



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

# Building competitive cities:

*Reform of the urban and infrastructure planning system*

*A technical working paper*



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# 1 Introduction

This technical working paper is a companion to the discussion document: *Building Competitive Cities: Reform of the urban and infrastructure planning system*.

The discussion document provides options to address problems facing **urban and infrastructure planning** in New Zealand, while this technical working paper provides greater detail and evidence about those potential problems.

## 1.1 Purpose of this technical working paper

The purpose of this technical working paper is to:

- develop a shared and improved understanding of the nature, scale and magnitude of possible problems facing urban planning and infrastructure development in New Zealand
- provide a check that the options outlined in the discussion document address the right problems
- seek public input and views on the potential problems.

The Government has not yet identified its preferred package of options and is seeking feedback on the issues identified, the options to deal with them, and whether any alternatives should also be considered. You are encouraged to consider how the options would operate together as a coherent system.

Your submission will help inform the Government's decisions on which options to take forward.

## 1.2 Objectives of the RMI reforms

When RMI began, Cabinet agreed to the overarching objectives to achieve: “least cost delivery of good environmental outcomes:

- providing greater central government direction on resource management
- improving economic efficiency of implementation without compromising underlying environmental integrity
- avoiding duplication of processes under the Resource Management Act 1991 (RMA) and other statutes
- achieving efficient and improved participation of Māori in resource management processes.”<sup>1</sup>

In investigating reforms specific to urban planning, Cabinet directed that matters to be addressed included:<sup>2</sup>

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<sup>1</sup> The Cabinet paper (April 2009) is available on the MFE website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

<sup>2</sup> CAB Min (09) 34/6A refers.

- improving the link between housing affordability and land supply
- improving the integrated growth management and infrastructure development
- improving the quality of outcomes delivered by urban design and urban planning.

When applied to social and economic infrastructure, the Cabinet's objectives translate to:

- efficient, timely and high-quality infrastructure that contributes to quality of life and economic productivity, and avoids, remedies or mitigates adverse effects on the environment
- a fair, equitable and efficient decision-making process that facilitates infrastructure development and promotes investment certainty.

## 1.3 Evidence base

This paper provides the main background evidence to support issues identified in the analysis of New Zealand's current system for urban planning and infrastructure development. Where possible, the scale and magnitude of the problem is quantified. Where this is not possible, a qualitative description and assessment has been set out.

It is expected that information provided in submissions will help fill in some gaps and help reduce the limitations to the evidence base. For example, understanding the likely number and types of future projects and developments will help build our understanding of the scale and magnitude of any problems. In turn, this will help us understand the costs of not addressing a potential problem, and assess the likely benefit of intervention. It is, of course, likely that some limitations in the evidence base will not be able to be overcome. For example, we will need to recognise that large-scale urban and infrastructure projects are unique to their setting and the needs of the particular site and project.

## 1.4 Finding your way around the technical working paper

Chapter 2 of this paper describes the potential problems identified for planning and urban design, while chapter 3 covers possible issues for infrastructure project development.

The appendices provide background information and supporting explanation.

- Appendix 1: Abbreviations used in this document
- Appendix 2: Glossary
- Appendix 3: The existing planning system for urban areas
- Appendix 4: Differences between different types of urban planning
- Appendix 5: Existing approval processes for infrastructure projects
- Appendix 6: Assessing the options

## 1.5 How to make a submission

The Government welcomes your feedback on this technical working paper and the companion discussion document. Printed copies of the discussion document are available on request by using the contact details below. The document is also available electronically on the Ministry for the Environment (MfE, the Ministry) website: [www.mfe.govt.nz](http://www.mfe.govt.nz).

The questions included in this paper are to guide your feedback. Broader comments are also welcomed. You may also raise other issues and/or only respond to some of the issues or questions. To ensure your point of view is clearly understood, and also to provide more evidence to support the Government's decisions, you should provide reasons for your answers or in support of your position.

To make a submission, you can fill in the form included in the discussion document (by downloading a writable version from [www.mfe.govt.nz](http://www.mfe.govt.nz) and emailing it back to us), or prepare your submission as a separate document. Submissions sent in hard copy should also be provided in electronic form (Adobe Acrobat, Microsoft Word (2003 or later version) or a compatible format).

The closing time and date for submissions is **5:00pm on Friday 17 December 2010**.

After receiving submissions, the Ministry will evaluate them and may, where necessary, seek further comments. After this, recommendations will be developed for Ministers, and then Cabinet, to consider.

### Contact for queries and submissions

Please direct all submissions and any queries to:

**Freephone:** 0800 RMREFORM (0800 767 336) **STD:** +64 4 439 7794

**Facsimile:** +64 4 439 7700

**Email:** [rmreform@mfe.govt.nz](mailto:rmreform@mfe.govt.nz)

**Postal:** RM Reform, PO Box 10362, Wellington 6143

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The Ministry may publish all or part of any written submission on its website, [www.mfe.govt.nz](http://www.mfe.govt.nz). Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting.

In any case, contents of submissions provided to the Ministry will likely have to be released to the public under the Official Information Act 1982 (OIA) following requests to the Ministry (including via email). Please advise if you have any objection to the release of any information contained in a submission, and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. The Ministry will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the OIA.

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.



## 2 Planning and Urban Design

### 2.1 Introduction

New Zealand is one of the most urbanised countries in the world. About 85 per cent of New Zealanders live in urban centres, and most urban New Zealanders live in Auckland.

Cities concentrate economic activity by bringing together sectors and businesses along with the universities and research institutions that support innovation, growth and specialised skills. That means well-functioning cities are central to our social, cultural and economic wellbeing.

Many of New Zealand's major urban areas have experienced rapid population growth. This growth has implications for how these urban areas develop, including housing supply and affordability, land supply, infrastructure provision and resource use. In contrast, some other urban centres have static or declining populations. In these places there may be underuse of existing resources and falling land prices.

New Zealand's high level of urbanisation, together with the central role that cities play in our economy and society, mean that improving how our cities develop and function is a critical component in delivering the Government's overall objectives – economic as well as environmental, cultural and social. There is an opportunity to use our urban planning system to better:

- drive productivity
- enable development
- get value for money from infrastructure investment
- deliver a quality built environment for a improved quality of life
- achieve desired social, cultural and economic outcomes.

This is in line with current international experience. For example, governments in Australia, the United Kingdom and United States of America are increasingly using their planning systems to achieve these outcomes. This approach sees improved planning and urban design as an important contributor to developing competitive cities and providing business with greater certainty and support.

This chapter outlines possible problems with New Zealand's current urban planning system, and provides a qualitative description and assessment for each. It is anticipated that evidence to quantify their relative scope and magnitude may arise through submissions. Box 1 summarises the components of New Zealand's current urban planning system, which is explained in further detail in Appendix 3.

### What do you think?

Your response to these questions is welcomed:

- Do you agree/disagree with the list of potential planning and urban design problems identified in this chapter?
- Can you provide any evidence that supports or questions the assessment of these problems?
- Are there any other problems you think need to be considered?

### Box 1: The urban planning system – a definition

In this document, the 'urban planning system' is defined as the statutory and governance frameworks that incorporate decisions by councils, central government and the private sector about urban spaces.

The New Zealand urban planning system is complex. The existing framework for regional and urban planning and development is predominantly guided by three different pieces of legislation:

- **The Local Government Act 2002** (LGA), amongst other matters, provides for:

- councils' infrastructure and investment over a 10-year period
- descriptions of the activities of the council and community outcomes
- integrated decision-making and coordination of the resources of the council.

Its purpose is to provide for democratic and effective local government that recognises the diversity of New Zealand communities by:

- a. stating the purpose of local government
- b. providing a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them
- c. promoting the accountability of local authorities to their communities
- d. providing for local authorities to play a broad role in promoting the social, economic, environmental, and cultural wellbeing of their communities, taking a sustainable development approach.

- **The Resource Management Act 1991** (RMA) addresses land-use development with an effects-based approach. Implementation of the Act plays a role in identifying and influencing spatial aspects through designations, zoning and provisions designed to manage environmental effects.

Its purpose is to promote the sustainable management of natural and physical resources, where '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 wellbeing 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

- b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems
- c. avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- **The Land Transport Management Act 2003** (LTMA) provides the system for national and regional transport strategy, planning and funding.

Its purpose is to contribute to the aim of achieving an affordable, integrated, safe, responsive, and sustainable land transport system by:

- a. providing an integrated approach to land transport funding and management
- b. improving social and environmental responsibility in land transport funding, planning, and management
- c. providing the New Zealand Transport Agency with a broad land transport focus
- d. improving long-term planning and investment in land transport, including planning and investment in coastal shipping and rail
- e. ensuring that land transport funding is allocated in an efficient and effective manner
- f. improving the flexibility of land transport funding by providing for alternative funding mechanisms.

Each Act has different legal purposes, processes and criteria. They require a number of different statutory plans with different time frames and relationships between plans. As well as the statutory plans required, councils often develop a range of non-statutory plans and strategies (eg, economic development plans). Further detail is provided in Appendix 3.

## 2.2 Planning and urban design problems

Four potential problems have been identified that may create barriers for successful urban places in New Zealand. They arise from current legislation and practice, and impact on the ability to facilitate and implement quality urban design and planning, integrated decisions and a coordinated and consistent approach to planning New Zealand's towns and cities. These problems are:

- inadequate recognition of the urban environment in the RMA
- complex planning system
- lack of consistency in decisions
- barriers to effective implementation.

Each problem is discussed in detail below, and references to the supporting evidence are provided.

### Urban problem 1: Inadequate recognition of urban environment in the RMA

A critical challenge facing growing towns and cities is how to enhance the positive outcomes of a high quality, liveable and economically productive urban environment (both natural and built),

while also managing the negative impacts of growth. High quality urban services and amenities, including open space, are crucial to cities' long-term attractiveness and competitiveness<sup>3</sup> and quality of life. Urban planning and design has a significant role in delivering and maintaining these attributes and outcomes.

There are growing concerns and evidence that the RMA does not facilitate the delivery of these outcomes.<sup>4</sup> The RMA was designed to be a statute that enables infrastructure and development but is also based on the management of environmental effects. While the definition of 'effect' in section 3 of the RMA includes 'positive effect' and 'future effect', the Act does not explicitly recognise the positive economic, social and cultural contribution that high quality urban design and planning can make. The RMA tends to focus on the environmental effects of specific developments rather than on their nature, scale and timing. It was not designed to provide for desired development outcomes, or to support integration of strategy or investment.

In particular, as the primary land-use planning legislation, RMA practice has emphasised the management of environmental effects and the protection of the natural environment.<sup>5</sup> Under the RMA, the creation and management of the urban environment (which may not already exist or is in the process of being created), is assessed in the same manner as the natural environment (as it already exists). The urban environment is under constant change and improvement by planning, design, and development processes,<sup>6</sup> often over short time frames. However, the RMA focus on effects tends to encourage a reactive, risk-averse approach that seeks to maintain the status quo as a starting point, regardless of any wider benefits which may be achieved from what is proposed.

RMA **practice** in New Zealand tends towards a prescriptive style of planning practice. This practice has evolved over time, partly in response to uncertainty and a lack of national guidance on priorities and environmental standards, and partly because of the need for plans to be legally sound to be certain and enforceable. The RMA is intended to be enabling by focusing on managing the adverse environmental effects of activities and recognising positive effects. The 'enabling' characteristic of the RMA is one of its greatest assets, but in practice retaining it is difficult

In **practice**, plans have a tendency to take a rules-based approach involving a conservative and protectionist process of avoiding, remedying or mitigating adverse effects on the existing environment. This includes the urban environment. Plans generally take this approach in order to give as much certainty as possible to local government, the private sector, communities and property owners about which activities are allowed under what conditions.

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<sup>3</sup> Kamal-Chaoui, L, Robert, A (eds) 2009. *Competitive Cities and Climate Change*, *OECD Regional Development Working Papers N° 2*, OECD publishing.

<sup>4</sup> Boffa Miskell. 2009. *Case Studies of Intensive Urban Residential Development Projects*. Unpublished report prepared for the Department of Building and Housing. Wellington.

Hunt, J. 2008. *Urban Design Controls and City Development in a New Zealand context: Reflections on Recent Experiences in Auckland's Urban Core*. University of Auckland.

Inter-agency Urban Development Unit. 2009. *Key findings from the policy work stream*. Inter-agency Urban Development Unit hosted by the Department of Internal Affairs, Wellington

Ministry for the Environment 2008. *Review of Urban Design Case Law*. Ministry for the Environment, Wellington.

<sup>5</sup> Perkins, H. Thorns, D. 2001. A decade on: reflections on the Resource Management Act 1991 and the practice of urban planning in New Zealand, *Environment and Planning B: Planning and Design*, vol 29 pgs 639–654.

<sup>6</sup> SGS Economics and Planning. 2006. *Catalysing Positive Urban Change in New Zealand*. Prepared for the Ministry for the Environment, Wellington.

Certainty is achieved by using rules to set agreed environmental bottom lines and using these rules as trigger points for further assessment. When environmental bottom lines are set high, they increase the thresholds for assessment and reduce the types of activities that can be undertaken in certain locations. This can result in protectionism and a focus on compliance.

