is crucial that these are not overridden by bespoke legislation like an Urban Development Act. We cannot countenance carve outs to environmental bottom lines.

At present, the Urban Development Act takes a novel and relatively complex approach to how Part 2 of the RMA applies. Its purpose, which looks quite different to that of the RMA (and does not cross-reference to it), is: “to facilitate urban development that contributes to sustainable, inclusive, and thriving communities.” In one sense, this difference is to be expected given that it covers broader territory (eg infrastructure funding, reserves, roading powers etc) well beyond that of the RMA. It is also quite understandably about driving urban development, not just managing its adverse effects or enabling people to provide for their own wellbeing.

Although the Urban Development Act’s purpose does not refer to the RMA, a link to Part 2 can be found later on. Thus, section 5 reads (with our emphases):

5 Principles for specified development projects

(1) In achieving the purpose of this Act, all persons performing functions or exercising powers under it in relation to specified development projects, or urban development projects selected or assessed as potential specified development projects, must—

(a) have particular regard to providing, or enabling,—

(i) integrated and effective use of land and buildings; and

(ii) quality infrastructure and amenities that support community needs; and

(iii) efficient, effective, and safe transport systems; and

(iv) access to open space for public use and enjoyment; and

(v) low-emission urban environments; and

(b) promote the sustainable management of natural and physical resources and, in doing so,—

(i) recognise and provide for the matters in section 6 of the Resource Management Act 1991; and

(ii) have particular regard to the matters in section 7 of that Act; but

(iii) recognise that amenity values may change.

(2) In this section, sustainable management has the same meaning as in section 5(2) of the Resource Management Act 1991.

Effectively, this provision requires that people exercising powers and functions must do two quite separate things:

1. promote sustainable management (essentially, the same direction as under the RMA, with the rider that current “amenity values” are not presumed to be best);

2. have particular regard to several additional matters that are not explicitly recognised under the RMA (eg the provision of infrastructure).

There is no express clarification of the relationship between sections 5(1)(a) and 5(1)(b). Presumably this has been seen as unnecessary because the direction
in relation to Part 2 ("must" promote sustainable management) is more directive than to "have particular regard to" the matters listed in section 5(1)(a), or because there are perhaps few obvious tensions between them. One would hope that is the case. Indeed, the same kind of urban planning principles would be embedded more strongly in a new Environmental Stewardship and Planning Act anyway (see Chapter 6).21 Section 5 of the Urban Development Act would therefore become somewhat redundant, and would need to refer only to the principles of the RMA's replacement. To restate them in a different form would be confusing and duplicatory.

However, it would be crucial to clarify the relationship between the purpose of the Urban Development Act and that of the RMA (and its successor). Despite the reasonably clear direction to promote sustainable management in section 5 of the former, one could ask whether its more development-oriented purpose (to facilitate development) could be used in legal argument as a "higher" provision to override or at least influence that direction. Similar kinds of arguments have in the past been used under the RMA itself to undermine clear protections contained in subordinate instruments (like national direction), and instead adopt an "overall broad judgement" based on more general directions in a purpose and principles section.22

It should therefore be made much clearer in the purpose of the Urban Development Act that it will only facilitate developments where doing so would promote the sustainable management of natural and physical resources (as defined under the RMA).23 The Act's inclusion of the novel term "sustainable ... communities" in its purpose is clearly not intended to be the same concept as sustainable management, and is wide open to interpretation.

The pre-eminence of Part 2 (and its replacement under a new Act) needs to be clarified elsewhere, too. In particular, when it comes to making decisions on development plans, the role of the RMA's purpose and principles is currently unclear. There are mandatory considerations for Kāinga Ora in preparing a plan,24 but these do not link to the matters listed in section 5(1)(a), or because there are perhaps few obvious tensions between them. One would hope that is the case. Indeed, the same kind of urban planning principles would be embedded more strongly in a new Environmental Stewardship and Planning Act anyway (see Chapter 6).21 Section 5 of the Urban Development Act would therefore become somewhat redundant, and would need to refer only to the principles of the RMA's replacement. To restate them in a different form would be confusing and duplicatory.

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Even more concerning is that Part 2 as a whole has been expressly demoted when it comes to consenting decisions. A project's strategic objectives – which are bound to be development oriented – are specifically given greater statutory weight than section 104 of the RMA (which in turn recognises the pre-eminence of Part 2).26 This undermines the more general intent of the legislation that those with functions and powers must promote sustainable management. Confusingly, this approach to consenting is also quite different to decision-making on a development plan, which does not contain any express hierarchy between project objectives and Part 2. The integrity of the environmental outcomes embedded in Part 2 could therefore conceivably be eroded over time by a string of consenting decisions that do not have to strongly defend it.

The RMA's (and, in the longer-term, Environmental Stewardship and Planning Act's) purpose and principles will need to remain pre-eminent in all types of decision-making under the Urban Development Act, with the exception of targeted changes to aspects like urban amenity. The relationship between the statutes should be made clearer and less complex.

11.5 National direction

The Urban Development Act's treatment of national direction is also of concern. While they have their issues (see Chapter 7), NPSs and NESs play an essential role in fleshing out nationally significant environmental bottom lines identified in sections 5 and 6 of the RMA.

A development plan produced by Kāinga Ora (which can override both regional and district level RMA instruments) is required to be "not inconsistent with" national direction. While this is still a reasonably strong direction, we do not see any compelling reason for it to be different to what is already in the RMA. To "not be inconsistent with" is a weaker (or at least more passive) direction than that to "give effect to" an NPS, which is what other plans under the RMA must do. A development plan should, for example, be expected to actively contribute to the outcomes sought under the NPS for Freshwater Management or the targets set for biodiversity under the proposed NPS for Indigenous Biodiversity. In theory, it would be possible for a development plan to completely replace a district plan or regional plan in a project area, in which case it would be particularly concerning if it did not need to give effect to national direction.

Furthermore, if a small pocket of urban development (an area unlikely to be based on freshwater catchments) were to take a less robust approach to freshwater quality or other environmental domains than in a regional policy statement or plan, that could have negative implications for water quality elsewhere in a region (eg downstream) and the ability of councils to give effect to the NPS for Freshwater Management as a whole.

In our view, Kāinga Ora should be obliged, in an evaluation report on environmental matters,27 to outline how national direction is being given effect to in its development plans. It should also be clarified that there is an obligation to make changes to a development plan to give effect to new national direction, or changes in national direction. As it stands, Kāinga Ora may amend a development plan without using the normal process if needed to maintain consistency with new national direction, but it is not clear when it must amend a development plan. This can be
contrasted with section 66 of the RMA, which states that a regional council must change a plan in accordance with national direction.

The strength of national direction relative to other instruments is also significant. While the Urban Development Act provides that a development plan must “not be inconsistent” with national direction under the RMA, section 26 of the already existing Kāinga Ora – Homes and Communities Act provides that Kāinga Ora must “give effect to” the Government Policy Statement on Housing and Urban Development when performing its functions. That instrument is focused firmly on development priorities, and (aside from some positive references to climate change) does not refer to environmental matters or link well to the RMA or transport legislation. This creates potential tensions and inconsistencies, which seem likely to require litigation to resolve.

Aside from the substantive risks this creates for environmental protections, it further highlights the general lack of cohesion between policy documents at the highest level in our system. It reinforces the need for a proper strategic spatial planning framework. Even provisions relating to the purpose of the GPS on Housing and Urban Development are not connected to the objectives set out for Kāinga Ora under the Act. Several agencies have highlighted this deficiency and the need to align the objectives of the framework more closely.

At least to the extent that a development plan overrides or amends RMA planning instruments, we recommend that those exercising powers and functions give effect to national direction. The GPS on Housing and Urban Development should be expressly subordinate to the need to give effect to national direction under the RMA. In a future system, there would be a much clearer identification of environmental limits, and these would need to be “complied” with in the same way as any other planning or development body.

The position of national direction under the Urban Development Act is not strong enough. We do not see any compelling reason to change the direction to “give effect” to it, as is the case under the RMA, particularly in light of the development-oriented purpose of the Act and Kāinga Ora’s stronger obligation to give effect to the GPS on Housing and Urban Development.

11.6 Regional functions

Under the Urban Development Act, development plans are able to override, add to, or suspend the whole or part of “any planning instrument that applies to the project area”. If there is any inconsistency, a development plan prevails over another instrument. The general reason given for this is to overcome “planning constraints” on urban development. However, the concept of planning constraints has been treated as an alarmingly broad one. Although it is not particularly obvious on the face of the Act, this in practice allows for a development plan to override or change regional policy statements, regional plans, and district plans. District plans largely deal with land use and subdivision controls, whereas regional plans largely address what some may see as more “environmental” issues in the sense of pollution and common pool resources like air, freshwater and the coastal marine area.