For the urban environment, this can mean that what an activity is trying to do is lost sight of. For example, the desire may be to provide housing close to necessary transport to link people to jobs and services, but the focus instead goes on assessing the effects of component elements and whether they comply with rules.

As stated previously, under the effects-based RMA, the creation and management of urban and natural environments are assessed in the same way. Its effects-based policy framework for decision-making relies on clear, objective and scientific information to determine what effect activities have and appropriate environmental bottom lines. However, this does not lend itself particularly well to addressing the cumulative effects of development in subjective areas such as urban design, where the link between activities and their effects are not well defined.<sup>7</sup>

RMA case law<sup>8</sup> has confirmed that urban design-related matters can be considered in decision-making at a site-specific level. However, it can be challenging justifying quality urban design in planning decisions where policies, and sometimes decision-makers, are focused on quantitative scientific-based decision-making. An example is where a residential, retail or commercial development is required to mitigate adverse environmental effects by providing pollution control devices (eg, stormwater ponds) or car parking, but is not required to recognise the qualitative factors required to deliver a well-designed built environment or functioning city or town.

Overall, it is considered that the RMA's emphasis on managing effects on the natural environment, and its definition of the environment, does not adequately address the complex social and economic processes which produce and maintain urban environments. The definition excludes critical aspects of the constructed urban environment from receiving the serious consideration they deserve. Essentially, in relation to urban development and the built environment, the RMA is being asked to do a job it is not explicitly designed to do.

## Urban problem 2: Complex planning system

New Zealand's urban planning system (namely the RMA, LGA and LTMA) lacks alignment between strategies, funding, regulation and decision-making to integrate land use and transport, set spending priorities and manage growth. Duplication of some powers and processes and lack of alignment between the RMA and other legislation was also identified in the Phase One Resource Management Reform.<sup>9</sup>

The three planning Acts were never designed to work together as a complete urban planning system. Each Act, its plans and decision-making are all subject to different legal purposes,

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<sup>7</sup> Morrison J, Sumits A. 2001. *Creating a Framework for Sustainability in California: Lessons Learned from the New Zealand Experience*, Pacific Institute for Studies in Development, Environment, and Security, California.

<sup>8</sup> Ministry for the Environment. 2008. *Review of Urban Design Case Law*. Ministry for the Environment. Wellington.

<sup>9</sup> Ministry for the Environment RMA Review Team. 2008. *Report to the Technical Advisory Group*. Ministry for the Environment. Wellington.

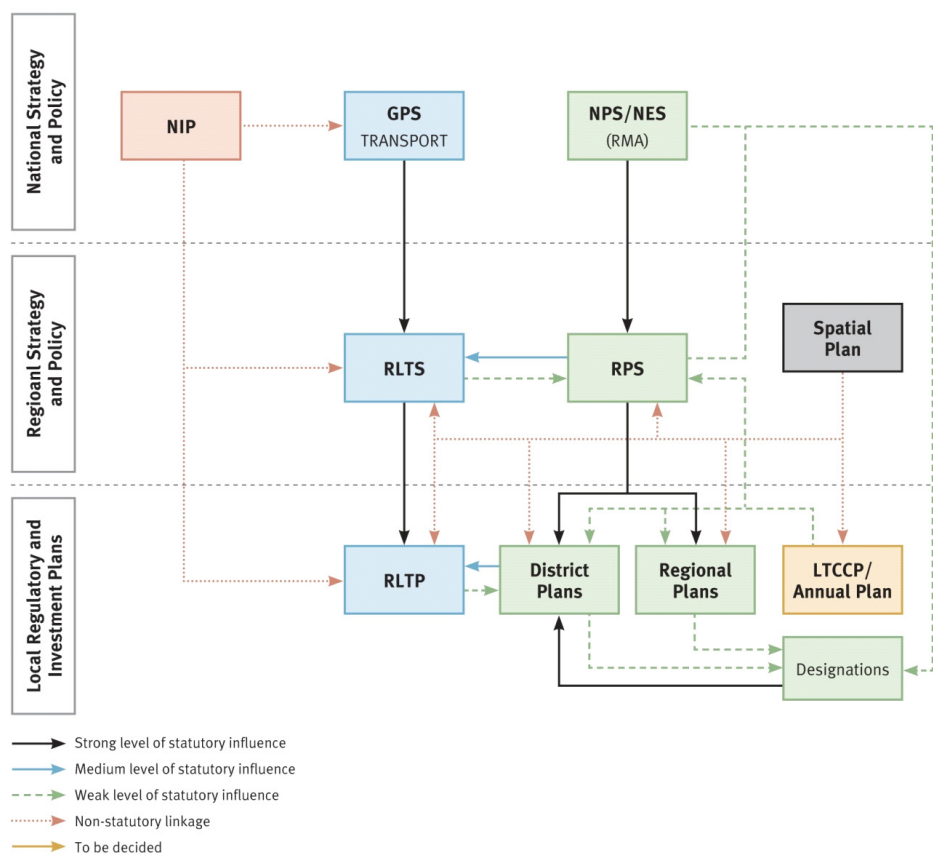
processes and criteria, and operate over different time frames. This results in duplication and lack of clarity, and demands considerable time and resourcing from all parties involved.

While there are legal links<sup>10</sup> between plans and decision-making under each Act to help them align, these have various statutory weightings and are often not consistent between the Acts. For example, a Regional Land Transport Strategy is ‘required to be consistent with’ a Regional Policy Statement, but the Regional Policy Statement has a lesser test of ‘having regard to’ a Regional Land Transport Strategy.

Across the system as a whole, the links therefore create an inconsistent hierarchy of legal weightings which is not always clear or easy to determine. Together with the number of plans, this creates complexity, fragmentation and confusion. Figure 1 illustrates the number of plans and the legal links that create the complexity and fragmentation in New Zealand’s current planning system.

**Figure 1: New Zealand’s urban planning system: relationships between the plans and strategies of the RMA, LTMA and LGA**

(Acronyms used in figure 1 and throughout this discussion document are explained in Appendix 1.)



<sup>10</sup> For clarity, the term ‘legal links’ refers to the spectrum of legal strength of relationships between plans, which provides the legal basis for the spatial plan and its strategic direction to influence other plans. This spectrum spans a range of legal threshold tests from high (eg, recognise and provide; give effect), medium (eg, not be inconsistent), to low (eg, have regard to; take into account; be informed by).

A further issue is that the current urban planning system does not facilitate the implementation of growth strategies or enable the resolution of specific issues (such as housing affordability), in an effective and consistent manner.<sup>11</sup> In fact, the current system requires that the individual components of a growth strategy or issue be broken up by type (eg, environment, social, infrastructure, economic, finance and funding). These components are then addressed by the relevant Act. This creates a fragmented and overly complex approach to resolving an issue. There is also a missed opportunity to use a number of policy levers across multiple Acts to implement a strategic direction in a consistent manner.

The complex urban planning system also creates a lack of alignment between spending, policy, regulation and development. This means the current planning system is not able to effectively engage or provide signals or sufficient certainty to infrastructure providers and the private sector. This undermines integrated decision-making that will provide the right infrastructure in the right place at the right time.<sup>12</sup> It does not support quality urban development and value for money.

Within the existing system there are few mechanisms to support the implementation of projects and broad objectives across the various plans under the RMA, LGA, and LTMA. For example, there is only a weak legal relationship between growth strategies and long-term council community plans (LTCCPs) developed under the LGA and other plans, including RMA plans, decision-making and funding plans.

To date, parties have relied on memoranda of understanding (MoU) and establishing collaborative working and governance relationships. However, implementation has not always been successful – eg, the Auckland Regional Sustainable Development Forum has successfully developed cross-party strategies for the Auckland Region, but implementing these strategies and delivering results on the ground has been challenging.

As a result, the implementation of growth strategies developed under the LGA is weak<sup>13</sup> with a requirement only to ‘have regard to’ in plan development<sup>14</sup> and in resource consent assessment.<sup>15</sup> There are often disconnections between LTCCPs and decisions under the RMA.<sup>16</sup> In the context of Auckland, the Royal Commission noted that in particular there has been a failure to align the land-use side of growth management with the funding and provision of city-shaping infrastructure<sup>17</sup> (roading, public transport, regional waste and wastewater networks and open space).

To summarise, RMA decision-making has little recognition of infrastructure investment decisions and priorities decided under the LGA. Where an LTCCP provides for a council’s contribution to the achievement of community outcomes, the RMA is not directly involved in the delivery of outcomes. Its focus is managing the environmental effects of activities, which

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<sup>11</sup> Inter-agency Urban Development Unit. 2009. *Key findings from the policy work stream*. Inter-agency Urban Development Unit hosted by the Department of Internal Affairs, Wellington.

<sup>12</sup> Ibid.

<sup>13</sup> Fragmented governance also contributes to weak implementation.

<sup>14</sup> RMA section 61(2); section 66(2)(c)(i); section 74(2)(b)(i).

<sup>15</sup> RMA section 104(1)(c).

<sup>16</sup> It is noted that this is partly a timing issue as RMA plans pre-date the LTCCP plans by some years. Some more recent RMA plans and plan changes have addressed this to a degree.

<sup>17</sup> Royal Commission on Auckland Governance. 2009. *Auckland Governance Report*. Royal Commission on Auckland Governance, Auckland

may or may not assist in the delivery of outcomes. This disconnect leads to gaps between funding and the demand for services, and limits the alternatives to fund infrastructure.

### **Urban problem 3: Lack of consistency in decisions**

This problem is a symptom of the lack of alignment and connection between the planning statutes (problem two, above).

Quality urban development requires effective coordination and alignment in decision-making and action across local and central government, infrastructure providers and the private sector. It also requires effective interaction and engagement with key participants affected by urban development, including iwi/Māori, communities and non-government organisations.

“Most development is a private sector function. This means that private sector developers and communities must have buy-in to and involvement in metro and local strategies.”<sup>18</sup>

In this context, key findings from a review of urban growth management in the United States<sup>19</sup> concluded that:

A critical ingredient in a successful strategy is that it is built politically from the bottom up and technically from the top down.

The bottom up approach involves genuinely searching for community and private sector views and, ideally, consensus on development choices and directions. ... private sector investment usually works from the bottom up and initially at a micro scale. Thus the development sector (housing, retail, industrial) needs to be tapped into (and) alongside the political community. Both need to have input into strategies.

The top down bit involves providing good political leadership and listening skills. It also involves articulating ideas and subsequently a clear vision and directions. It must be supported by professional analysis (based on good information and careful monitoring) of urban trends and the impacts of various options. And having built the strategy, it is very important to keep it live. Strategies require ongoing investment in information and monitoring, and updating through reviews.

Metro strategies fail when they become technocratic and directive.

Things fall apart when metro authorities start directing and controlling development and imposing ideas without seeking cross-sectoral political mandates and without communicating with and involving affected communities, the private sector and local government.

In practice, in New Zealand, there are two key aspects to this problem, each discussed further below:

- multiple parties with an interest in urban planning
- the role of central government.

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<sup>18</sup> Gow L. 2000. *Curbing the Sprawl: Urban Growth Management in the United States – Lessons for New Zealand*. Ministry for the Environment. Wellington. p 93.

<sup>19</sup> Ibid, p 93.



## Multiple parties with an interest in urban planning

Multiple parties are involved in decision-making and action in the urban planning system. The lack of coordination and consistency between these parties is a practice issue, and is also a symptom of the complex urban planning decision-making system.

Some good examples of planning practice and/or design leading to agreement and greater consistency in decision-making and action by participants do exist – for example, the Tauranga Growth Strategy and Greater Christchurch Urban Development Strategy.<sup>20</sup> However, such strategies are not statutory documents and have limited weight. In other areas, there is difficulty in implementing the long-term strategies developed at the regional level by local authorities.<sup>21</sup>

No effective, single mechanism exists to facilitate engagement, provide the full range of relevant information needed to inform robust decision-making, or secure agreement between participants and create certainty for investment. Currently, mechanisms are spread throughout the LGA, RMA, LTMA and other Acts (eg, Schedule 1 of the RMA, whereby agreement is ultimately reached through judicial decision-making).

Under this situation, the scope and aspects of the urban environment considered are limited to the purpose of the relevant Act. Agreement between participants also tends to be limited to single elements of the urban environment (eg, natural environment, transport) or the particular interest or values of particular groups, rather than integrated.

One symptom of the fragmentation is the difficulty in implementing long-term strategies developed at the regional level by local councils. These strategies are often aspirational and not grounded in the realities and funding constraints faced by central and local government and the private sector. They are also often not based on robust analysis of market preferences, or demand for location and development types. Development pressure from the private sector in areas not identified for growth is also a symptom of poor cross-party agreement. It is important that long-term plans and strategies are realistic and responsive to changing circumstances and have the support of participants.

An example is the development of the Auckland Regional Growth Strategy 1999, and its concept for growth management. This set out areas for growth and intensification, but did not have the support of the development sector as to the location or economic feasibility of the areas identified for intensification and development. Nor did it have the full endorsement of central government, although agencies were involved and aware of its development. Findings of the review of the Auckland Regional Growth Strategy raised the need for closer relationships with key partners in the future implementation of the Strategy, including private-sector infrastructure providers and the development industry, as well as central government.<sup>22</sup>

## Central government's role

Central government plays critical roles in urban areas as a policy maker, regulator, developer, investor and capability builder, and as an implementer and deliverer of infrastructure and

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<sup>20</sup> These strategies have relied on the establishment of collaborative working and governance relationships to achieve their development and implementation.

<sup>21</sup> Royal Commission on Auckland Governance. 2009. *Auckland Governance Report*. Royal Commission on Auckland Governance, Auckland

<sup>22</sup> Auckland Regional Growth Forum. 2007. *The Auckland Region in the 21<sup>st</sup> Century: an evaluation of the Auckland Regional Growth Strategy 1999*. Auckland Regional Council.

services. Infrastructure is a key priority of the Government because it helps to shape places, to connect people within and between places, provide services to locations and influence people's choices and behaviour.

Central government provides the bulk of public expenditure in urban areas across a range of portfolios. When compared to other jurisdictions, New Zealand's Government spend is highly centralised, whereas resource management is highly decentralised.<sup>23</sup> Total central government spend in Auckland (including benefit payments and operating costs) outweighs local government by a factor of around eight to one. In the 2007 fiscal year, estimated total expenditure by central government in Auckland was NZ\$17.2 billion, or 32 per cent of national expenditure by central government.<sup>24</sup> This compares to NZ\$2.7 billion spent in the same period by Auckland local authorities. Despite the level of its investment however, central government has not been explicit about what it wants to achieve overall for town, cities or rural areas.

New Zealand Institute of Economic Research estimates<sup>25</sup> show that the Government's infrastructure investments in Auckland are concentrated in a small number of portfolios: transport (NZ\$705 million), housing (NZ\$474 million), education (NZ\$283 million), health (NZ\$125 million) and law and order (NZ\$98 million). More than 40 per cent of central government's capital expenditure for transport, housing and education is in Auckland.

Its level of investment means central government needs to be involved in agreements on urban growth management.<sup>26, 27</sup> The Government is considering mechanisms that will provide for more effective and coordinated engagement in planning and delivery where appropriate. Its 20-year National Infrastructure Plan,<sup>28</sup> released in March 2010, will help coordination by creating a clear outline of the nature, scale and timing of significant national infrastructure investment over the life of the plan.

At present, urban land-use planning in New Zealand (under the RMA) is often disconnected from infrastructure spend decisions (under the LGA) and this can undermine return on investment. To get better value for money from infrastructure and productivity gains, spend needs to be targeted to deliver the highest possible return on investment. Central government will therefore need to have a clear view about what it wants to achieve in a location, along with:

- quality and relevant information about places – eg, environmental conditions and constraints, migration, growth areas, and locations that have a demand for housing and business activities

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<sup>23</sup> Expenditure by central government accounts for 89 per cent of expenditure by all levels of government (ie, central and local government) in New Zealand, compared with 43.3 per cent of government expenditure across the Organisation for Economic Cooperation and Development (OECD) countries.

<sup>24</sup> Report prepared by the New Zealand Institute for Economic Research for Committee for Auckland. Most central government's spend is on operating costs rather than capital expenditure, with the exception of transport. In absolute terms, social welfare expenditure was estimated to be the single largest area of central government spend in Auckland, at NZ\$5.1 billion, (roughly 70 per cent of this in benefit payments). Health and education estimated expenditure were the next two largest areas at around NZ\$3 billion each. In 2007, transport spend was NZ\$944 million or 38 per cent of national funding.

<sup>25</sup> Ibid. 2009 figures.

<sup>26</sup> Department of Building and Housing. 2009. *Report and Recommendations of the Urban Taskforce*. Wellington.

<sup>27</sup> Inter-agency Urban Development Unit. 2009. *Key findings from the policy work stream*. Inter-agency Urban Development Unit hosted by the Department of Internal Affairs, Wellington

<sup>28</sup> Treasury. 2010. *National Infrastructure Plan*. New Zealand Government. Wellington.

- an understanding of what is needed and agreement with other parties to provide other critical factors – eg, land-use plan changes, and/or complementary investment by local government in other infrastructure or development
- appropriate means of protecting critical routes and sites.<sup>29</sup>

## Urban problem 4: Barriers to effective implementation

Effective implementation of planning and urban design outcomes relies on being able to access a full range of appropriate tools and assess which is best for the job in specific circumstances. The full range of tools covers a spectrum, including the use of plans to implement national objectives and standards, provision of information, using incentives and regulatory tools.

The use, flexibility and effectiveness of tools should complement the broader planning system, allowing the achievement of broader objectives, such as economic growth, integrated urban and infrastructure development, value for money from investment, and well-designed urban environments that create value.

Three potential barriers to effective implementation have been identified, and are discussed further below:

- inconsistent plan structure and format
- cost and time associated with preparing and changing plans
- potential problems with tools in practice.

### Inconsistent plan structure and format

There are 85 local authorities in New Zealand, and each has adopted one or more plans with a structure, format, and set of provisions that are virtually unique to that local authority.

This variability and inconsistency can result in:

- duplication of effort in resolving common issues, unnecessarily increasing the cost and time local authorities and submitters spend on the plan preparation and change process
- frustration amongst resource consent applicants who have to deal with a number of different plans and have to tailor otherwise identical proposals to match those plans
- national policy statements (NPSs) and national environmental standards (NESs) having to be drafted to cater for all possible variations in plan format and provisions. This can increase the complexity of NPS and NES while reducing their clarity and effectiveness
- unexpected costs for those carrying out, or on the receiving end of, enforcement action brought about because of misunderstandings over unexpected and subtle differences between the provisions of plans
- limited ability to transfer case law lessons from one plan to another (such that some local authorities are forced to obtain legal advice or face legal action in relation to matters that are essentially the same as those encountered by other local authorities).

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<sup>29</sup> Inter-agency Urban Development Unit. 2009. *Key findings from the policy work stream*. Inter-agency Urban Development Unit hosted by the Department of Internal Affairs, Wellington.

Variability in the meaning of ‘residential zone’ highlights the issues. Most district plans have at least one or more residential zones. However, a quick analysis of 230 residential zones contained in RMA plans suggests that no two are exactly alike – even when many have similar names and broadly similar purposes, the rules and standards that apply vary.

Similarly, a separate study of plans associated with the eight largest territorial authorities found 123 different terms defined, of which there were more than 450 variations.<sup>30</sup>

Very little quantitative information is available on the effect of plan variability on costs and time.

Notwithstanding the shortage of quantitative information, several businesses and industry groups have repeated calls for greater consistency within and between plans.<sup>31</sup>

One problem caused by the lack of consistency is the difficulty in expressing national direction clearly and unambiguously through plans:

- Variability in plan structure, terminology, expression and format means that NPSs and NESs are either very complex, or generalised, in an effort to reflect plan variability. In other instances, national instruments have relied on local authorities’ use of RMA plan change processes to try and reflect national direction (with the resultant cost and variability in how well individual plans reflect the national direction).
- The absence of a common process to produce NPSs and NESs that relate to the same matter on a single timetable makes it difficult to produce a fully integrated national direction policy and standards package on a given topic that can be reflected in RMA plans with minimal effort on the part of local authorities.

Compounding this, NESs all but prescribe rules to be included in RMA plans, but require a plan change process to achieve this. That means the costs fall on local authorities and communities if they want to fully integrate the NES into their plan.

Compared with some other countries (Australian states and the United Kingdom), New Zealand has relatively few environmental standards and national policy statements in force. At present there are:

- NESs on four topic areas
- at least five new NESs under development
- two NPSs – including the first generation New Zealand Coastal Policy Statement
- up to four NPSs in various stages of development.

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<sup>30</sup> Raw data associated with: Harrison Grierson. Unpublished. *Development of Standard Definitions for Common District Plan Terms*. Prepared for the Ministry for the Environment 2008.

<sup>31</sup> These include:

- Federated Farmers (see for example, Waikato Times 7 November 2009)
- Various groups including telecommunications providers who submitted to the “Facilitating the Deployment of Broadband Infrastructure Discussion Document” (2009), published by the Ministry of Economic Development
- Architects, network utility operators and those involved in the construction sector (various submissions to previous reviews of the RMA including those in 2005 and 2009).

Where insufficient national direction is provided, this can be seen as a problem where local or regional differences are too costly or inappropriate. However, a multitude of national instruments can create other problems.

Experiences in the United Kingdom demonstrate the potential risks of not having an integrated and simple approach to dealing with national policy direction. Articles in the Royal Town Planning Institute journal of 13 November 2009 noted that more than 3000 pages of interrelated and sometimes conflicting national policy and rules existed, resulting in a fog of targets, quotas and structures.<sup>32, 33</sup>

In the New Zealand context, a similar potential risk exists, particularly as more NPSs and NESs are prepared. The Government has received a number of requests and suggestions in recent years for specific NPSs or NESs.

### **Cost and time associated with preparing and changing plans**

Compared with other forms of local authority planning, the preparation and changing of RMA plans is expensive and time consuming. This can impact on local authorities, communities, businesses and the environment through:

- direct costs in time and resources for local authorities
- indirect costs of money and resources that could have otherwise been spent on other local authority works and projects
- direct costs to businesses and communities in making submissions and resolving appeals in the Environment Court
- indirect costs to businesses and communities through downtime for key people, and money and resources being diverted to submitting on plans and resolving disputes through the Environment Court
- costs to businesses associated with delays in fixing unnecessary, inappropriate or out-of-date rules
- costs to the environment if plan provisions that may benefit the environment are delayed or diverted.

Costs to businesses and other stakeholders (such as those in forestry and agriculture) can also arise from the need to educate, or provide information to local authority staff who have limited knowledge about the sector and its activities. Without such information, plan provisions may become unnecessarily precautionary in approach, with additional plan and consent administration and compliance costs over and above those reasonably expected.

The costs of educating and informing local authority staff can also be exacerbated by long plan and plan change development time frames as, within that time, staff may leave and be replaced (sometimes twice over). Costs to businesses and stakeholders providing such education and training may be financial (cost of employing researchers, trainers, or printing publications for example) time, or a combination of both (for example, business owners or farmers sacrificing time that may otherwise have been devoted to running their business or farm).

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<sup>32</sup> Spelman (2009) *Changing the Rules*, Planning: the Journal of the Royal Town Planning Institute, 13 November 2009.

<sup>33</sup> Morris (2009) *Deluge of Draft Policies Can Only Result in More System Confusion*, Planning: the Journal of the Royal Town Planning Institute, 13 November 2009.

## Time:

Studies of local authority experiences with the first generation of plans under the RMA<sup>34</sup> showed that, on average, it took local authorities 8.2 years to prepare a plan and make it operative. However, this figure does not take into account first generation plans that were still not operative at the beginning of 2010 (of which there are still at least four). The two largest contributors to time were plan preparation before notification (30 per cent) and appeals (40 per cent).

Information on time frames for plan changes and variations is less comprehensive but suggests that it takes nearly three years to prepare and make a plan change operative.<sup>35</sup> The overall distribution of time for each task of the plan change process suggests around 30 per cent is being spent in preparing the plan change and the RMA section 32 analysis; 35 per cent in the submission and hearings processes; and a further 35 per cent in resolving appeals.<sup>36</sup>

A survey<sup>37</sup> of plan changes in Auckland and Franklin found it could take between 18 months and six years for a plan change to be prepared, notified, go through the submission process, go through the hearing process, and have decisions released (the average being close to three years). More than half (51 per cent) of the time was taken in the pre-notification and plan change drafting stages of the plan change process, with the second biggest contributor being the hearings process (23 per cent). However, several of the plan changes surveyed were still subject to appeals that would extend their time frames beyond six years.

Similar survey work<sup>38</sup> was carried out for plan changes by local authorities in the Bay of Plenty in 2008. The overall time for plan changes was approximately half that of the Auckland local authorities (79 weeks on average if appeals were excluded). Of note was that the average time spent resolving appeals in the Bay of Plenty added 29.4 weeks to time frames (nearly seven months).

## Cost:

The average cost of producing the first generation of plans under the RMA has been estimated at more than NZ\$1.9 million.<sup>39</sup> The greatest contributor to costs is the first stage of plan

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<sup>34</sup> Brown and Pemberton Planning Group Ltd. 2008. *Analysis of time frames for the development of policy statements and plans under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

<sup>35</sup> Hill Young Cooper Ltd. 2008. *First Schedule Process – Time and Costs*. Prepared for the Ministry for the Environment. Wellington.

Harrison Grierson. 2008. *Schedule One Process – Plan Changes: Quantitative and Qualitative Evaluation*. Prepared for the Ministry for the Environment. Wellington. .

<sup>36</sup> Brown and Pemberton Planning Group Ltd. 2008. *Analysis of time frames for the development of policy statements and plans under the Resource Management Act*. Prepared for the Ministry for the Environment.

<sup>37</sup> Hill Young Cooper Ltd. 2008. *First Schedule Process – Time and Costs*. Prepared for the Ministry for the Environment. Wellington.

<sup>38</sup> Harrison Grierson (2008) *Schedule 1 Process – Plan Changes: Quantitative and Qualitative Evaluation*. Prepared for the Ministry for the Environment. Wellington.