This is a significant power, and in our view goes well beyond what is necessary to address urban development issues (eg allowing changing amenity values or overcoming Nimby resistance to densification). Thus while we consider that a development plan should be able to amend district plan provisions to provide for quality development at pace and scale, we do not see a compelling case for a development plan to have the ability to override regional plans or anything other than the land use components of regional policy statements. Legitimate environmental protections are not “planning constraints” to be weakened. Elsewhere in the Act (where Kāinga Ora expressly does not have ongoing jurisdiction over regional consenting once a development plan takes effect) it is recognised that a development-oriented entity should not also have regulatory powers in relation to environmental protections. That should apply equally to regional planning functions.

The environmental risks associated with the power to override regional instruments are exacerbated by the lack of a role for regional councils in the project establishment and planning process. While territorial authorities do not have an absolute right of veto (national interest considerations can still override any opposition), they are anticipated to be closely involved in “partnership” with Kāinga Ora and must be invited to express support or opposition to a proposal. They are also invited to nominate a representative for the project’s governance body if supportive of a proposal. Regional councils are not extended the same opportunities, and are only consulted as key stakeholders. The legislation seems to assume that the interests and therefore involvement of local government in urban development are associated mainly with infrastructure responsibilities, the provision of amenities, and land use jurisdiction, but not issues to do with the natural environment in urban areas. Effectively, the environmental mandate of regional councils under the RMA seems to be viewed as a roadblock to be overcome rather than a set of functions to contribute to sustainable urban development.

Furthermore, the weak role of regional councils does not recognise the importance of what is often strong regional level interest in economic development, flood protection and natural hazards management, and spatial planning for urban growth. Regional councils are not just environmental regulators that operate in the countryside. They have a broad focus across their regions and are often well-placed to consider the bigger picture impacts of urban development patterns. In Chapter 8 we proposed a shift towards regional unitary authorities, and
this should address concerns about the marginalisation of regional councils. In the interim, however, they should have a more prominent partnership role alongside territorial authorities.

A weak recognition of regional functions in the Act flows through to the consenting context. Although it is not authorised to be the longer-term consenting authority for regional consents, Kāinga Ora is able to “decline all or part of [a regional consent application], to impose conditions on the grant, or to modify any conditions that the consent authority would impose on the grant” in a transitional period (between the establishment of a project and its development plan becoming operative). This approach is concerning because it potentially allows Kāinga Ora, a development-oriented entity, to weaken environmentally focused conditions on regional consents before a development plan has (1) been prepared, (2) been subject to recommendations from an Independent Hearings Panel, or (3) become operative following ministerial approval. Being a developer and planner rather than a dedicated environmental authority, it is by no means certain that Kāinga Ora would have the kinds of expertise to qualify it to make decisions in relation to conditions concerning freshwater, soil quality, air quality and so forth. Independence for these matters will be important.

Furthermore, although it cannot be a regional consenting authority once a development plan becomes operative, Kāinga Ora does have significant powers in relation to regional functions in the plan itself. The content of a plan has significant implications for consenting. For example, providing for activities to be permitted or controlled in a development plan has a big effect on subsequent consenting settings (no consent is required, or it must be granted). And it is worrying that, while it has the power to override or alter regional plans, Kāinga Ora does not have corresponding functions to ensure that a regional council’s environmental mandates are still met (section 59 reflects only territorial authority functions). This may prove significant, given that the institution’s functions under the Act may well influence decisions about staffing and expertise.

### 11.7 Project establishment

Some have seen an urban development authority model as a potential alternative to spatial planning, in that it provides for the coordination of land use, infrastructure and other decisions. These are made through the same development plan process, and by the same entity. However, this approach could create a different kind of fragmentation, by focusing on the short-term development life-cycle of a reasonably small defined area, rather than a region-wide coordinated strategy for long-term urban growth or change. Development projects are to be identified in response to a pressure or need rather than planned in advance.

For that reason, we think that the legislation should be a tool to implement a well-considered regional spatial plan, not an invitation for the government to substitute its own growth strategy, to continue ad hoc urban expansion, or to ride roughshod over community expectations. For example, Panuku Development in Auckland has been tasked with urban renewal that is consistent with the urban form outlined in Auckland’s spatial plan. And the Productivity Commission has also noted the risk that a centralised urban development authority model could make “greenfield land relatively cheaper to develop, which would bias growth towards the edge of cities.” That would not be conducive to the compact urban form we should be seeking. As such, special powers could even be limited to where they would be most useful: complex brownfields re-development or infill development (eg through the repurposing of existing Crown land).

Careful thought should also be given to whether it is appropriate to put some kind of scale or other restrictions on projects. At one extreme, the legislation should not become a default mechanism by which central government can intervene in site specific planning disputes. Nor should it become the default mechanism for urban planning or a way to circumvent existing legislation like the RMA. Indeed, a regulatory impact statement has noted “a risk of undermining the coherence of the overall planning regime by ‘tinkering’ with overarching purpose and principles in only specific areas and/or contexts”. Importantly, the legislation does not make it clear whether Part 2 of the RMA (and its successor under a new Act) is intended to guide how projects are selected. It applies only to “specified development projects, or urban development projects [already] selected or assessed as potential specified development projects”. Yet such considerations are equally important when Ministers or Kāinga Ora are considering where projects should be pursued in the first place. That is particularly important where they are in greenfield areas (where productive soils or other environmental considerations need to be safeguarded).

Part 2 also needs to closely inform the core objectives of a project, which should enhance environmental wellbeing alongside social wellbeing (eg improving water quality and biodiversity through environmentally sensitive urban design and green infrastructure). At present, the government can set fairly open-ended objectives, and eligible projects could conceivably include ones that focus...
on commercial purposes rather than just housing or more holistic urban regeneration.

It is particularly worrying that the concept of an "urban" development does not clearly exclude the use of centralised powers to progress things like large-scale port developments, energy facilities, or other industrial projects. Much stronger constraints are needed regarding where and why projects can be established in the first place if the Act is not to become a subtler reincarnation of the much maligned National Development Act of the Muldoon era.

The urban development authority model is not a proper alternative to a framework for regional level spatial planning. The legislation should be used as a way to implement a spatial plan rather than override it. Stronger safeguards are required around where and why project areas can be established.

11.8 Concluding comments

Although it adds a layer of complexity (including burdening New Zealand's statute book with a couple of hundred extra pages filled with a web of legislative cross-references), bespoke urban development legislation has positive features and could usefully have a place in a future resource management system. However, it should categorically not be seen not as a way to weaken environmental protections or "get around" other parts of the system. Instead, it should be seen as a way for development to be done faster in ways that safeguard and actively improve environmental outcomes. It has not been adequately established that the purpose and principles of the RMA as a whole – and the wide range of crucial environmental protections they embody – are barriers to good urban outcomes that somehow need to be overcome. Special powers under the Urban Development Act should be targeted at core problems like overcoming nimby objections to urban change and density in district plans.

Furthermore, the rationale for wide ranging planning and consenting powers – essentially, a carve out from the RMA – will become much less compelling in light of more systemic reforms described in earlier chapters. These include a more urban-focused set of principles in a new Environmental Stewardship and Planning Act, a more agile planning process, and a framework for regional spatial planning. To us, the real benefit of the legislation is as a tool to implement the vision in a regional spatial plan at scale (and within the constraints of environmental limits). That will be particularly valuable in brownfields areas that have complex issues, fragmented ownership, and pose excessive risks to smaller-scale private developers. It should not be used as a substitute for more systemic resource management reforms, or a way to get around an under-performing RMA.
1 See Kāinga Ora – Homes and Communities Act 2019. This agency doubles as the Crown’s landlord and is the successor to Housing NZ and the government’s Kiwibuild unit.

2 At the time of writing, the Select Committee’s report has just been released.

3 Although not entirely, the agency is envisaged to undertake developments that do not necessarily have housing components, such as the regeneration of an urban centre.


6 Established in 2005 as a wholly owned subsidiary of the Housing New Zealand Corporation under the Crown Entities Act.

7 People, places, spaces: A design guide for urban New Zealand (Ministry for the Environment, 2001) at 18.

8 See generally New Zealand Productivity Commission Using Land for Housing (2015) at 300.

9 Ministry of Housing and Urban Development Kāinga Ora – Homes and Communities Bill: Officials’ report to the Environment Committee (August 2019) at 17.

10 Kāinga Ora – Homes and Communities Act 2019, s 10.

11 Section 4 deals specifically with the Crown’s responsibility to provide for Māori interests, and requires that the Board maintain systems and processes that ensure Kāinga Ora has the capability and capacity to “uphold the treaty of Waitangi and its principles”.

12 Under its operating principle of stewardship and sustainability, Kāinga Ora must operate in a manner that recognises the need to mitigate and adapt to the effects of climate change. In contrast, under the RMA decision makers must have regard to the effects of climate change (under s7) but are prohibited from considering the effects of discharges on climate change (see Chapters 6–8).

13 Although there are already legal precedents allowing public authorities to acquire land compulsorily for housing and urban renewal: We note that Kāinga Ora would have to request that powers be exercised by the Minister for Land Information on its behalf. The prospect of compulsory acquisition powers being used for private residential land (someone’s house), without any right of first refusal when new lots are then sold off for potential commercial use, will be particularly controversial.