<sup>39</sup> Boffa Miskell and Hill Young Cooper. 2004. *Improving Processes For Making Plans and Policy Statements under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

Note that the report uses a lower overall average figure. Summing the quoted average for each component gives the figure to NZ\$1.9 million used in the text in this paper. This figure does not take into account costs

preparation, including initial plan preparation, the section 32 report, and pre-notification consultation. This first stage contributed 37 per cent of the total costs.<sup>40</sup>

At the upper end of the scale, the cost of developing a number of first generation RMA plans produced by larger local authorities, and those facing significant growth pressures, is known to have exceeded NZ\$7 million (with at least two local authorities spending more than NZ\$15 million).<sup>41</sup>

The costs of preparing changes to plans and making them operative vary considerably with scale. Surveys of plan changes in four local authorities in 2008<sup>42</sup> found a cost range of NZ\$18,500 to NZ\$601,000. The mean for the survey was NZ\$109,000. The cost of resolving appeals made up nearly half the costs of the more expensive plan changes.

Mean costs for the main stages of plan changes (excluding appeals) from the studies in Auckland, Franklin and the Bay of Plenty<sup>43</sup> found that, for those plan changes studies, the highest proportion of costs (55 per cent) was associated with the hearing process, with the pre-notification plan change preparation stage being the second highest source of costs (22 per cent).

Little data has been collected about the cost of plan change appeals for local authorities. Some local authorities are known to include a contingency of NZ\$50,000 into their plan change budgets but actual figures tend to vary considerably according to whether appeals are withdrawn, settled before a hearing, or proceed through to a hearing and are further appealed.

## Potential problems with tools in practice

Our international competitors have adopted strong planning systems that are flexible and responsive to new challenges and market forces, forward looking, and focused on economic growth and fostering value. They are designing their urban planning systems and tools to be more enabling, rather than focusing on just complying with rules and ticking boxes.

Increasingly, governments are focused on using their planning systems to drive productivity, enable development and get better value for money from infrastructure investment (eg, the United Kingdom, United States of America and Australia). Attention to places and improved planning and urban design is seen by some countries as part of the answer to having competitive

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to submitters in preparing submissions and attending hearings, which are estimated to take the costs of some plans to over NZ\$30 million.

<sup>40</sup> Brown and Pemberton. 2008. *Analysis of time frames for the development of policy statements and plans under the Resource Management Act*, Prepared for the Ministry for the Environment. Wellington, and Boffa Miskell and Hill Young Cooper Ltd. 2004. *Improving Processes For Making Plans and Policy Statements under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

<sup>41</sup> Brown and Pemberton. 2008. *Analysis of time frames for the development of policy statements and plans under the Resource Management Act*, Prepared for the Ministry for the Environment. Wellington, and Boffa Miskell and Hill Young Cooper Ltd. 2004. *Improving Processes For Making Plans and Policy Statements under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

<sup>42</sup> Hill Young Cooper Ltd. 2008. *First Schedule Process – Time and Costs*. Prepared for the Ministry for the Environment. Wellington.

<sup>43</sup> Derived from Hill Young Cooper Ltd. 2008. *First Schedule Process – Time and Costs*. Prepared for the Ministry for the Environment. Wellington.

and productive cities, providing business with certainty, and creating a quality regulatory and physical environment (eg, infrastructure). Spatial planning is often being used as the tool to enable this shift. A comparison of different types of planning is provided in Appendix 4.

The Australian Federal Government is moving fast to use its planning systems to harness growth and improve competitiveness. Australia has launched a new reform of its urban planning system and the Federal Government is now providing strong national leadership for major cities, and delivering on its objectives through practical partnerships with states, territories and local government.

The Organisation for Economic Cooperation and Development (OECD) also has a focus on the role of cities and regions in economic performance and growth. The OECD recognises that attention to the design of places and improved planning is part of the answer to having competitive and productive cities and towns and quality environments.

“There is considerable evidence that a good and attractive environment, including well performing urban infrastructure, are not alternatives to metropolitan urban success but in fact fundamental to its continuation.”<sup>44</sup>

Trends and tools in international urban planning include:

- clear statements of national objectives for towns and cities
- priorities and criteria for plans, and nationally or regionally significant development (eg, projects of national/regional significance)
- using *regional* spatial plans as a mechanism for negotiating and agreeing overarching objectives and development patterns, and also to provide information to the private sector and enable public-private partnerships
- using *national* spatial plans (eg, Ireland, Scotland, Wales, Denmark, the Netherlands) to inform and augment national infrastructure plans and investment. In these cases, national spatial plans provide the context for the development of regional spatial plans by local government
- recognising the need for partnerships across each level of government (central and local governments) and with the private sector (often implemented through spatial planning)
- using complementary tools to support good urban planning and design including: housing market assessments, urban design commissions and capability building, value capture instruments, innovative financing instruments, master-plans and specialised zoning, urban regeneration/development agencies, and instruments to enable land assembly in strategically important areas, such as compulsory purchase.

As our competitors and our trading partners move to use their urban planning systems to deliver economic growth alongside environmental and social objectives, we are at risk of being left behind. We have to benchmark ourselves against our competitors and assess not only the regulatory costs of our urban planning system but also the opportunity cost. Where we have high regulatory or opportunity costs and/or low benefit we must review and consider reforming our approaches to keep up with our competitors. This is as much about delivering a better regulatory environment for business, as it is about maximising the opportunities for improved economic performance and environmental outcomes.

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<sup>44</sup> OCED (2006) *OECD Territorial Reviews: Competitive Cities in the Global Economy*, OECD Publishing, Paris, pg 137.



For New Zealand, some of the tools currently available for supporting effective urban development may be ineffective in practice because they may:

- be inadequate – eg, metropolitan urban limits; financing and funding mechanisms for infrastructure
- need to be complemented by new tools to be effective – eg, spatial plans
- not being used to their full potential – eg, urban design panels.

It is important to note that tools to implement urban design and planning generally need to be implemented as a package as each has particular limitations and characteristics. Implementation tools should therefore cover the full spectrum from information, incentives, to regulatory tools.

Development tools can complement broader urban planning systems and improve the ability to achieve broad outcomes sought in urban areas, such as economic growth, integrated urban and infrastructure development, value for money from investment and well-designed urban environments that create value.

New Zealand's existing tools are discussed below.

## **Metropolitan Urban Limits (MULs)**

The use of MULs, rightly or wrongly, has been accredited with contributing to housing unaffordability by limiting land supply and thereby raising land prices. Although there is evidence of a strong zoning boundary effect on land prices,<sup>45</sup> there are a number of other factors which influence locational demand and therefore land prices:

- a market that favours new, large floor area, large lot detached homes which increase return on investment in land, and the lack of alternatives to these
- incentives associated with property investment which are not available with other forms of investment
- population growth, immigration policies and workforce composition.
- the quality and availability of transportation options
- the locations of business areas and the workforce skills required by those businesses
- the willingness of owners of large land holdings, both on the urban fringe and in existing urban centres, to develop their land for residential or business purposes
- the responsiveness of the rental market to housing supply (including apartments) and house price increases
- surrounding amenity levels, including school zones, and views
- time taken to journey to work or access services
- possible future increases in energy prices
- priorities for infrastructure provision and costs of delivering and maintaining infrastructure.

Any discussion on MULs needs to consider these other factors; in particular the effect on infrastructure provision where there is no MUL. There are many unanswered questions that

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<sup>45</sup> Grimes (2007) *Impacts of Land Supply and Planning Infrastructure on New Zealand House Prices*, Motu Economic & Public Policy Research Trust, Wellington.

need future analysis by officials and discussion with other parties, particularly infrastructure providers.

For instance, to manage and avoid rate increases, councils need to think about where best to provide for development. Considerations need to include the cost of infrastructure provisions. Various locations will have different associated costs and will require a critical mass of development to make them affordable. Smaller developments may be able to provide some of their own infrastructure. Although, as WaterCare Services<sup>46</sup> has noted, this can result in a proliferation of small plants which a public service provider often has to take over. This can also push up the cost to the rate payer through lack of economy of scale and poor environmental performance.

The use of MULs in New Zealand is a blunt instrument when compared to international uses of MUL. They tend to be applied rigidly and do not consider the social and economic benefits and costs of their use. For example, the objective of the Auckland MUL is simply to protect rural and coastal environments.<sup>47</sup>

MULs are used effectively as a tool elsewhere in the world (eg, Melbourne and Portland) because they are one part of a broad suite of tools, including ongoing monitoring of land supply,<sup>48</sup> and are kept under review. This is central to their effective use.

If urban limits or tight regulation severely restrict land supply and related choice, especially of housing, then prices rise and land speculation becomes a big problem. Regulatory restraints become strained as pressure comes on and litigation starts to replace strategic planning as a way of making decisions.<sup>49</sup>

The conditions under which an MUL should or could be moved, the process for deciding on a move, and the method for implementing a move, are also essential factors.

## Current finance and funding mechanisms

Existing finance and funding mechanisms have particular limitations, including poor allocation of current and future costs and benefits, and where they fall. For example, development contributions impose long-run costs of infrastructure development upfront on the developer, rather than on the property user over the life of the infrastructure (100+ years). They are also often applied early in the development process when developers may have tight cashflow.

The current system of finance and funding mechanisms has limited ability to create an incentivised system that encourages private sector development in areas of greatest benefits (public and private). This could include the ability to provide discounted contributions in designated growth areas, while providing certainty and reducing risks for the developer and council.

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<sup>46</sup> pers com.

<sup>47</sup> Hill G. 2008. The Effectiveness of the Auckland Metropolitan Urban Limit – Ring-fencing Urban Development. Paper presented at the Environmental Defence Society Conference, 11–12 June 2008.

<sup>48</sup> A range of policy instruments used by cities internationally to manage urban sprawl is presented in Kamal-Chaoui L, Robert A (eds) 2009. *Competitive Cities and Climate Change, OECD Regional Development Working Papers N° 2*, OECD publishing. p 106.

<sup>49</sup> Gow L. 2000. *Curbing the sprawl: Urban growth management in the United States – lessons for New Zealand*. Ministry for the Environment. Wellington. pg 91.

## Urban design panels:

These panels provide expert advice on design proposals, including significant new buildings, open space, transport projects, master plans and infrastructure. However, where urban design panels are in place, their recommendations have limited influence on decision-making under the RMA due to a lack of legal support or status. In addition, good urban design is not prioritised by some councils, possibly due to limited capability and resources.<sup>50</sup>

## Spatial planning

A comparison of spatial planning against other forms of planning is contained in Appendix 4. A brief overview of spatial planning is provided in Box 2 below.

### Box 2: Spatial planning – a generic definition

A spatial plan is a high-level strategy for developing a region that relates to its geography and seeks to achieve desired broad outcomes. Developed and implemented via collaboration between multiple parties, it provides a mechanism for agreeing joint priorities, actions and investment.

Spatial planning is:

- multi-party – a tool for collaboration between the key decision-makers
- focused on the long-term development of cities and regions and improving investment certainty
- a guide to the location and timing of future infrastructure, services and investment that can be used to provide for the co-location of infrastructure where this is appropriate
- evidence based
- integrated across sectors – eg, transport, land use, housing, education, funding policy and regulatory policy – to achieve broad outcomes (economic, social, environmental, cultural)
- strategic – provides direction to regional funding policy, regulation and other implementation plans (eg, transport, economic development).

Spatial planning is not:

- prescriptive regulation
- only about land use.

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<sup>50</sup> Ministry for the Environment (2010) *Urban Design Panels – A National Stocktake*. Ministry for the Environment, Wellington.

# 3 Problems with Infrastructure Project Development

## 3.1 Introduction

The Government's objectives for social and economic infrastructure are outlined in chapter 1.

One of the key challenges for resource management in New Zealand is ensuring that the right infrastructure is in the right place at the right time, and that approvals processes support the delivery of projects in ways that maximise the value of investment while sufficiently avoiding, remedying or mitigating environmental effects.

The potential problems identified for urban planning in the previous chapter are also relevant to infrastructure investment, planning and project delivery. In particular, the current planning system does not adequately provide for effective longer-term or integrated infrastructure planning. Inconsistencies in decision-making also fail to provide certainty for investment by infrastructure providers and other investors.

Five potential problems have been identified in how the RMA planning system affects infrastructure projects, both in urban and rural areas and throughout different regions:

- lack of clarity and consistency of national objectives and standards
- mixed access to designations
- complex and inflexible approval processes
- need for robust and integrated decision-making
- efficiency and adequacy of the land acquisition process.

Each problem is discussed, along with the relative scope and magnitude of its contributing factors. To provide a quick background to key terms and concepts, Box 3 provides a summary of processes available for infrastructure approval – in particular, the designation of land for infrastructure. Appendix 5 provides a more detailed explanation.

### What do you think?

Your response to these questions is welcomed:

- Do you agree/disagree with the list of potential infrastructure problems identified in this chapter?
- Can you provide any evidence that supports or questions the assessment of these problems?
- Are there any other problems that you think need to be considered?

### **Box 3: Processes for infrastructure approval – a summary**

#### **Designations**

The RMA allows for areas of land to be designated for use by network utilities, Ministers of the Crown or local authorities.

#### **Eligibility**

Land may only be designated by 'requiring authorities', meaning either:

- a Minister of the Crown
- a local authority
- a network utility operator (ie, certain types of infrastructure providers) approved by the Minister for the Environment.