15 See New Zealand Productivity Commission Using Land for Housing (2015) at 287, where it is pointed out that “Nelson’s regulatory and non-statutory plans seek to achieve greater intensification, particularly around transport nodes. However, [a review] concluded that ‘Intensification is not potentially occurring to the degree needed to adequately support public transport... or accommodate future population growth as anticipated in the [plans]’”.

16 Ibid, at 299.

17 While it in no way detracts from our concerns, it is worth noting that the Act takes a more robust approach to environmental wellbeing than in previous legislative proposals. For example, Part 2 of the RMA is no longer expressly subordinate to development considerations in the purpose and principles of the Act, specific reference is made to the need to consider low emissions urban environments and the need to adapt to climate change risks, and Kāinga Ora is not the consent authority for regional level consents after a transitional period has expired.

18 Albeit ones that can be much improved: see Chapter 6.

19 Compare the concerns of the Parliamentary Commissioner for the Environment in his submission on the Urban Development Bill.

20 Urban Development Act 2020, s 3.

21 Including recognition that amenity values may change and that compact urban form is desirable.

22 See Chapter 6. This was overturned in Environmental Defence Soc Inc v New Zealand King Salmon Co [2014] NZSC 38, [2014] 1 NZLR 593.

23 Compare the submission of the Parliamentary Commissioner for the Environment on the Urban Development Bill, and the legal advice commissioned by the Commissioner from Bell Gully.

24 Section 69.

25 Compare the Environment Select Committee’s report on the Urban Development Bill at 2.

26 Urban Development Act 2020, s 19(1).

27 See section 73.

28 See section 23.

29 Ministry of Housing and Urban Development Kāinga Ora – Homes and Communities Bill: Officials’ report to the Environment Committee (August 2019) at 111.

30 Section 91.

31 Section 90.

32 The only exception to these powers appears to be for historic heritage, where existing protections in planning instruments cannot be undermined (only made more stringent) in a development plan. There is no mention of exceptions for existing environmental restrictions protecting domains like freshwater, air quality, soil, or biodiversity (other than in national direction).

33 Or those equivalent provisions in combined regional plans, which are recommended in Chapter 8.

34 Section 116(1)(b).

35 Section 30(h) and cl 43.

36 Section 284.

37 Section 35(3)(a).

38 Section 106.

39 Compare the Environment Select Committee’s recommendations, which included extending the ability to alter consents lodged before project establishment.


42 Ibid, at 304 citing the submission by the Ngāti Tamaoho Trust.


44 This should be in addition to the “specified conservation-related areas” provided for already in section 310(d) and for which approval is required from the Minister of Conservation. There are many considerations under the RMA that may mean an area is unsuitable for development (eg landscape, biodiversity and SNAs, food production), not all of which are encompassed by “specific conservation-related areas”. Some of these areas may be on private land and not protected by property law mechanisms like covenants.

45 Infrastructure New Zealand Submission to the Environment Committee on the Urban Development Bill (14 Feb 2020).
12. FROM URBAN PLANNING TO SYSTEMIC REFORM

12.1 Introduction

Over the course of this report, we have focused on the core framework of legislation needed for a resource management system that is fit for purpose in urban areas. At the centre of this would be a new Environmental Stewardship and Planning Act, which would be closely linked to frameworks for local government, infrastructure and climate change. It would be presided over by integrated spatial planning at a regional and cross-regional scale.

However, we reiterate that urban areas and concerns are not isolated from the wider context of reform. In many respects, it does not make sense to speak of urban reform at all – most issues are systemic and require a holistic view of our society and environment. As demonstrated in Phases 1 and 2 of the project, we need to think about the big picture and pursue fundamental changes across the board to create a sustainable, inclusive and prosperous New Zealand. Our cities are a big part of that, but not the only part.

We do not delve into this in detail here, as it strays beyond a purely urban focus. However, we think systemic reforms could include the following measures.

12.2 A Future Generations Act

In Chapter 10, we discussed spatial planning and signalled that this should occur in a separate, overarching statute: a Future Generations Act. We envisage that this legislation, and new institutions at its heart (eg an independent Futures Commission) would also have a more far reaching role. It would be a sort of resource management constitution, and at its heart would be a legislated recognition that all human activity and policy must occur within biophysical boundaries. A Futures Commission, established under the Act, would inject strong independence into decision-making that has inter-generational impact, while retaining the ability for governments to pursue their democratic mandates. This could reflect a similar “Future Generations Commissioner” as established in Wales. More specifically, this framework would:

- Provide a set of high-level inter-generational objectives that would be mandatory considerations for all public decision-making (including proposals for legislative change), not just decisions taken under specific statutory frameworks like the RMA or infrastructure investment legislation. The OECD has pointed out that the current system in New Zealand lacks a robust framework for objective setting and associated reporting and accountability frameworks; it does not embed a vision for where we want New Zealand to go. Carbon neutrality (stronger than just meeting international obligations), resilience to harmful change, environmental security and zero waste should be prominent. Under Canada’s Environmental Protection Act, for example, there are general duties for the government to proactively “exercise its powers in a manner that protects the environment and human health”, and to “take preventive and remedial measures to protect, enhance and restore the environment”, among other things. Objectives should guide the expenditure of public money and investment choices, building on the living standards framework underpinning recent “wellbeing” budgets. In Sweden, for example, the government’s Budget process is informed by a set of environmental objectives and targets set by Parliament. In New Zealand, the Public Finance Act (governing the government’s Budget process) can already support strong consideration of inter-generational environmental wellbeing (not just fiscal considerations) and this should be strengthened through reference to explicit principles in a Future Generations Act. The enormous amount of inter-generational debt being amassed in the response to Covid-19, particularly in and around cities, makes this even more important (see Chapter 4).

The Act as a whole could also be underpinned by powerful guiding principles that, for example, make clear the natural world as a whole has “the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes”. It could usefully be worded in a way that reflected the intersection between te Ao Māori and Western perspectives, building upon ideas like te Mana o te Taiao. Common principles at the highest level of the system should help ensure that different pieces of legislation do not pull apart or become misaligned over time, because they would also apply to decisions for legislative change (see the spotlight below).
• Outline, at a high level, the nature of the Treaty relationship in relation to the use and protection of natural resources, including in cities. Some have suggested that national direction under the RMA (an NPS on the Treaty relationship) could fulfill this function, but we consider that it should be embedded into a higher level, constitutionally significant framework that guides all others. At present, there are widely divergent approaches to Treaty principles across legislation like the RMA, Local Government Act, Conservation Act, Land Transport Management Act, Climate Change Response Act, Kāinga Ora – Homes and Communities Act, and others. Greater harmonisation would be desirable.

• Provide for the creation of an integrated national resource management strategy (a “Futures Strategy”), outlining a vision for our country’s future and methods for creating synergies and addressing risks. Climate change should be front and centre. For example, the Productivity Commission has called for a low emissions strategy that specifically outlines what the government will do to meet emissions and targets (eg for environmental enhancement, urban form, or timber construction).

• Require a Futures Commission to produce and table in Parliament periodic “futures scanning” reports that look across New Zealand and the world to proactively identify emerging issues, threats and opportunities (environmental, social, health and economic), and recommend measures to pre-empt them. The government would be required to respond to the reports. Such a measure is reinforced by the emergence of Covid-19 in recent months (in a similar spirit, some have suggested the establishment if an independently managed national risk register), but a wide range of issues indicate that we need to look ahead more than we have become accustomed to doing in a reactive, market led model. Looking ahead is particularly important in cities, where markets, demographics, technology and societal expectations can change rapidly. We need to be well prepared given that “we cannot discount the possibility that one or more of the global social, economic or environmental systems will collapse, with devastating consequences”.

• Provide for the Futures Commission to issue periodic report cards to the government (or specific public authorities, like local government) assessing its performance against clear statutory principles and targets (eg for environmental enhancement, housing etc). This would align with electoral cycles, to ensure that New Zealanders went to the polls with the assessment in mind. We can compare the Welsh approach, where public bodies are obliged to improve wellbeing; they must publish objectives, take all reasonable steps to achieve them, and report on progress. The Welsh Future Generations Commissioner has power to review public bodies, which must take all reasonable steps to follow recommendations unless good reason exists not to do so. In Ireland, an independent Office of the Planning Regulator has oversight over the implementation of the national planning framework (ie the country’s strategic plan). Strong independent oversight of strategic and inter-generational urban and environmental matters is an emerging theme in many countries.

• Provide for the establishment of a single “Futures Group” within government, comprised of senior officials from all departments relevant to the resource management system (chaired by the Department of the Prime Minister and Cabinet), and advising a special Cabinet committee (rather than a specific minister). This would be a meaningful whole of system steward.

Currently different branches of government provide differing advice and submissions on various matters. A Futures Group would respond to complaints that there is a lack of clear leadership across the system (particularly in cities), and that institutional fragmentation affects the ability to deliver cross-cutting outcomes. In the urban context specifically, some have noted that “without proper oversight and leadership, the risk is that a ‘silo mentality’ develops” and there is more focus on “the mandate of that department or agency, and less on ‘joined up’ action for a particular urban area.”