#### **Effect of a designation**

A designation is like a 'spot zoning' in a district or city plan that:

- allows a project to go ahead without land-use consent from the relevant council
- places restrictions on landowners against doing anything that would prevent or hinder the work to which the designation relates.

#### **Decision-making**

In order to obtain a designation, a requiring authority must provide a 'notice of requirement' that it wants to designate land and follow one of the following processes:

- a local council may make a recommendation to the requiring authority who then decides whether to confirm or withdraw the notice of requirement
- a notice of requirement may be lodged with the Environmental Protection Agency (EPA) and referred to a Board of Inquiry or the Environment Court if it is part of a matter of national significance
- a notice of requirement may be referred directly to the Environment Court for a decision.

#### **Resource consents**

In addition to a designation, a requiring authority may be required to obtain resource consents from a regional council or approvals under other legislation.

#### **Other processes for infrastructure approval**

Instead of using the designation system, there are two alternative processes for infrastructure approval:

- an infrastructure provider can apply to a local authority or authorities for resource consent
- an infrastructure provider can seek a plan change to amend the controls and standards that apply to a particular site.

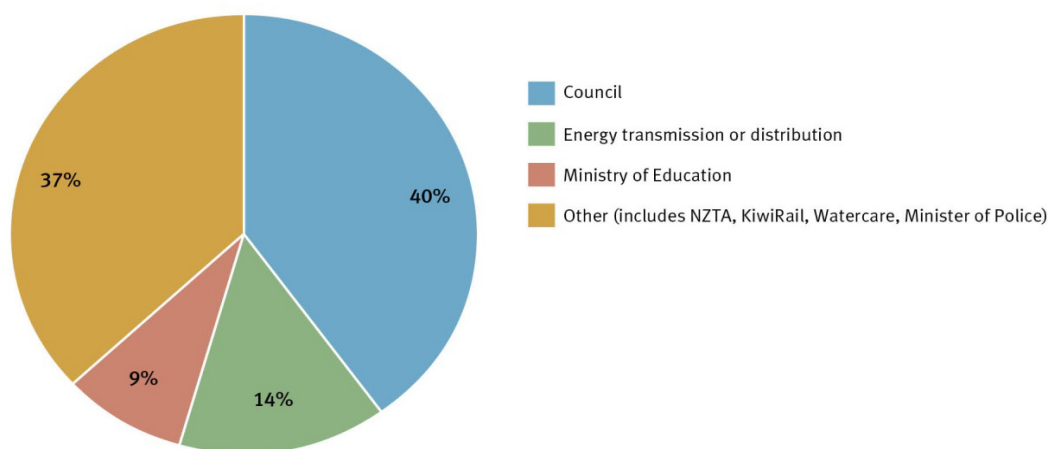
#### **Public Works Act 1981**

A network utility operator that is approved as a requiring authority can apply to the Minister of Lands to have land required for a project compulsorily acquired under the Public Works Act 1981 (PWA). An actual designation is not required for such an application.

## 3.2 Examples of the use of designations

Considering applications for all types of development (not just infrastructure), designations are in the minority when compared to resource consents. Over the past five years, 43 councils received 2778 notices of requirements for designations. In comparison, those same 43 councils received 27,947 resource consent applications between 1 July 2007 and 30 June 2008 alone.<sup>51</sup> Most existing and new designations are brought forward by public bodies, with the Ministry of Education, New Zealand Transport Agency (NZTA), and local authorities the greatest users of notices of requirement under designations (see figure 2).

**Figure 2: Requiring authorities who provided Notices of Requirement under s168 RMA (2005–2010)**



Source: *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*, GHD report to MfE, June 2010 (sample size of 185 notices to 43 councils).

Survey evidence from interviews with a small number of requiring authorities in 2006 suggests that requiring authorities opt to use designations rather than resource consents or plan changes for different reasons, including:<sup>52</sup>

- long-term certainty of the ability to construct and continue to operate the work, which is not subject to change to the same extent as district plan rules or zoning (10 out of 10 respondents)
- to overcome unsupportive district plan rules or issues of competing land use (three out of 10 respondents)
- to let the public know what is proposed or where a designation is already in place and may continue to impact on the use and enjoyment of their property, in order to put the public ‘on notice’. This can help with reverse sensitivity<sup>53</sup> (three out of 10 respondents)

<sup>51</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

<sup>52</sup> GHD. 2006. *Research into the use of designations*. Report to the Ministry for the Environment, Wellington.

<sup>53</sup> Reverse sensitivity arises where a new, incompatible activity establishes near an existing, lawfully established activity, and the new activity objects to the effects generated by the existing activity, thereby threatening the continued operation of the existing activity. For example, an airport may generate noise that is not appropriate for residential amenity, and may therefore initially locate in an area with no or low-density residential development. More intense residential development around the existing airport has the

- to provide national and cross-boundary consistency, such as, avoiding variations in rules across regions (three out of 10 respondents)
- to provide for an efficient and fast process for changes in operations in the future by using the outline plan process<sup>54</sup> rather than resource consent process (two out of 10 respondents)
- access to compulsory acquisition powers under the PWA (two out of 10 respondents)
- decision-making is retained by the requiring authority (one out of 10 respondents).

## **Infrastructure problem 1: Lack of clarity and consistency of national objectives and standards**

Under the RMA, decision-making in many areas has been devolved to local councils. This is because local government has the best knowledge and understanding of development impacts on its local area, and can best reflect its community's views.

However, infrastructure projects often cross regional and local boundaries, or provide services more widely than the local area in which they are physically located. Infrastructure providers themselves often operate in more than one region.

This leads to difficulty for decision-makers in balancing national and regional infrastructure needs against social, environmental and community interests. Clear national direction is important to reduce the uncertainty and risks for infrastructure providers that can arise from this balancing process.

Two potential problems have been identified with the current system:

### **a. Lack of clarity about national objectives and standards**

The RMA is able to provide national direction to infrastructure providers and decision-makers, through Part 2 of the Act, which sets out the Act's purpose and principles. Part 2 lists a number of 'matters of national importance' (section 6) and 'other matters' (section 7) to be considered in RMA decision-making.

However, insufficient central government direction about priorities for economic, social and environmental resource management leads to uncertainty for decision-makers and local government planning, and may mean government outcomes for infrastructure are not achieved.

Lack of clarity reduces the ability of local government and private sector infrastructure providers to integrate their investment with central government investment. Complementary private sector investment may also be delayed or reduced in its effectiveness.

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potential to create a reverse sensitivity effect on the airport, if the new residential development generates amenity expectations that are incompatible with the noise generated by the existing airport.

<sup>54</sup> An outline plan of work is provided to a local authority by a requiring authority. It gives details about the scale, location and shape of a particular work or project covered by a designation. Outline plans are not publicly notified.

### *Scope and magnitude:*

There is no empirical evidence to suggest that the lack of express recognition of infrastructure in sections 6 and 7 of the RMA is frustrating infrastructure development. Given the significance of changes to Part 2, the Government has undertaken further research into the extent of the problem and whether changes to Part 2 provide the best means to achieve the outcomes sought.<sup>55</sup> This further research indicates that:

- The overall success rate of a sample of infrastructure projects seeking approval would suggest that Part 2 as a whole allows infrastructure projects a better than even chance of obtaining approval.
- National policy statements have the potential, if framed with sufficient directive clarity, to assist with consenting infrastructure projects, especially by helping how the Courts and boards of inquiry approach trade-offs on competing community benefit and protection issues under Part 2.
- The timetable for plan reviews and analysis of long-term planning and RMA issues is driven primarily by the pressing issues of the district/region, industry and community pressure, rather than legislative changes to sections 6 and 7. However, although legislative amendments are not generally the initial trigger to carry out policy work on certain resource management issues, amendments provide the incentive and justification to elevate related policy work over other policy areas.
- There was disagreement among infrastructure providers, decision-makers and stakeholders as to the value or need to include reference to infrastructure in sections 6 or 7.
- There was general agreement among infrastructure providers, decision-makers and stakeholders that any amendment to sections 6 or 7 should be supported by additional guidance to ensure the Government's intention is clear and adopted consistently by practitioners and decision-makers.

A lack of clear national priorities regarding the importance of infrastructure, or clear communication of these priorities, impacts on all infrastructure providers, including the Crown, local authorities, and private bodies, and regardless of whether the infrastructure is located in urban or rural areas.

### **b. Lack of coordination in the development of national instruments and inconsistent implementation of national objectives**

The RMA provides the Government with the ability to develop resource management tools that can articulate national priorities, provide national direction and facilitate consistency and certainty in the way resource management issues will be addressed. Key tools include NPSs and NESs (see Appendix three for more information on both). The Minister for the Environment is also able to intervene in a matter of national significance, and direct the preparation of a plan, plan change or variation to a plan.

Insufficient central government direction on priorities for economic, social and environmental resource management makes it difficult to address *ad hoc* requests to develop NPSs/NESs. It also leads to uncertainty for local government, sectors and decision-makers, and may mean key Government outcomes for infrastructure are not being achieved in resource management.

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<sup>55</sup> Hill Young Cooper Ltd and Enfocus. 2010. *Providing National Guidance on Infrastructure Through the RMA*. Report to Ministry of Economic Development and Ministry for the Environment. Available on the MED website: [http://www.med.govt.nz/templates/ContentTopicSummary\\_\\_\\_\\_25226.aspx](http://www.med.govt.nz/templates/ContentTopicSummary____25226.aspx)



RMA plans across New Zealand incorporate NPSs in different ways. This increases compliance costs and investment risk for infrastructure providers who provide networks and services across territorial boundaries.

Under the RMA, a rule in a plan or resource consent cannot be more lenient than an NES. However, NESs are not always incorporated into plans. There are also inefficiencies in the process for incorporating NESs. The lack of incorporation of NESs means that it is often necessary to refer to both a plan and an NES, as the provisions of a plan may be misleading when read in isolation.

### *Scope and magnitude:*

Some discussion on the scope and magnitude of this problem is provided under ‘Urban problem 4’ in chapter 2 of this paper.

After the 2005 RMA Amendments, a list of priority NPSs and NESs was created, which formed the basis for most of the Government’s work programme over the last four years. New and emerging issues are added to the list, but the list is not actively re-prioritised across government portfolios. Matters that are most critical to economic development and environmental performance can therefore be on the list but not progressed. Further, the general approach to national instrument development since 1991 has been inconsistent and lacks transparency. There also continues to be regular requests from sectors for national instruments to be tailored to their specific activities, which risks a sector-based approach to national intervention in resource management issues. The development of NPSs can stall, particularly if they signal priorities to certain sectors, which makes them contentious. It also leads to uncertainty about time frames for investors and local government who implement national instruments.

Table 1 sets out the status of national instruments that are either in force or have been under development:

**Table 1: Status of national instruments**

National instrument	Year work commenced	Current status
<b>NPSs</b>		
New Zealand Coastal Policy Statement (1994)	1991	In force since 1994
Proposed NPS on Indigenous Biodiversity	2000	Under development
NPS on Electricity Transmission	2004	In force since 2008
Proposed New Zealand Coastal Policy Statement (2008)	2004	Under development
Proposed NPS for Renewable Electricity Generation	2005	Under development
Proposed NPS for Freshwater Management	2006	Under development
Proposed NPS on Flood Risk Management	2007	On hold
Proposed NPS on Urban Design	2008	On hold
<b>NESs</b>		
Air quality	2003	In force since 2005
Sources of human drinking water	2005	In force since 2007
Telecommunication facilities	2005	In force since 2007
Electricity transmission	2005	In force since 2010

Water measuring devices (section 360 regulations)	2005	Takes effect in November 2010
Contaminated sites	2006	Under development
On-site wastewater	2007	Withdrawn
Sea level rise	2008	On hold

Inconsistent implementation of national objectives is likely to be a problem that is more significant for infrastructure providers who cross territorial boundaries (eg, linear designations, such as state highways) or locate in more than one territorial authority area (eg, spot designations, such as schools). It is therefore not a universal problem and would not be an issue, for example, for city or district councils who are also infrastructure providers. As councils are a significant user of designations (see figures 3 to 5), this problem has a limited extent.

## Infrastructure problem 2: Mixed access to designations

The existing designation system described in Box 3 provides a specific process with outcomes intended to enable and encourage the provision of infrastructure. For example, a future roading corridor can be identified on a district plan map a number of years before the road is developed, and a restriction placed on other development within that corridor to preserve the ability to build the future road, even if the land is not owned by the roading provider.

Access to the system can therefore be seen as a benefit to infrastructure providers who are eligible, as well as something to be assigned carefully given the potential constraint on private property rights.

Existing provisions of the RMA restrict access to the designation system to infrastructure providers who satisfy the definition of requiring authorities (see Box 3: Eligibility). This approach reflects the history of designations.

## Background

Before the RMA, similar provisions had existed in earlier versions of legislation, including the Public Works Act 1981 (PWA), and the Town and Country Planning Act 1977. Designations were available for a wide range of central and local government development, including airports, ports, hospital authorities and fire services, as well as schools and local government development. Public utilities were provided for as permitted activities.

During the 1980s and early 1990s previously publicly owned and operated infrastructure was privatised through reforms in the organisation of New Zealand's public sector. Sectors included the telecommunications, electricity and aviation sector.