Reforms to the state sector more broadly reflect this desire to take a more integrated approach, including for environmental matters (eg by making department heads jointly responsible for cross-cutting outcomes like climate change mitigation, or for the multifarious aspects of urban resource management like land use, infrastructure, water mobility and health). A Futures Group could be a formally established as an example of an “interdepartmental executive board” already contemplated under proposals for a new Public Service Act.

• Provide for a more integrated and comprehensive system of environmental monitoring and reporting, including on how land is being used in and around urban areas and the state of housing and infrastructure. The Act could strengthen, and expand on the existing Environmental Reporting Act.
Environmental monitoring and reporting

Triennial report card issued to public authorities, assessing performance against criteria in Act

Futures scanning (identifying threats and opportunities)

Decision-making criteria for all public decisions, including framework under which crosscutting environmental targets/objectives must be set

Mandatory response, aligned with electoral cycles

Establish cross-cutting Futures Group within government, comprised of representatives from all relevant departments

Integrate legislation establishing cross-cutting institutions

Impose general environmental duties of care

Mandatory consideration of consistency with purpose and principles when making legislative change

Establish independent Futures Commission

Potentially integrate existing watchdog-type institutions

Figure 12.1: Decision-making principles and duties under a Future Generations Act
In 2012, the National government introduced the Local Government Amendment Bill (No.2) changing the Local Government Act's focus away from the promotion of social, economic, environmental and cultural well-being to a more economic and efficiency based approach. This construed the function of local government more narrowly as one of providing good quality infrastructure and services, and the performance of regulatory functions in a cost effective way. These changes were then reversed with a change in government, by the Local Government (Community Well-being) Amendment Act 2019, which restored the Act’s focus on well-being and sustainability that had existed prior to 2012. In addition, a number of other local government powers that had been removed, such as the ability of territorial authorities to collect development contributions for community infrastructure, were revived.

This demonstrates how changeable the vision and role of local government can be across the electoral cycle, shifting between a narrow versus broad scope, and between the prioritization of economic efficiency and service provision on the one hand to community well-being and sustainable development on the other. Many other examples exist of the policy ground constantly shifting. For example, the case of Ihumātao discussed earlier shows how new legislative carve outs like special housing legislation can create difficulties. We can seriously question whether the Environment Court would have allowed Ihumātao to be rezoned for urban development had special housing legislation, with its reduced scope for consultation and the lesser provision for cultural, environmental and heritage concerns than the RMA, been in place at the time.

We need greater policy predictability for inter-generational matters. Some have suggested that there should be a single minister or department responsible for all statutes relevant to urban planning. We suggest that the wider resource management system warrants a stronger, more integrated central government steward, and common principles under a Future Generations Act that guide further legislative reforms. The Biodiversity Collaborative Group has reminded us that success in one policy area requires “integrating and aligning wider government policy, institutional arrangements and regulations. Otherwise we run the risk of one initiative negating or impeding the other.”

A new statute – a Future Generations Act – should be enacted in a future system. This would be the legislation under which strategic spatial planning occurred, but it would also have a much wider role. In particular, it would: provide a set of high level objectives to guide the exercise of all public powers; outline a consistent approach to Treaty issues relevant to resource management; provide for the creation of an integrated national level resource management strategy; provide for an independent Futures Commission to create futures scanning reports to which government would need to respond, and issue a report card for public authorities based on their progress towards achieving inter-generational targets; establish a whole of system steward (a Futures Group) within government, being a forum where different agencies and departments came together to speak with one voice; and provide for a more comprehensive system of monitoring, reporting and evaluation.
12.3 A circular economy

A lot of waste is generated in urban areas, including through construction and manufacturing. But a city that cannot deal with its waste is not a sustainable one, and we need to be aiming for truly zero waste settlements by implementing a circular economy across New Zealand. That is beyond the reach of urban planning frameworks like the RMA. The generation of waste from land uses is seen as an effect on the environment that is too “remote”. This creates issues much further down the supply chain, in that we are forced to accommodate rather than prevent waste.

While the principle of a circular economy should be built into a Future Generations Act at the highest level, it also requires the strengthening of specific tools within the Waste Minimisation Act (greater government funding, cradle to grave product stewardship schemes, prohibited products, the production of alternatives, and creative incentives for recycling and reuse). In particular, there is a widely recognised need to scale up our domestic recycling sector to become self-sufficient.

A future resource management system needs to travel much faster towards an aim of a circular economy and zero waste, including in cities.

12.4 Economic and behavioural incentives

As explored in Chapters 4-8, it is vital to have strong regulatory frameworks for urban planning. However, it would be unwise in a future system to rely only on regulation. Urban outcomes can often be realised more effectively – or further enhanced – by engaging with people’s incentives. This is particularly the case where the imperative is to improve things rather than just prevent further harm (it is harder to make people do things than to stop them doing things). We need to think hard about changing underlying economic and social pressures, not just strengthening the regulatory system that needs to respond to them (although the former is not a replacement for the latter). As such, in the Phase 2 report we recommended:

- Greater use of “green” taxes to influence people’s behaviours (e.g. feebate schemes, congestion charging, pollution taxes). Green taxes can be used to raise revenue too, supporting the imperative to fund complementary measures to improve environmental wellbeing in cities, or addressing the shortfall in funding for environmentally sustainable urban infrastructure (see Chapter 9). The Tax Working Group shared this sentiment, calling for a “profound change to existing patterns of economic activity” through the tax system. As explained in the Phase 2 report, this will likely require considerable changes to existing legal frameworks like the RMA and local government legislation (which do not clearly authorise such taxes), but alongside the planning system could play a major role in reducing the environmental impact of cities.

- More positive financial incentives, such as making urban environmental restoration activities tax deductible, providing tax exemptions for public transport, and tax/rates rebates for the inclusion or retrofitting of green building measures (see Chapter 9). Government subsidies could also be deployed in a more systemic fashion for activities that enhance the urban environment (e.g. for ecosystem services), including through independently managed funds that are capitalised through green tax revenue, and through competitive processes where funding is provided to those who cause most improvement per dollar. Green spending is also prudent from a financial perspective if a longer-term view is taken. The New Zealand Green Investment Finance initiative (a $100 million green investment fund tasked with co-investing in projects or companies providing a pathway to a lower emissions economy) is a positive move and could be expanded, both in terms of its size and its environmental aims to catalyse rather than subsidise private sector initiatives.

- A gradual shift in our underlying tax base towards an environmental footprint tax, which would tax people according to their impacts on the environment. This could do much more than just internalise negative externalities. It would also incentivise urban residents to actively enhance environmental outcomes on their own property to minimise their tax burden, through (for example) indigenous planting, roof, rain or vertical gardens, and green building design features. While many details of an environmental footprint tax would need to be worked through, to some extent this could shift tax away from productive activities (through reductions in income tax).

Tax incentives are particularly important in cities; we need to be careful that strong financial incentives for urban councils to fund adequate growth infrastructure (e.g. through a local portion of GST, discussed in Chapter 9) would result in the kind of growth that encourages environmental restoration and not just economic productivity gains at the expense of the environment. The idea is that private decisions about whether (and how) to undertake an activity would be influenced by environmental considerations from the outset, reducing the economic pressures that constantly seek to erode regulatory environmental limits through the political system. At present, tax settings encourage the depletion of natural capital, so regulatory responses are forced to fight a rearguard action against overwhelming private incentives or are simply left to mitigate the fallout. Some have even said that the current economic system is “pathologically incompatible” with the ecosystems that ultimately sustain it. The Tax Working Group also recommended close consideration of a tax framework based on an environmental footprint or natural capital.
A spotlight on an environmental footprint tax

An environmental footprint tax is a form of land tax, spatially defined. The idea is that this would determine tax liability based on the environmental footprint of a land use: a measure of what natural capital is present on a parcel of land. The tax levied on a property would be calculated as footprint depth (expressed in dollars) multiplied by the land area. Tax rates would increase with uses that were more depleting of natural capital, and could even provide rebates for net positive ecological outcomes. If used at a regional level, it could be deployed through a modified version of targeted rates under local government legislation, or through bespoke legislation. As strange as it sounds, people would be encouraged to engage in tax avoidance measures.

- Making it easier for people to do positive things that they may wish to do already, but where they lack capacity, information, resources or coordination. For example, some local authorities have provided native plants at no cost for people to plant in urban road reserves. The development of a coherent network of community conservation hubs shows real promise in marrying up volunteer effort and passion with public coordination, resourcing and expertise (and there is no reason why that would be of less value in cities, where there are many more people and resources available to coordinate). And people may change their spending and investment preferences if they have more information about companies’ environmental/climate performance or risk exposure, which can be achieved through including these things in mandatory financial disclosures.

- Nudging people’s behaviours towards positive urban outcomes (eg providing visual cues that influence people subconsciously, like painting footprints leading to recycling bins; making positive activities more enjoyable, like less congested lanes for electric vehicles or wider cycle paths; appealing to people’s morality and desire not to be worse than others in their community or peer group; and giving real time feedback so that the negative consequences of an action are readily apparent).

- Strengthening directors’ duties under the Companies Act to extend to public interest matters like environmental wellbeing, not just the financial interests of shareholders.

- Strengthening government certification of green products, services and businesses to prevent greenwashing.

- Reforms to the education system, to inject sustainability and climate concerns (“eco-literacy”) into the heart of the school curriculum (as in Italy), as well as reviewing the core content of vocational training courses vital to future sustainability (eg planning and engineering). There is considerable potential to align environmental education with an understanding of matauranga Māori. Education is not just formal, either. Urbanites of all ages need to see it and feel it in their neighbourhoods, in which case they will learn to value what it provides. Our cities should become nature-based schools rather than our conservation estate becoming a nature museum.

- Strengthening public messaging around environmental enhancement. For example, a citizen’s assembly in France has proposed a public advertising campaign against excessive consumption, and restricting private advertising for polluting or carbon intensive products. The Covid-19 response has shown that an active public messaging service can be effective in transmitting important information, causing people to rally around a common cause, and changing people’s behaviours.

Economic and behavioural incentives need to be embraced much more strongly in a future system. This includes, but is not limited to, tax settings. Economic instruments are particularly valuable and should be used in the service of wider public policy goals, not just be limited to the goals of internalising negative externalities or mitigating future harm.
12.5 From system reform to an open conversation

The above measures highlight the importance of focusing on both regulatory planning statutes and engaging with non-regulatory tools if we want to improve urban – and New Zealand wide – outcomes. Transformation requires change on many fronts, some of which is urgent. However, much will come down not to the resource management system, but to the kinds of values that emerge from nationwide conversations between all New Zealanders. Some of these conversations will be extremely difficult, but momentum is growing as we enter a new post-Covid 19 phase.

For example, it is far from ideal that the size of our urban populations is a topic that is often brushed under the carpet. How big do we really want Auckland to get? Would we have to choose between productive land and housing, if we stopped growing so fast? Do we want to see the continued decline of rural communities? Would we want a New Zealand of 10 or 20 million people, most of them in ever-expanding cities?

And what risks would all of the above pose to health, environment and security outcomes? There is often an underlying assumption that as a nation we have little ability to control or direct demand through the resource management system, and we simply have to somehow accommodate population pressures. Any suggestions to the contrary can easily descend into heated arguments around migration, xenophobia and the almost heretical idea that we can live prosperous and happy lives without endless economic growth (often seen to be fuelled by population growth). Is it time to have an open conversation about such things? Some certainly think the time has come, and that "we need to have an evidence-based and forward-looking discussion about what a population policy or plan (or direction) might look like for New Zealand."

We cannot, obviously, tell people where to live. And we cannot tell people how many children to have. We are, and will continue to be, a liberal democracy. And natural population increase is, indeed, much less of a concern in New Zealand than elsewhere in the world, where living standards are lower and family planning practices are less developed. Yet the question is legitimate; over half of Auckland's projected population growth over the next few decades is anticipated to come from internal migration and birth rate, and this will cause significant costs and risks.

And discussions about demography and density, and our ability as a nation to be self-sustaining in terms of food supply and other essentials, are now much more at the forefront of policy questions in light of Covid-19. How can we expect to make sensible decisions about protecting elite soils when we have no real plan for population that it may be required to support, especially in light of the uncertainties created by climate change and the potential for pandemics that may render ourselves more isolated from the rest of the world and in need of self-reliance?

Simply because technology and globalisation have overcome problems of food supply, population growth and consumption in the past does not mean this will solve all our problems in the future. Such conversations could be carefully framed within the development of a population policy by an independent Futures Commission. We could look to Ireland for inspiration, where a national planning framework has objectives outlining specific desirable population distributions, linked to employment targets, across different parts of the country ("Southern Region: 340,000 - 380,000 additional people, ie a population of almost 2 million").

Conversations about consumerism and perpetual economic growth may prove even harder to have. New Zealanders – including in large and growing cities – use vast amounts of resources. But we live in a society that constantly tells us to want more and that we deserve the latest shiny thing ("if you have a problem, you probably need more stuff; and in order to have more stuff, you must produce more of it").

We often remain sceptical of environmental warnings until it is too late to prevent them (at which point we search for technological solutions), and there is a strong deference to private property rights even where significant cumulative harm is socialised across all New Zealanders and the natural world. The desirability of growth is instilled into our daily lives, as if endless increases in resource exploitation and consumption are both possible and necessary if we are to avoid collapse.

Yet we are reaching the limits of our model for economic growth, and collapse may be the result. The reality is that more people, and constant expectations for higher standards of living, is putting increasing strain both on the resources we need and the environment that must receive our waste. We need a different way of thinking to reject the notion that endless growth in GDP terms, population, or urban expansion is possible or desirable, or that anything else is considered to be failure; and to reject the idea that technology will always come to our rescue just in the nick of time. As one author has noted:

We will never reach a moment when capitalism says: 'That's it. Enough growth. We can now take it easy'[and]

Who knows if science will always be able to simultaneously save the economy from freezing and the ecology from boiling. And since the pace [of growth] just keeps accelerating, the margins for error keep narrowing. If previously it was sufficient to invent something amazing once a century, today we need to come up with a miracle every two years.

There is also the much broader, but even more significant, question of how we become a fairer society by shrinking the difference between the have and the have-nots. Nowhere is this more obvious than in large cities, where those with fewer means will be increasingly forced out of gentrifying areas, out of home ownership, or even out of housing altogether. We can tinker endlessly with interest rates, subsidies for first home buyers, loosening land use restrictions, construction costs and so on, but for many this will still not be enough. There is an underlying gulf developing between those who are growing richer, and those who are growing poorer. Accepting the need to stabilise rather than accelerate economic growth because of constraints on our resource base – limiting the size of the pie – will force difficult questions about how we might redistribute that pie.
All of those conversations are ongoing, longer-term projects, and will not be addressed overnight. Yet there are many measures that we can take in the shorter-term to improve how our resource management system operates in urban areas. In this report we have outlined what we see as core reforms at the framework level. We can replace the RMA with an Environmental Stewardship and Planning Act that is better at defending environmental limits and promoting urban outcomes; we can integrate and revamp infrastructure and local government legislation alongside institutional and funding reforms; we can create a level of regional spatial planning and align norms and processes across legislation to ensure that we achieve timely development of housing as well as promoting synergies with environmental wellbeing; and we can ensure that construction standards and bespoke urban development legislation reinforces rather than undermines broader urban objectives; and we can pursue a range of measures encouraging wider societal change.

Reforms to particular legislative frameworks will not be enough for the transformation we require in or beyond cities. Much of the system is designed to treat the symptoms, not causes, of such issues. As a society we face difficult questions – including around future population size, the sustainability of an economic model that is fixated with endless growth, and the growing divide between poor and rich – that must be confronted with honesty, ethics and open minds. We recommend an ongoing conversation on these difficult matters alongside more targeted reforms.

It is also worth bearing in mind the importance of non-urban reforms (including in relation to conservation, marine issues and questions of allocation), recognising that urban matters cannot be treated in isolation of their broader resource management context.

Through all of this, we must not take our eye off the prize. The resource management system is filled with what can be dull legal terminology, processes, and checks and balances, but it is there for a reason. We need a broad vision for what we want our cities to be, and a framework that can support it.

The cities of our future should be good for our health and make us happy. They should embrace carbon neutrality and zero waste. We can imagine urban networks of electric vehicle infrastructure for the easy mobility of freight and people; energy neutral and water sensitive buildings and infrastructure; a resurgence of greenery and indigenous biodiversity. Nature would be brought into the city, as would community food production and hydroponic farming. The principles of the Treaty would be respected, with our cities referencing Māori design and their pre-European roots. We can picture a place where warm and healthy housing is within the reach of all, where people and buildings are prepared for the impacts of a changing climate, and where positive social connection is encouraged through a compact urban form with green space, safe streets, rapid mass transit or public transport, walkable neighbourhoods and active transport. Beyond the city we would preserve open space, productive land with easy access to urban markets, and indigenous forest.

Of course, we should not hope for utopia. We need to accept that visions change with the times, as will the context in which they are implemented and the society that creates them. All our urban areas are different, with their own unique identities and histories to be reflected. But our future cities will need to look quite different to the cities we have today, and they will need to be designed to serve the needs of generations of people well into the future.
This has been described in previous chapters (Chapters 7, 8 and 10 in particular) in terms of its role in reviewing national direction, regional combined plans, and spatial plans. We acknowledge that there is potential overlap here with the role of the Parliamentary Commissioner for the Environment (in its general investigative and advisory function, and its review role). Indeed, the new, more structured roles outlined here could be given to an expanded version of that institution instead of a Futures Commission.

Who acts as a guardian for future generations in Wales, and is also tasked with encouraging public bodies to take greater account of the long-term impact of the things they do?