The introduction of the RMA in 1991 introduced an effects-based regime, while also carrying over the established designation processes. The RMA changed who was eligible to be a requiring authority to reflect changes in central and local government responsibilities and the increased role of the private sector in providing and maintaining economic infrastructure. The concept of network utility operators was introduced, and some types of infrastructure were excluded from using designations, such as health authorities and universities.

Further reforms to the RMA have since made changes to designations, but no substantive review of eligibility has been undertaken. Eligibility therefore still reflects the context in which it was first drafted, with an emphasis on government infrastructure provision, and a consistent

set of rights and responsibilities granted regardless of the scale of a project or whether the requiring authority is publicly or privately owned (with some small variations).

## Problems

Two potential problems have been identified with current access rights to the designations process:

- a) definition of 'requiring authority' is inconsistent
- b) definition of 'requiring authority' may not reflect future infrastructure needs.

### a. Definition of 'requiring authority' is inconsistent

The definition does not capture all infrastructure projects that could deliver similar economic and social benefits and where the nature of development could benefit from the powers given under designation process. There are a number of examples of this:

- airports are eligible but ports are not, even though New Zealand's ports are essential to our economy, accounting for more than 99 per cent of merchandise exports and imports by volume<sup>56</sup>
- electricity generators are not eligible, although the production of electricity is essential to our every-day life and the growth of our cities and economy
- a publicly-funded school is eligible but a private school is not, although both provide educational services
- universities and health authorities are not eligible, although they deliver key public services.

These infrastructure providers are being excluded from the designation system, in some instances without apparent justification. Having to go through a resource consent process, rather than a designation process, and not being allowed access to any of the outcomes of designations (eg, long-term protection of land, access to the PWA, ability to use the non-notified outline plan process to progress development), may act as a disincentive to developing infrastructure, or may mean missed opportunities to encourage the development of infrastructure.

In addition, some currently eligible infrastructure development may be using the designation process when the range of powers (particularly restrictions on private property rights) is not necessary or proportionate to the development proposed, and an alternative RMA process, or access to weaker powers, may be more appropriate.

### *Scope and magnitude:*

A survey of a small sample of requiring authorities and councils in the first half of 2010 looked at their use of designation processes during the last five years.<sup>57</sup> The survey data gives an indication of the types of infrastructure and requiring authorities that make use of the current designations route. The sample sizes were relatively small and provide a snapshot of the status quo.

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<sup>56</sup> Treasury, 2010. *National Infrastructure Plan*. New Zealand Government. Wellington. p 88.

<sup>57</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

Figures 2 to 4 show that both public and private sector infrastructure providers make use of the designation route. Figure 2, above, shows the range of parties providing notices of requirements for designations. Territorial authorities and energy transmission or distribution providers are the two largest sectors to use this process.

Figure 3 shows the range of parties using the process to alter existing designations, with territorial authorities and the NZTA being the two largest groups using this process.

**Figure 3: Alterations to existing designations**

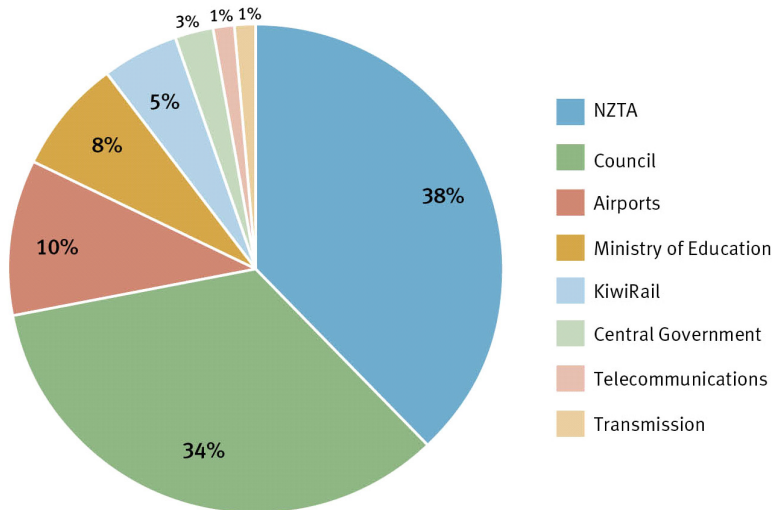
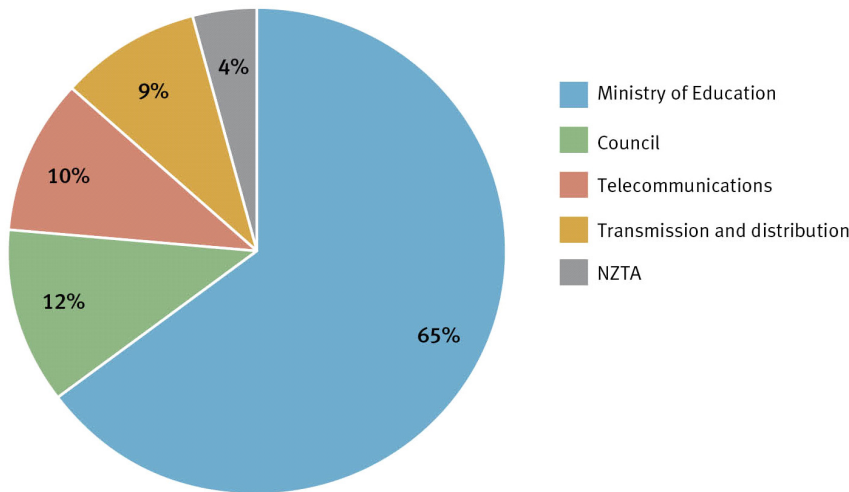


Figure 4 shows the range of parties submitting outline plans for works undertaken within designations, with the Ministry of Education being the largest user in the sample group.

**Figure 4: The range of parties submitting outline plans for works undertaken within designations (section 174)**



In total, the Minister for the Environment has approved 98 network utility operators as requiring authorities. Of these 40 are in the energy sector, 12 in the communications sector, 18 in the

water and wastewater sector and 22 in the transport sector. Of the 98 network utility operators, 88 are privately owned companies.<sup>58</sup>

Research to date has focused on parties that use the designations system. It is more difficult to assess the implications of granting access to infrastructure providers currently excluded (for example power generators), or on the impact to private property rights that could result from wider access to designations given the uncertainty about the nature and location of future projects. On the face of it, it appears that a long-term planning tool to set aside land for the development of a wind farm, for example, would provide greater certainty to the wind farm developer than the current resource consent process is able to do, and would therefore act to encourage infrastructure development. The conclusion is that the exclusion of these infrastructure providers from the current system is an issue, which this review presents an opportunity to consider.

The impacts of this problem are limited to infrastructure providers currently excluded from the designation system. These will be non-government providers, and may provide infrastructure in urban or rural locations throughout the country. It is difficult to assess the scope of this issue, as future demand to access powers under the designations system cannot be accurately projected.

## **b. Definition of ‘requiring authority’ may not reflect future infrastructure needs**

In the future, there is likely to be an increased desire by central and local government to develop and operate infrastructure by using innovative financing vehicles, such as public-private partnerships and private financing initiatives, and alternative procurement methods, such as ‘design and build’.<sup>59</sup> As signalled in the National Infrastructure Plan:<sup>60</sup>

The Government also intends to improve its procurement processes and evaluation of procurement options. For appropriate projects, it is anticipated that performance will be improved by accessing the skills and expertise available in the private sector. This initiative may entail contracting out, public private partnerships, alliancing or other procurement methods where they will provide value for the taxpayer.

It remains untested whether traditionally publicly-funded infrastructure, such as roads and prisons, delivered through private financing arrangements would satisfy the condition of a Minister having ‘financial responsibility for a public work’.

Delivery models for social services are also likely to continue to evolve (eg, integrated services, such as co-location of health, education and social services; Māori-Government joint service providers; cooperative arrangements between voluntary and community providers; and private sector service delivery). Some of these approaches would not be entitled to access the designations system as those involved do not meet the current model’s definition of a ‘requiring authority’, and this may act as a barrier to efficient infrastructure development by forcing the provider down an alternative approval route.

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<sup>58</sup> The term ‘private’ is used loosely in respect to electricity distribution companies. Twenty-four of the 88 “private” network utilities are electricity supply companies some of whom are owned, or partly owned by community trusts (being entities established to manage the assets of former power boards). Similarly, 16 approved network utilities are airport companies, of which a number of partially or wholly owned by territorial authorities.

<sup>59</sup> ‘Design and build’ is an approach where both designing and building the project are combined into a single contract, allowing single tender and contracts processes.

<sup>60</sup> National Infrastructure Unit. 2010. *National Infrastructure Plan*. Wellington: New Zealand Government.

### *Scope and magnitude:*

The use of public-private partnerships in New Zealand is in its infancy, so it is not known whether they can rely on section 167 of the RMA. Anecdotal evidence suggests that requiring authorities have tried to avoid potential issues by seeking the designation powers before the public-private partnership was finalised. This may be an appropriate work-around for some types of financing and delivery models, but may, in practice, restrict the extent to which other models which aim for greater risk sharing with the private sector can be used. If used extensively, it may also raise concerns about transparency.

## **Infrastructure problem 3: Complex and inflexible approval processes**

Planning systems in all countries, including New Zealand, attempt to balance certainty and clear and transparent approval processes that minimise risk and cost for investors, with processes that are flexible enough to support innovation and changes to the external environment and provide appropriate opportunity for public participation. If this balance is not achieved, processes can impose unnecessary costs on investors, infrastructure providers and local communities, as well as delaying or discouraging investment.

Box 4 provides an example of a complex infrastructure project which illustrates the difficulty in achieving this balance.

### **Box 4: Case study: Complex processes and long time frames for infrastructure projects – inner city bypass, Wellington**

This project was a highly complex central city roading improvement in Wellington. The proposal's stated key benefits were to provide a less congested, safer and more efficient route between the Terrace Tunnel and the Basin Reserve. The project aimed to separate cross-city and central business district traffic, and provide a safe route for pedestrians and cyclists. It had a benefit cost ratio of 3.8:1 (ie, for every \$1 spent, the project was estimated to deliver \$3.80 of benefit).

The project attracted significant public opposition. The primary local concerns were focused on heritage values, urban form, noise, traffic, access and air quality. Opposition also expressed concerns about greenhouse gas emissions, induced traffic, car promotion and the proposal's overall sustainability.

The planning approval process took 10 years. Construction took two years.

- 1994 to 1996: Investigations.
- 1996 to 1999: Designation and resource consent process, including public council hearing. Submissions on the resource consent applications totalled 1500. Designation was approved. An appeal to the Environment Court was made and the designation was confirmed.
- 1999 to 2001: Detailed design and ancillary consents applied for.

- 2001 to 2004: Historic Places Act 1993 (HPA) approval process, including public hearing. Authorisations granted. Judicial review application to High Court on the Historical Places Trust's (HPT) decision. HPT decision upheld. A community group sought to appeal HPT authorisations to the Environment Court. The Environment
- Court struck out the appeal due to the group not being directly affected. High Court appeal on Environment Court decision struck out the decision. The High Court heard judicial review and appeal from strike out together. Environment Court's decision was upheld.
- 2004: Contract awarded following funding approval process under LTMA.

Four potential problems have been identified with the existing approval processes for infrastructure:

- a) level of detail required for new designations
- b) time frames for validity of approvals for construction and ongoing operation of infrastructure
- c) duplication and inconsistency of processes
- d) multiple approval processes and appeal routes.

### **a. Level of detail required for new designations**

When a notice of requirement is submitted, the RMA includes provision for the consideration of environmental impacts that are broadly similar to those required for resource consents. However, if the notice is being given before the details of the project are known, the high-level, non-design-specific nature of the notice of requirement means consideration of environmental effects cannot be as specific as for a resource consent application for an equivalent project.

However, an increasing trend to require high levels of detailed information about the potential effects of a proposal at the notice of requirement stage has emerged.<sup>61</sup> This frustrates the purpose of providing a notice of requirement in advance of detailed design work, and the ability of designations to act as long-term planning tools. It can force infrastructure providers to make a significant upfront investment in detailed design at an earlier stage of the project, or force infrastructure providers to wait until later in the project to lodge a notice of requirement. It may also increase the costs and reduce flexibility for innovative financing arrangements which allow for 'design and build' contracts with subcontractors.

#### ***Scope and magnitude:***

Both requiring authorities and territorial authorities have identified the trend for territorial authorities to require detailed information about potential effects at the notice of requirement stage.<sup>62</sup> Territorial authorities have indicated that they wish to see as much information as possible, similar to what would be expected for a resource consent application for a project of

<sup>61</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

<sup>62</sup> Ibid.

similar scale. One particular requiring authority surveyed was quite clear that a greater level of information is being required at the notice of requirement stage than five to 10 years ago.<sup>63</sup>

Data from a detailed survey of nine territorial authorities gives some indication of the types of issues that arise and how these are dealt with under the current processes.<sup>64</sup> During the past five years, the nine authorities processed 91 notices of requirement for new designations under section 168 or section 168A of the RMA, along with 905 outline plan submissions. Most applications for notices of requirement were recommended for approval subject to modification or conditions.<sup>65</sup>

In 20 per cent of applications for notices of requirement, territorial authorities sought further information, such as more detailed assessment of environmental effects or information about engagement with affected parties.

Types of conditions recommended included those relating to typical local environmental concerns, such as height, lighting, noise or health and safety and hazardous substances. Territorial authorities can also recommend management plans for issues such as construction, traffic and earthworks. Often, these reflect the conditions proposed by the requiring authority in the notices of requirement and assessment of environmental effects.

Survey feedback from the territorial authorities suggests that further information is sought for a variety of reasons, including:

- increasing the degree of certainty for the council and public about what is to be built on a site or route, and the potential effects of that development
- trying to overcome the limits on council's ability to influence the requiring authority's plans at the outline plan stage. As the council cannot decline a proposal or add additional conditions at this stage, the outline plan is seen as 'nothing more than a consultative exercise'
- increased public scrutiny of development
- a lack of public understanding about the notice of requirement process, and how it differs from zonings or resource consents, leads to greater expectations of information provision than is perhaps anticipated within the current designations process.

The trend for requesting more information, and the reasons councils gave for changing their approaches, suggests dissatisfaction with how the current designations approach caters for public participation and consideration of environmental impacts. In practice, requiring authorities appear to be generally cooperative in providing further information on request, although this is likely to be imposing additional compliance costs and delays on some proposals.

This problem potentially impacts on all users of the designation system and all aspects of the approval process, from notices of requirements to outline plans.

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<sup>63</sup> Palmerston North City Council. See GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment. Wellington.

<sup>64</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

<sup>65</sup> Information regarding the council's recommendation was provided for 48 of the 91 applications for notices of requirement processed. Of these, 34 were recommended for approval subject to modification or conditions being imposed; two were confirmed without a request for modification or conditions; one was recommended to be withdrawn. In 11 other instances, the application was approved but no detail is available about whether modifications or conditions were recommended.



## **b. Time frames for validity of approvals for construction and ongoing operation of infrastructure**

### *Lapse period for designations*

The usefulness of designations as a long-term planning tool can be undermined by the relatively short default period before they lapse – five years.<sup>66</sup> Although a requiring authority can apply for a longer period, there is a potential that the default period does not sufficiently recognise the benefits of long-term strategic planning or the lead time needed to develop and fund nationally significant infrastructure.

The ‘short’ default lapse period may cause requiring authorities to defer obtaining notices of requirement until later in the process. If this is the case, it introduces the risk that the land could be lost to another, possibly lower-value, development and/or that the infrastructure is constrained by incompatible development.

The Ministry is seeking feedback to better understand the potential impacts resulting from the short-term nature of designations, namely to what extent and whether:

- designations are not routinely sought for long-term route protection due to higher risk of litigation (ie, beyond a 10-year horizon). This can present problems for highly strategic urban and peri-urban routes (eg, a 20-year lapse period was sought by the NZTA for the Hamilton bypass, but on appeal the Environment Court confirmed the designation but restricted the lapse period to 10 years)
- arguing for a lapse period beyond five years introduces additional cost, uncertainty and risk (eg, a 20-year lapse period was sought for Kiwi Rail’s Marsden Point line. Although this time frame was initially supported by the territorial authority it subsequently recommended that the period be reduced to 10 years. Following further consideration of the arguments by a panel of independent commissioners, a 20-year period was recommended)
- a change in funding priorities may mean that a project that was originally intended to be constructed within the lapse period is delayed, with the consequent loss of the designation.

### *Scope and magnitude:*

The extent to which the five-year lapse period is a major problem needs to be carefully considered. A survey of a limited number of local authorities and requiring authorities indicates that lapse periods do not cause problems for requiring authorities.<sup>67</sup> It appears therefore that the potential issue of a short default lapse period may not be a significant problem in practice.

A recent random sample survey of 30 district plans indicates that where lapse periods are included in the schedule of designations, their median duration is 10 years. There were, however, several instances where lapse periods of 15 or more years were recorded (eg, 15 years for the air noise boundary associated with Queenstown airport; 20 years for the NZTA’s proposed northern and eastern arterials in Tauranga City; 30 years for the upgrade and widening of a local road in Manukau City). These figures suggest that it is not uncommon for lapse periods longer than the default five years to be obtained.

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<sup>66</sup> A designation will ‘lapse’, that is, expire and no longer be valid, if it has not been given effect to within the specified period.

<sup>67</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

Currently requiring authorities are the decision-makers on both notices of requirement and designations that are rolled over into district plans. Consequently, they have the ability to include extended time frames for projects or works as part of these processes and to make a determination on these based on the recommendations received by the territorial authority.

Further, it is only when an extension to an existing designation is sought under section 184 of the RMA that a territorial authority exercises a decision-making role. In these cases, the territorial authority needs to determine whether continuing substantial progress has been made towards giving effect to the designation. If a territorial authority determines not to approve an extension, the requiring authority can seek redress by lodging an objection under section 357.<sup>68</sup>

The NZTA has expressed an opinion that the current five-year default lapse period somewhat restricts long-term strategic planning.<sup>69</sup> This suggests that the impact of this potential problem may be limited to users of designations who seek a long lead time between approval and construction.

### *Re-consenting*

Designations only provide land-use approval for an infrastructure project and much infrastructure also requires resource consents for its operation. For example, hydropower stations and irrigation schemes require consents for water use and discharges. The RMA specifies a 35-year maximum term for consents, except most land-use consents and subdivision consents. New resource consents have to be applied for at the expiry of the term. This reflects the view that the right to use public resources, such as water or air, should be not privatised or given for an unlimited period. There also is no consent renewal process under the RMA – unless the plan provides otherwise. Once a consent has expired a new consent is required to continue the same activity. In 2005, the RMA was amended to require consideration of the value of existing investment when a new consent application is made to continue an existing activity.

Much infrastructure is designed and built to operate for longer than 35 years. This means that it is common for infrastructure providers to need to apply for new consents during the life of their facility.

However, some uncertainty exists about the process when consents expire. The need to ‘re-consent’ activities creates risks for investment in long-term infrastructure. The following list of issues has been collated from informal feedback from infrastructure providers.

- High costs are associated with applying for a new consent for an existing activity, with a potential re-litigation of issues that arose in the original decisions. There is also a lack of clarity on what information is required for the new consent.
- For current consent holders, there is a risk that a new consent may not be granted, and the activity has to cease. This makes it difficult to plan and make effective investment decisions and can potentially act as a deterrent to investment.
- Investment certainty is a particular issue for sectors seeking consents for long-term infrastructure development. Some sectors consider the RMA should be amended to provide for longer maximum consent terms to reflect their level of investment.

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<sup>68</sup> Section 358 also offers requiring authorities a further right of appeal to the Environment Court against any decision on an objection.

<sup>69</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington. p 22.

- There are particular problems where there is a disjunct between unlimited duration of land-use consents and limited duration of associated consents. For example, ports rely on land-based activities for storing containers and other goods, and for buildings, and they also rely on water space for wharves where ships berth and load and unload. Consent duration can be unlimited for land-based activities, but it is limited to 35 years for coastal permits. If a port company is undertaking a multi-million dollar development, it can be argued it is undermined by the element of uncertainty around the development that requires water space.

It is not clear how widespread or significant these concerns are.

### *Scope and magnitude:*

It is difficult to assess the size of the re-consenting problem because the context of each consent application varies widely – the experience and outcome depends on the conduct of the applicant and council, the circumstances of the proposal and plan, and the level of support or opposition from other parties. Decisions on resource consents are made by considering a wide range of factors, including provisions of the RMA, relevant policies and plans. It is therefore hard to determine what weighting and effect particular factors have in decision-making.

The 2005 amendments to the RMA were intended to address the issue of consent security in favour of the consent holder over other possible applicants. They were also intended to remove the need for a specific consent renewal category. A key change was through new sections 124A–124C, which set up a process to give existing consent holders priority over new applications. For example, section 124B includes additional factors that must be considered by a consent authority:

- the efficiency of the existing consent holder's use of the resource
- the use of industry good practice by that person
- whether the existing consent holder has been served with an enforcement order that has not later been cancelled, or convicted of an RMA offence
- having regard to the value of existing investment (under section 104) when determining applications under section 124 (for new consents to replace existing consents).

Research has not been undertaken on the effectiveness of these new provisions. Some anecdotal feedback has been that additional security is provided, but it does not go far enough for long-term infrastructure. The Ministry is seeking feedback on how these provisions are being implemented and their effect on re-consenting processes.

It is important to note that activity status rules in plans also have a significant effect when a new consent is sought to continue an existing activity. For example, if an existing activity is specified in the plan as a permitted or controlled activity, then a consent is either not required, or cannot be declined so long as it meets defined conditions in the plan.

The impact of this problem is confined to infrastructure projects that also require regional council resource consents. Regional council consents are likely to be triggered if the project involves large-scale earthworks, water takes or discharges to water, discharges to air, or if the infrastructure is located in the coastal marine area. It is therefore likely that this problem would impact on a reasonable proportion of larger-scale infrastructure projects.

### c. Duplication and inconsistency of processes

#### *Two-step process*

The current designation system requires a two-step process by which approval is required for a notice of requirement, followed by an assessment of the detailed design contained in an outline plan of the work. Outline plans are also generally required for minor developments and upgrades. Sometimes the need for an outline plan may be waived, but this still requires formal correspondence with the local authority. The need for the outline plan step may add unnecessary compliance costs and delays for maintenance and minor upgrade activities.

#### *Scope and magnitude:*

Figure 5, compiled from a recent survey of a sample of local authorities,<sup>70</sup> shows that of the three main designation ‘approval’ processes, outline plans are by far the most frequently used. While the information gathered did not inquire into the type of developments covered by outline plans, anecdotal evidence suggests that many are small developments, minor changes to existing development that are still within the scope of the designation, or maintenance.

**Figure 5: Types of applications under Part 8 of the RMA**

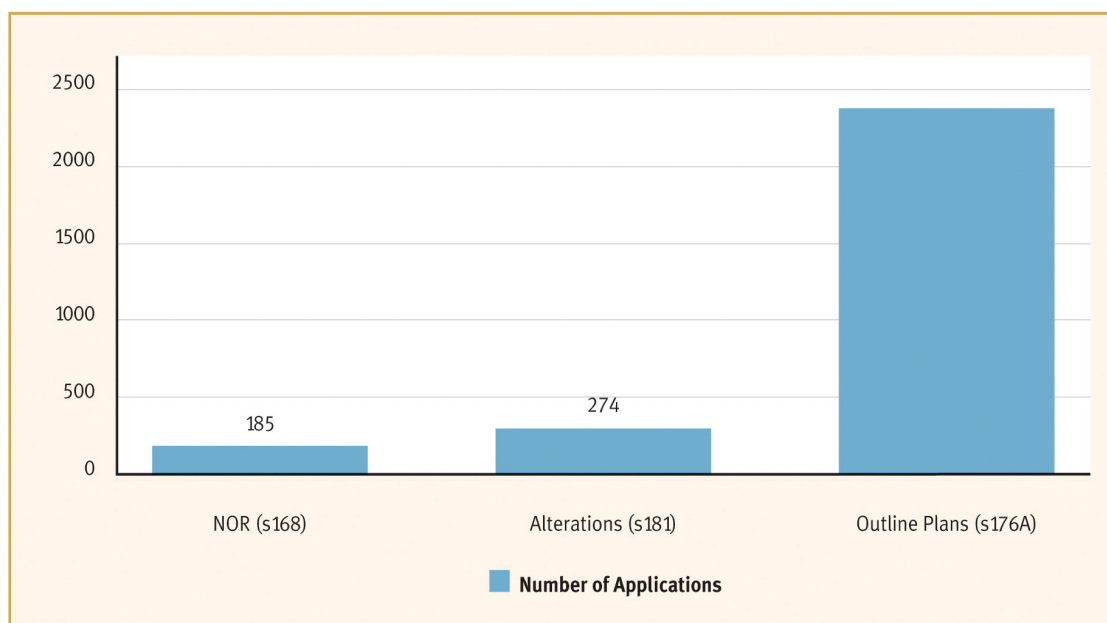


Figure 3, above showed the range of parties using the process to alter existing designations, with territorial authorities and the NZTA being the two largest groups using this process. Figure 4 showed the range of parties submitting outline plans for works undertaken within designations, with the Ministry of Education being the largest user in the sample group.

Figure 4 suggests that outline plans are used by a range of requiring authorities. Ministry of Education was a high user of outline plans (submitting 65 per cent of all outline plans to nine councils, total number of 588), compared to submitting 9 per cent of notices of requirements to 43 councils (see figure 2). This suggests that, in the case of the Ministry of Education at least, a large number of developments and upgrades are undertaken through outline plans, on

<sup>70</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

designations that have been in place for some time. A similar trend applies to the other users of outline plans surveyed.

The outline plan stage appears to add a level of compliance cost to minor upgrade and maintenance activities. However, further information is needed to understand the significance of this issue.

### *Inconsistent process*

An outline plan is not subject to public participation. In many cases the lack of public input is consistent with other RMA processes, such as a non-notified resource consent process where no parties are considered to be affected by the proposed works. However, in some cases, significant development is brought forward under an outline plan. This can occur in the case of historical designations, such as for defence purposes or local authority works, that have been specified at a general level and may have no conditions attached to them. In such cases, lack of public input is inconsistent with what would occur if the designation was not in place, and a resource consent process was followed instead.