Care would need to be taken that principles and duties in a Future Generations Act did not override the more targeted, legally binding criteria applied by other frameworks for specific decisions (eg the grant of resource consents under an Environmental Stewardship and Planning Act).


M Petrie “Reversing the degradation of New Zealand’s environment through greater government transparency and accountability” (2018) 42(2) Policy Quarterly 32 at 35.

Ibid, at 37. A number of changes are being made to the Public Finance Act through the omnibus Public Service Legislation Bill (to be split into a separate Public Finance Amendment Act), but these do not extend to transformational reform.


Compare Ecuadorian Constitution, art 71. The Canadian Environmental Protection Act 1999 begins with a declaration: “It is hereby declared that the protection of the environment is essential to the wellbeing of Canadians…”. It is followed by a powerful preamble in which the whole government commits itself to action.

The Act could, for example, provide mechanisms to clarify expectations of how Crown and Māori would work together under other frameworks.


To “take into account the principles of the Treaty of Waitangi” (s 6).

To “take appropriate account of the principles of the Treaty of Waitangi” and “to improve opportunities for Māori to contribute to local government decision making processes” (s 4).

To “give effect” to the principles of the Treaty (s 4).

To “take appropriate account” of the principles of the Treaty and “to maintain and improve opportunities for Māori to contribute to land transport decision making processes” (s 4).

To “give effect to the principles of the Treaty of Waitangi” (s 3A).

To “uphold the treaty of Waitangi and its principles” among other more specific requirements (s 4).


P Glückman and A Bardsey The future is now: Implications of Covid-19 for New Zealand (Koi Tū Centre for Informed Futures, April 2020) at 3.


Well-being of Future Generations (Wales) Act 2015 (UK), ss 2, 3(1).

Government of Ireland Project Ireland 2040: National planning framework at 12.

One commentator has recommended that the Department of Internal Affairs act as lead system steward due to their focus on the local government system (New Zealand Productivity Commission Local government insights (2020) at 29) but we lean towards a truly cross-agency forum to recognise the interlinked nature of the resource management system across multiple tiers and portfolios of government.


New Zealand Productivity Commission Better urban planning (2017) at 393.


A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 17.


See Public Service Legislation Bill, cl 23 – cl 29. The Bill is pending its third reading at the time of writing. Alongside changes to the Public Finance Act, this will see the introduction of a Public Service Act to replace the State Sector Act 1988.


It would be possible for this to occur within the existing framework of the RMA (ie in an Environmental Stewardship and Planning Act), but in our view a separate overarching statute would be more appropriate, given that it would be intended to flow down through multiple other frameworks. It would also do quite different things to what is currently done under the regulation-focused RMA.

To Rūnanga o Ngāi Awa i/8 Blong Platy Regional Council [2019] NZEnvC 196.

See G Severinsen Reform of the resource management system: A model for the future (EDS, 2019) at 262-263.


Or to provide rates relief; see Report of the Biodiversity Collaborative Group (2018) at 98.


Potentially even by offsetting the impact of one property (eg an apartment building) by enhancing values elsewhere within a city (an urban biobank of sorts). This might be necessary to encourage a compact urban form and increase the efficiency of environmental enhancement measures.

For example, if a tax is designed to change behaviour, then the prospect of people actually doing so has implications for the quantum and predictability of revenue raised. In other words, if the tax is successful then it would raise less money, which is not a good outcome where it is relied on to fund essential goods and services. And there are logistical challenges – for example, do we need some form of “ecological valuation day” to benchmark who pays what? And how do we monitor the environmental impacts of someone’s land use? See G Severinsen Reform of the resource management system: A model for the future (EDS, 2019) at 273.


V Southworth “Increasing the uptake of building-scale water sensitive urban design stormwater management options in Christchurch, New Zealand” (Masters thesis, University of Canterbury, 2019) at 131.


Ibid.


New Zealand’s total population is projected to reach 5.8 million in 2038, with an average increase of 1.1 percent per annum (using Statistics New Zealand medium projections). See Statistics New Zealand Estimates and projections (February 2018).

There are other ways to control demand, of course, such as through the immigration system, but that is not generally considered in an integrated way with strategic questions of resource management.

P Gluckman and A Bardsey The future is now: Implications of Covid-19 for New Zealand (Koi Tū Centre for Informed Futures, April 2020) at 13.

See Funding Auckland’s transport future (2014).

On population policy, see N Jackson “Does New Zealand need a population policy” (Plenary presentation to the Biennial Population Association of New Zealand Conference, Wellington, June 2013).

Government of Ireland Project Ireland 2040: National planning framework at 159.

Yuval Noah Harari Homo deus: A brief history of tomorrow (Vintage, 2016) at 240.

See OECD Environmental performance reviews: New Zealand (2017); compare K Raworth Doughnut economics (Random House, 2017).


APPENDIX 1: LIST OF RECOMMENDATIONS

The RMA should be replaced by an Environmental Stewardship and Planning Act

1. An integrated single statute – combining decision-making on land use and other aspects of the environment like water, soil and air – should remain at the heart of a future system managing our cities. Land use and the built environment are too intimately connected to other environmental domains to be considered separately. However, the RMA should be rebuilt in fundamentally different ways, including to address concerns that have led to calls to split the Act. Changes would be significant enough to create something entirely new, not just another RMA amendment: an Environmental Stewardship and Planning Act.

The normative foundations of an Environmental Stewardship and Planning Act should be different

2. The resource management system in cities should be based on a broad rationale (pursuit of the public interest) rather than a narrow one (the internalisation of externalities).

3. The reactive, market-led ethos of the RMA should be replaced by one that is focused on the proactive pursuit of positive outcomes, including environmental enhancement.

4. A new purpose and principles for an Environmental Stewardship and Planning Act should specifically embrace a range of principles for good urban planning and design that are not just about addressing the adverse effects of proposals.

5. New principles should more clearly encourage solutions that have synergies for social, cultural, economic and environmental wellbeing (including compact urban form).

6. A comprehensive and coherent range of biophysical environmental limits needs to be much more clearly defined, required and defended in a new Act’s purpose and principles. All other principles need to be expressly subject to the achievement of those.

7. Climate change mitigation and a link to the targets and budgets of the Climate Change Response Act need to be strongly recognised within the purpose and principles of an Environmental Stewardship and Planning Act.

National direction under a new Act needs to be more comprehensive, coherent and mandatory for some matters

8. Central government should be required to promulgate a comprehensive range of national direction that gives effect to the purpose and principles of a new Environmental Stewardship and Planning Act, including in cities. This would mean that matters identified as being of national importance then have an expectation of at least some national response (which might take the form of policy, regulation or both).

9. There should be a clearer definition of subsidiarity in a new Act, outlining the reasons for which central and local government are expected (or required) to act.

10. A coherent suite of national direction should be contained within a single instrument: a National Environment Plan. Links and hierarchies between policies should be made clear, including those for environmental protection and enhancement (e.g., biodiversity targets) and urban development/urban development capacity.

11. A National Environment Plan should specifically identify the environmental limits required under a revised legislative purpose and principles, including how they are to apply in urban areas. Provisions setting out environmental limits should have different (dominant) status to others.

12. Mandatory targets – and not just for development capacity – should be embedded into national direction to form a consistent and coherent package.

13. Reflecting the scope and orientation of a revised purpose and principles, national direction should provide for a much wider range of good urban planning principles and synergies between social, economic and environmental wellbeing.

14. There needs to be a strong link between national direction and the aspirations for climate change mitigation and adaptation embedded in the Climate Change Response Act.

15. The process for developing and changing a National Environment Plan should involve a collaborative approach between central government, local government and Māori.
16. A new institution(s) – a Futures Commission and Tikanga Commission/commissioners – should be created to act as a standing, independent system steward and have a structured review role in the creation of national and local level instruments under the RMA. It should contain urban planning/design expertise or have an “urban” commissioner within it. It would replace the current board of inquiry model used for reviewing national direction.

17. A strengthened EPA (or other independent agency) should have a role in translating policy provisions for environmental limits into regulatory rules and standards in a National Environment Plan.

18. Central government will need to have a mandatory role to support the implementation of a National Environment Plan. This should include funding, advice and operational assistance to councils where necessary. The Plan should flag where the funds for implementation are expected to come from.

19. Aspects of national direction providing for urban development and growth should not be based solely on economic trigger points like the price differential between urban and rural land. There should also be triggers set for immediate corrective action in the event of declining environmental indicators, including urban biodiversity.

20. There is an opportunity to transform cities by removing car parking requirements in appropriate places and replacing these with requirements for indigenous planting.

21. Reforms should not go too far in constraining the ability of councils to implement good urban planning, particularly in relation to things like balconies or minimum apartment sizes.

Environmental Stewardship and Planning Act, and to give effect to a new National Environment Plan (including environmental limits). This process should also be used where a plan change is “called in” by the government or an independent Futures Commission/Tikanga Commission. It would roughly resemble, in many respects, the process for creating the Auckland Unitary Plan.

25. Ongoing plan changes should be subject to a different process, in which a single “hybrid” institution makes decisions. This institution would be chaired by an Environment Court judge and be comprised of independent commissioners (from a standing national pool), alongside council and mana whenua nominees. There would be a majority of independent members. Central government should have observer status.

26. In all processes, bottom up plan co-creation would be important. There should be greater use of citizens’ assemblies and other creative mechanisms for community involvement.

27. The EPA should have a role in translating policies concerning environmental limits to actual regulatory restrictions in council plans, including where needed to give effect to national direction on environmental limits. The EPA should be tasked with initiating plan changes.

28. A publicly funded Environmental Defender’s Office should be established to pursue public interest litigation and reduce resourcing disparities between developers and community/environmental groups.

29. A partnership approach with Māori is needed to give effect to the principles of the Treaty of Waitangi. This should involve close collaboration in the production of plans alongside councils; the provision of independent advice through a Tikanga Commission/commissioners; and the provision of resourcing by the Crown to enable those roles to be effective.

30. There could usefully be greater clarity around who has legal authority to speak for Māori, particularly in urban areas where many Māori have interests yet do not have mana whenua status. This is a matter for Māori to determine.

31. Urban limits will be a valuable tool in a future system to implement a wider, more strategic spatial planning framework, which would enable and manage urban growth over time and achieve long-term compact/efficient urban form. Limits should not have undue impact on land prices and need to be responsive, but if issues arise that might signal a need to take other measures (such as making density more attractive).
Consenting settings should be reformed in a variety of ways

32. A future system should provide greater predictability of outcome in advance through environmental standards and clear policies in plans, rather than relying on the discretionary weighing of general and potentially conflicting policies through a string of consenting decisions.

33. Environmental limits defined in a revised Act would need to be translated into regulatory limits, associated more strongly with prohibited activity status, moratoria or common mandatory consent conditions.

34. Appeal rights to the Environment Court in the consenting context provide valuable independent oversight of first instance decision-making. In our view, the risks of removing appeal rights outweigh the benefits.

35. An independent, publicly funded Environmental Defender’s Office should have standing to appeal councils’ notification decisions to the Environment Court.

36. A new notification status should be introduced whereby applications are notified and submissions invited, but where hearing and appeal rights do not follow automatically.

37. Consenting functions could usefully be removed from elected councillors and placed instead, alongside council staff, with commissioners selected from a nationally accredited pool.

38. There should be a strengthened role for the EPA in consenting where there is a national interest.

39. A future system could usefully provide for an integrated permitting process (a “project consent”) for complex or nationally significant projects, which would align permitting process under multiple statutes.

40. Reforms should be made to compliance monitoring and enforcement settings (as outlined in the EDS Phase 2 report). ¹

41. Consent authorities should be compelled to make decisions that are, at minimum, “consistent” with national direction.

42. While some improvements to the regime for designations may be possible (such as removing default lapse periods) we see most merit in pursuing a regional spatial planning framework to address complaints about poor coordination of land use and infrastructure decision-making.

We need a new approach to urban infrastructure planning and funding

43. The Local Government Act, Land Transport Management Act and other infrastructure-focused legislation should be merged into a single Local Government and Infrastructure Act.

44. The purpose and principles of a new Local Government and Infrastructure Act should retain the four wellbeings that are at the heart of the existing Local Government Act. However, they should also more clearly embrace the need to meet environmental and climate change targets, the need to make choices that achieve synergistic outcomes and a vision that aligns with a revamped purpose and principles of a new Environmental Stewardship and Planning Act (including principles of good urban design).

45. Central government should have a stronger role in the planning, funding and provision of essential intergenerational urban infrastructure beyond just transport. This includes three waters infrastructure.

Institutional arrangements for infrastructure – particularly three waters – should be shaken up

46. Jointly owned CCOs should be deployed at a regional level for the planning, funding and delivery of drinking water and wastewater infrastructure and services.

47. A CCO model should be adjusted by allowing for/requiring the Crown to be a partner in these organisations alongside local government, with a corresponding degree of capital investment (and control). ²

48. A dedicated, independent regulator for water services is a good idea, and Taumata Arowai has recently been established by specific legislation to fulfil this function. This entity could be folded into a strengthened EPA to avoid adding complexity to the system, especially if Taumata Arowai were to take on a stronger role with respect to environmental standards for wastewater and stormwater as well as drinking water.

49. An economic regulator should be established, with responsibility to ensure that investment levels and pricing are both sufficient and fair, and that a long-term and public-interest perspective is being taken.

50. A future system should see a continuation of a partnership approach to land transport between central government (particularly the NZTA) and councils (to be regional unitary authorities).

51. The arm’s length decision-making of the NZTA could usefully be mirrored by a move towards
Our toolbox for infrastructure funding needs to be expanded, and incentives to raise and spend money need to be corrected

53. Incentives to underinvest in three waters infrastructure should, following a large capital injection from central government, be addressed through institutional reforms (regionalised CCOs and an economic regulator).

54. The economies of scale generated by regionalising infrastructure providers through CCOs should help address some funding challenges faced by councils for transport and three waters infrastructure. However, that will not be enough.

55. For three waters infrastructure, there should be predictable, ongoing and need-based central government contributions where required to meet adequate levels of service delivery and environmental and health standards. That would likely come with a corresponding level of control through representation in regional CCOs.

56. Funding and financing constraints on local government and residents in the wake of Covid-19 reinforces the need for a greater central government role in financing intergenerational urban infrastructure.

57. Councils would remain primarily or partly responsible for the operation of regional level CCOs (alongside the Crown) so may be required to fund them in part (alongside cost recovery measures by a CCO itself). Thus there is a need to revisit how local government itself is funded.

58. More needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure.

59. Some degree of cost recovery from those who use, or benefit from, urban growth infrastructure would be appropriate. In particular, a future system should facilitate value uplift capture to help fund large projects.

60. The incentives provided by the current system of funding infrastructure in the context of urban growth and renewal require correction. Targeted measures should be taken to shift the costs of infrastructure onto those who benefit. In particular, the Crown should be responsible for a much larger burden of the costs (and control) of drinking water and wastewater infrastructure.

61. We also see merit in allowing councils to levy a local form of GST, which would provide added incentives to proactively fund growth while allowing communities more control than Crown contributions. That cannot be a complete replacement for rates, but would be a useful addition to the toolbox.

62. More bespoke cooperative funding arrangements between local and central government may be required for particular “one off” projects over time, but this should be guided by a vision in a regional spatial plan (see Chapter 10).

63. User-charging should be deployed more in a future system both to provide a fair way to fund related services and to incentivise the efficient use of resources. This should include volumetric charging for drinking water and wastewater (and a proxy measure for stormwater) and congestion charging for land transport.

64. User charging and other forms of demand-based tools cannot be absolute and must carefully consider how impacts on the poor or vulnerable are to be addressed.

65. The system should not allow substantial new investment in urban infrastructure in locations or contexts vulnerable to failure in light of climate change.

66. There needs to be a clear link between a national adaptation plan, urban land use controls and infrastructure funding frameworks.

67. To facilitate urban adaptation to climate change we need a new funding mechanism in the form of a national adaptation fund, to be deployed according to clear and transparent principles and through collaboration between central and local government. There are different options for how that could operate and be capitalised.

The contribution of the Building Act to achieving good urban outcomes needs to be strengthened

68. An Environmental Stewardship and Planning Act and the Building Act should not be merged. However, the statutes should be more closely aligned to coordinate permitting processes, achieve common urban objectives and pursue synergies in the built environment.
69. Construction and infrastructure standards should be strengthened to recognise the essential contribution that “green” construction will make to environmental outcomes in a future system. There are different ways in which this could be achieved, including through performance-based subsidies, stronger certification programmes, charging, and incentives.

70. There needs to be a more coordinated approach to decision-making on land use and infrastructure, including through an overarching spatial planning framework.

71. A future system should see greater alignment between processes under an Environmental Stewardship and Planning Act (especially for land use change) and infrastructure legislation, although they will need to remain distinct. Related decisions should be reached within a reasonable time of each other.

72. A new legislative framework should be established to provide for mandatory regional and cross-regional spatial plans to be created. These plans would outline a vision for how urban areas would grow, contract or change over time.

73. Regional spatial plans would not be directly binding in a regulatory sense. However, they should have real legal influence on decision making under more targeted frameworks (eg for land use and infrastructure). It would not be feasible for them to be given effect to in these other statutes but a reasonably strong legal direction should be put in place to ensure strategic planning is worth doing.

74. On balance, we think that regional policy statements should be included within regional combined plans under an Environmental Stewardship and Planning Act. They should be reviewed alongside regional spatial plans.

75. Other existing instruments could be subsumed within regional spatial plans (eg council infrastructure strategies) or removed entirely (eg future development strategies required under the NPS on Urban Development Capacity).

76. There would need to be a robust process for the creation of spatial plans. Central government and Māori involvement in co-creation, alongside councils, infrastructure providers and communities, would be important.

78. Spatial plans would contain considerable value-based judgements and should not be subject to appeal. However, independent review by a Futures Commission and Tikanga Commission/commissioners would be important to ensure an inter-generational view is taken.

79. Final sign off should be by councils and mana whenua, and it would be important for an ongoing Crown commitment to implementation to be reflected in formal ministerial sign off as well.

80. Spatial plans should be accompanied by a description of anticipated costs, and should signal where funding is envisaged to come from.

An urban development authority model will be useful for urban growth and renewal, but the Urban Development Act should be changed in fundamental ways

80. We see a place for an urban development authority model in a future system. In particular, central government should have an active role in development activities to provide housing and act as a catalyst for urban renewal.

81. Powers to compulsorily acquire land will be intensely controversial (especially without offer back rights) and will require robust safeguards. But some powers will be useful for the regeneration of complex brownfields sites at scale.

82. The RMA’s (and, in the longer-term, Environmental Stewardship and Planning Act’s) purpose and principles will need to remain pre-eminent in all types of decision-making under the Urban Development Act, aside from targeted changes to aspects like urban amenity. The relationship between the statutes needs to be made clearer and less complex.

83. The position of national direction under the Urban Development Act is not strong enough. We do not see any compelling reason to change the direction to “give effect” to it, as is the case under the RMA, particularly in light of the development-oriented purpose of the Bill and Kāinga Ora’s stronger obligation to give effect to the government’s policy statement on housing and urban development.

84. We see no compelling reason why powers under the Urban Development Act should extend to the ability to override regional functions. Regional councils (prior to local government structural reform proposed earlier) should have a stronger role under the legislation.
85. The urban development authority model is not a proper alternative to a framework for regional level spatial planning. The legislation should be used as a way to implement a spatial plan rather than override it.

86. Stronger safeguards are required around where and why project areas can be established.

**Deeper resource management system reform is required alongside more targeted urban reforms**

87. A new statute – a Future Generations Act – should be enacted in a future system. This would be the legislation under which strategic spatial planning occurred but it would also have a much wider role.

88. This Act should provide a set of high-level objectives to guide the exercise of all public powers; including outlining a consistent approach to Treaty issues relevant to resource management.

89. The Act should provide for the creation of an integrated national level resource management strategy.

90. An independent Futures Commission should be established under this Act. It would be charged with creating futures scanning reports to which government would need to respond.

91. A Futures Commission should be required to issue a report card for public authorities based on their progress towards achieving inter-generational targets established under this Act or others like a new Environmental Stewardship and Planning Act.

92. The Act should establish a whole of system steward (a Futures Group) within government, being a forum where different agencies and departments came together to speak with one voice.

93. The Act should provide for a more comprehensive system of monitoring, reporting and evaluation, building on the Environmental Reporting Act.

94. A future resource management system needs to travel much faster towards an aim of a circular economy and zero waste, including in cities.

95. Economic and behavioural incentives need to be embraced much more strongly in a future system. This includes, but is not limited to, tax settings.

96. Wider system reforms will need to occur in parallel with the range of matters outlined in the Phase 2 report (including in relation to conservation, marine issues and questions of allocation), recognising that urban matters cannot be treated in isolation of their broader context.

97. Reforms to particular legislative frameworks will not be enough for the transformation we require in or beyond cities. As a society we face difficult questions – including around future population, the sustainability of an economic model that is fixated with endless growth and the growing divide between poor and rich. These issues must be confronted with honesty, ethics and open minds. We recommend an ongoing conversation on these difficult matters alongside more targeted reforms.
ENDNOTES

1 See G Severinsen Reform of the resource management system: A model for the future (EDS, 2019), from 138. We note that it is positive that the EPA has taken on a stronger compliance and enforcement role under the RMA by virtue of the Resource Management Amendment Act 2020.

2 At the time of writing, there is a proposal for central government funding of water infrastructure to essentially be conditional on councils accepting the need for institutional reform in water providers.
Integrate the Local Government Act, Land Transport Management Act, and other legislation into a single LOCAL GOVERNMENT AND INFRASTRUCTURE ACT

New purpose and principles focused on wellbeing and aligned with the aims of the Environmental Stewardship and Planning Act

- **Long-term plans**
- **Annual plans**
- Revised and expanded funding and financing mechanisms, altered incentives
- **Regional CCOs** for drinking water, waste water and transport
- **Economic regulator**
- **Independent water regulator**

**New process** for creating and changing

- Process to “reset” and combine existing plans, and for plan reviews
- Different process for plan changes

**Regional**

- Revised settings
- Notices of requirement

**Other**

Retain but make considerable changes to the BUILDING ACT to strengthen green construction

Establish an independent Futures Commission and Tikanga Commission/commissioners for review and oversight

**Futures scanning reports**

**Report card** system for public authorities

**Statutory principles** applicable

**Regional/cross-regional spatial**

Enact a new FUTURE GENERATIONS ACT

**Environment and Planning Act**

New purpose and a future focused on urban planning

- A more coherent and National
- Mandatory targets and

**Process alignment**

Notices of requirement for designation, heritage orders

Revise settings for consenting

Other tools

**National futures strategy**

Enact a new FUTURE GENERATIONS ACT

**National planning standards**

Greater role for the EPA

Integrate the Local Government Act, Land Transport Management Act, and other legislation into a single LOCAL GOVERNMENT AND INFRASTRUCTURE ACT

New purpose and principles focused on wellbeing and aligned with the aims of the Environmental Stewardship and Planning Act

**Regional/unitary councils**

Replaces the RMA with a new ENVIRONMENTAL STEWARDSHIP AND PLANNING ACT

Development plans are firmly subject to the purpose and principles of the Environmental Stewardship and Planning Act and national direction, and used to implement regional spatial plans

Integrate the Local Government Act, Land Transport Management Act, and other legislation into a single LOCAL GOVERNMENT AND INFRASTRUCTURE ACT

New purpose and principles focused on wellbeing and aligned with the aims of the Environmental Stewardship and Planning Act

**Regional CCOs** for drinking water, waste water and transport

**Economic regulator**

**Independent water regulator**

Establish an independent Futures Commission and Tikanga Commission/commissioners for review and oversight

**Futures scanning reports**

**Report card** system for public authorities

**Statutory principles** applicable

**Regional/cross-regional spatial**

Enact a new FUTURE GENERATIONS ACT

New purpose and a future focused on urban planning

- A more coherent and National
- Mandatory targets and

**Process alignment**

Notices of requirement for designation, heritage orders

Revise settings for consenting

Other tools

**National futures strategy**

Enact a new FUTURE GENERATIONS ACT

**National planning standards**

Greater role for the EPA

Integrate the Local Government Act, Land Transport Management Act, and other legislation into a single LOCAL GOVERNMENT AND INFRASTRUCTURE ACT

New purpose and principles focused on wellbeing and aligned with the aims of the Environmental Stewardship and Planning Act

**Regional CCOs** for drinking water, waste water and transport

**Economic regulator**

**Independent water regulator**

Establish an independent Futures Commission and Tikanga Commission/commissioners for review and oversight

**Futures scanning reports**

**Report card** system for public authorities

**Statutory principles** applicable

**Regional/cross-regional spatial**

Enact a new FUTURE GENERATIONS ACT

New purpose and a future focused on urban planning

- A more coherent and National
- Mandatory targets and
New purpose and principles focused on wellbeing and aligned with the aims of the Environmental Stewardship and Planning Act.

Revised and expanded funding and financing mechanisms, altered incentives.

Process alignment

Regional CCOs for drinking water, waste water and transport economic regulator

Independent water regulator

Relocate most council functions to the regional level, resulting in REGIONAL UNITARY COUNCILS.

Partnership role for mana whenua

Strengthen the link between the CLIMATE CHANGE RESPONSE ACT and other legal frameworks.

Establish a Climate Change Adaptation Fund

Move to a circular economy by strengthening the WASTE MINIMISATION ACT

Deployment of green taxes and economic instruments

Move towards an Environmental Footprint Tax

Strengthen directors’ duties under the COMPANIES ACT

Engage with people’s behavioural incentives

Reform the EDUCATION ACT

Strengthen the PUBLIC FINANCE ACT

Undertake wider systemic changes

Strengthen the link between the CLIMATE CHANGE RESPONSE ACT and other legal frameworks.

Strengthened monitoring, reporting and evaluation

Establish an inter-departmental Futures Group within government as a whole of system steward

National futures strategy

with a new AND PLANNING ACT

principles, including clearer environmental limits, orientation and stronger recognition and design principles.

comprehensive set of national direction in a single Environment Plan

dominant status for bottom lines

combined plans for consenting

for designation, heritage orders

tools changes to the ACT

principles of the Environmental Stewardship implement regional spatial plans

Retain but make considerable changes to the BUILDING ACT to strengthen green construction
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EDS is leading a project which is taking a first principles look at the resource management system in Aotearoa New Zealand. This report marks the completion of the project’s third phase, which is about how system reform would look from an urban perspective.