By not providing for public consultation, an opportunity for improved outcomes, for both the infrastructure provider and the community, can be lost.

### *Scope and magnitude:*

While situations of significant development being brought forward under an outline plan may be the exception rather than the norm, the divergence from the expected opportunity for public input and consideration of effects can be significant, particularly in situations where effects on neighbours from the development are substantial. This issue applies to holders of designations that have been in place for some time, particularly those that have general purposes or no conditions, and those where ongoing development or upgrades occur often. This issue is much less prevalent for more recent designations.

There is limited evidence that the outline plan process, when used for significant developments, compromises environmental integrity. Interviews undertaken with eight territorial authorities<sup>71</sup> revealed some concerns with the lack of public consultation required for outline plans, and over outline plans for designations with very general purposes and no conditions. Detailed evidence on what types of development are currently being considered through outline plans is not available.

## **d. Multiple approval processes and appeal routes**

The complex nature of infrastructure developments means that it is common for a proposal to require a range of approvals under separate regimes – eg, designations, land-use approvals, regional resource consents, authorisation to access acquisition or taking powers under the PWA, and approvals under other statutes, such as the Conservation Act 1987 or Historic Places Act 1993 (HPA). There are also often multiple appeal routes available because of the range of legislative approvals required. The need to engage in multiple processes increases the complexity for obtaining necessary approvals, extends overall time frames and increases risks and uncertainty for the infrastructure provider and affected communities.

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<sup>71</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

### *Scope and magnitude:*

There is limited evidence on how often infrastructure developments have to go through multiple approval processes and then face multiple appeal routes, or the impact this has on costs or the efficient delivery of infrastructure. This is likely to be an issue faced particularly by larger scale or more complex projects. However, officials do not have detailed information on the percentage of large-scale projects that use designations.

Regional council consents are likely to be triggered if the project involves large-scale earthworks, water takes or discharges to water, discharges to air, or if the infrastructure is located in the coastal marine area. However, how often these require a notified process is unknown.

The requirement for approvals under other Acts, such as the HPA, will occur less frequently.

The requirement to go through two or more processes for one project, particularly if the processes go through public hearings, is costly and time consuming.

## **Infrastructure problem 4: Need for robust and integrated decision-making**

Legitimate and fair decision-making processes are crucial to ensure public acceptance and confidence in the decision-making system and its consequences. Different decision-making processes exist for designations and resource consents (explained in Box 3), and are not always perceived as fair.

For example, decisions on most designations are made by the requiring authority, who is often also the infrastructure provider. Essentially, that means it is the applicant who decides whether to accept or reject the relevant territorial authorities' recommendations in part or in full – which means these are not independent decisions. This role applies whether the requiring authority is a public or private body. The exception is where nationally significant projects are referred to a board of inquiry or the Environment Court. In contrast, decisions on resource consent and plan processes are independent of the infrastructure provider; they are made by the relevant territorial authority, a board of inquiry or the Environment Court.

Requiring authority status provides additional powers and protections from development compared to those available through a resource consent, as well as access to significant powers under the PWA..<sup>72</sup> These PWA powers can be used to compulsorily remove private property rights from individuals, in exchange for compensation, to allow the requiring authority to acquire the land.

Two potential problems are:

- perceptions of legitimacy and fairness
- barriers to integrated decision-making.

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<sup>72</sup> Note that it is requiring authority status that is required, not an actual designation. Also note that the Crown and local authorities have direct access to the Public Works Act.

## **a. Legitimacy and fairness**

While a requiring authority submits a notice of requirement or an outline plan to the territorial authority, it makes its own decision on whether to accept or reject any of the authority's recommendations. This means the decision is not independent in these circumstances. Some balance is provided through a right of appeal to the Environment Court by the territorial authority or a submitter, but the cost of appeals is likely to act as a barrier. Non-independent decision-making and inadequate checks on this has the potential to compromise environmental integrity.

This issue is particularly pertinent in the case for non-government requiring authorities, of which there are currently more than 100. As the requiring authority is an investor as well as the decision-maker for designation processes, there is a legitimate question about how a private sector infrastructure provider balances delivering the sustainable management objectives of the RMA with its statutory duties to its shareholders or its statutory obligations under its establishing legislation.

The RMA attempts to overcome the issue of a requiring authority (who is not the Crown or a local authority) also being a decision-maker by requiring the Minister, when approving requiring authority status, to be satisfied that the applicant is likely to give proper regard to the interests of those affected and to the interests of the environment (section 167 of the RMA). These are essentially matters of public policy. However, in practice this can be difficult to assess or establish with confidence. It also creates potential difficulties in areas where the private sector is the infrastructure provider, often in historically publicly provided areas (eg, telecommunications, airports, etc) where they have their own obligations and statutory duties to their shareholders. Where the private sector is unable to demonstrate it can satisfy the requirements of section 167, it will be ineligible to use the designations process. This may impact on the efficient delivery of infrastructure by private firms.

### ***Scope and magnitude:***

The general consensus from nine councils recently surveyed<sup>73</sup> is that requiring authorities seldom reject or significantly alter the council's recommended conditions. However, small alterations are relatively frequent and are usually carried out with open discussions between the council and requiring authority. The survey also identified examples where conditions or recommendations to withdraw the notice of requirement were rejected in whole, or in part, by the requiring authority.

Both requiring authorities and territorial authorities have noted the importance of a good working relationship to ensure the system works well. This is seen to be especially important by councils, as they are aware that the decision-making power resides with the requiring authority.

Specific examples have been identified by individual authorities where they felt unable to achieve all the mitigation measures and alterations considered appropriate, sometimes because of the lack of public consultation at outline plan stage.<sup>74</sup> Examples include:

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<sup>73</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

<sup>74</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to MfE. Wellington

- An outline plan being used to establish secure parking facilities adjacent to a listed building, where the site had a high profile within the district and there was public concern about the development.
- Where there is little or no detail in the original designation. This is particularly the case where some designations have been ‘rolled over’ at the stage of renewal of district plans. In some circumstances, designations can be as broad as “rail purposes” or “defence purposes” and it is possible for the requiring authority to argue that any number of activities can be carried out within this scope.
- Requiring authority decisions on whether to accept the recommendations of the territorial authority on a notice of requirement or outline plan are subject to appeal to the Environment Court. While this can act as a check on the legitimacy of the decision-making process, a number of councils recently surveyed identified ‘a big gap’ between not agreeing with a requiring authority’s decision and actually lodging an appeal.<sup>75</sup> As a consequence, only a relatively small number of appeals are pursued by councils.

Changes to the RMA were made in 2009 that introduced independent decision-making for projects of national significance. The RMA now also provides for people to request an independent commissioner for hearings, and the requiring authority can directly refer the decision on a notice of requirement to the Environment Court. These provisions reduce the magnitude of the problem around the decision-making process, particularly for nationally significant projects, although there is limited evidence about how often they are being used, given the provisions were only recently introduced.

## **b. Barriers to integrated decision-making**

Decision-making on infrastructure development is, to an extent, separated from other planning decisions. Designations form a parallel system to plan development and resource consent processes. Having a number of different decision-makers across different processes can create a barrier for coordinated and integrated planning (it requires greater effort to achieve). If a designation is in place first, the current system allows planning to take place around the identified route or site. However, it does not facilitate coordinated planning or decision-making.

The requirement for spatial planning in Auckland, and its potential application throughout the rest of the country (discussed in chapter 2), presents the opportunity to maximise the value of investing in costly, long-lived, infrastructure, including leveraging greater productivity gains by coordinating investment decisions, where appropriate. However, the current designations process may not necessarily support effective spatial planning as requiring authorities can seek designations in areas of their choosing, irrespective of any commitments made in a spatial plan. This maximises flexibility for requiring authorities’ investment priorities but would not necessarily reflect the regional priorities.

Anecdotal evidence from infrastructure providers also suggests that reverse sensitivity is a real concern, especially around ports and airports. A potential lack of integration between designations and spatial planning, should spatial planning be implemented throughout the country, could cause further problems with reverse sensitivity, or miss an opportunity to better manage any issues arising.

The designation system does not promote an ethic of cooperation between infrastructure providers. Once a designation is approved, the requiring authority has rights of protection

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<sup>75</sup> Ibid.



against encroachment within the space of the designation. This includes an ability to limit other infrastructure providers making use of the same corridor or spot designations, even where the uses could be complementary or compatible. The existing system therefore does not encourage infrastructure providers 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.

#### *Scope and magnitude:*

Little information has been gathered on problems arising from the limited ability to integrate designation planning processes with other RMA planning processes. It is not yet possible to gather actual data on problems caused by a lack of integration of designation planning with spatial planning as the latter is an emerging trend and the system has not yet been tested.

A 2010 survey of a sample of requiring authorities<sup>76</sup> identified that co-location of infrastructure is occurring on an as-required basis. None of the requiring authorities surveyed identified that they had encountered any problems when wishing to co-locate. It appears, therefore, that this may not be a significant problem with the current designations process. There may, however, be an opportunity to better encourage and facilitate co-location of infrastructure, particularly with the advent of spatial planning.

### **Infrastructure problem 5: Efficiency and adequacy of the land acquisition process**

Anecdotal evidence suggests that some delays in acquiring land for public works projects arise because landowners consider that the overall amount of compensation is not sufficiently generous to recognise their property rights or incentivise an early agreement.

Under the PWA, the term ‘compensation’ is used rather than ‘purchase price’. This is because a landowner is being compensated for a loss arising from the sale of their land to an acquiring authority. The current primary principle of compensation is that the landowner is put in a financial position as close as possible to what they would have been in had the land acquisition not taken place. This ‘no better or worse off’ principle is applied in most developed economies (including Australian states, the United Kingdom and the United States of America).

There are several elements to compensation under the PWA. The main elements include payments:

- based on the market value of land acquired at a specified date
- where a principal residence is acquired and a solatium<sup>77</sup> paid
- for landowner expenses (including legal, valuation, lost business and moving costs).

Potential problems have been identified with the adequacy of compensation and the efficiency of processes. The current compensation provisions could be viewed as being outdated and inadequate in some ways, because:

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<sup>76</sup> GHD. 2010. *Phase II Reform of the RMA, Notices of Requirements and Outline Plans – Analysis*. Report to the Ministry for the Environment, Wellington.

<sup>77</sup> A solatium is a legal expression meaning compensation for grief or stress over and above actual loss, and applies when a residence is purchased.

- they do not recognise how long a person has owned a property, or the emotional consequence of losing a property regardless of whether it contains a dwelling
- they fail to provide incentives for early agreement and settlement, extending the time required for infrastructure projects
- current valuation practices within New Zealand, which are used to determine ‘fair market value’, may not form a suitably objective and reliable basis for ‘willing purchaser, willing seller’ price discussions
- affected landowners may not understand their rights under the land acquisition process.

As a specific example, the current level of solatium has been in place for nearly 30 years (since 1982) as a flat payment of NZ\$2000 and does not reflect increases in the consumer price index.

### *Scope and magnitude:*

It is noted that not all infrastructure projects use PWA processes to acquire land. Crown agencies and local authorities have access to these processes, while private infrastructure providers generally acquire land through standard commercial processes. Figures 3 to 5 suggest that somewhere between half and three-quarters of designation users are Crown agencies or local authorities. LINZ officials do not have statistics on the proportion of Crown agency and local authority projects that use PWA processes. In the last 10 years, there have been only two applications by network utility operators to access powers under the PWA. However, even if network utility operators do not use powers under the PWA, the potential to access them is likely to be a significant factor in negotiating with landowners.

Discussions with acquiring authorities and research of international practices<sup>78</sup> suggest that the level of compensation is only occasionally a large factor in delays in the land acquisitions process. Delays are more often caused by the very fact that land is being taken and by landowners being uncertain around the land acquisitions process. Notable delays only occur for around 5 per cent of PWA land acquisitions. Only around 1 per cent of public works land takings are objected to the Environment Court.

Compulsory acquisition powers are used rarely. Between 1 July 1998 and 30 June 2009, the Crown acquired approximately 4000 properties under the PWA. Of these, 40 (or 1 per cent) required the taking of land by compulsory acquisition.

However, given that access to land is essential for the development of infrastructure, delays caused in the acquisition of even one property could hold up an entire development.

There is currently insufficient evidence to assess the significance of current valuation practices used to determine ‘fair market value’.

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<sup>78</sup> In 2009, LINZ officials researched how public works compensation is paid in other developed countries: Australia, UK, USA (California), Canada (British Columbia) and France. Officials also held discussions with counterparts from Victoria and New South Wales, as well as with local authorities, Local Government New Zealand, and the New Zealand Transport Agency (NZTA).

# Appendix 1: Abbreviations used in this document

EPA	Environmental Protection Authority
GPS	Government Policy Statement
HPA	Historic Places Act 1993
ITAG	Infrastructure Technical Advisory Group
LGA	Local Government Act 2002
LTCCP	Long-term council community plan
LTMA	Land Transport Management Act 2003
MfE	Ministry for the Environment
NES	National environmental standard
NIP	National infrastructure plan
NLTP	National Land Transport Programme
NPS	National policy statement
PWA	Public Works Act 1981
RLTS	Regional Land Transport Strategy
RLTP	Regional Land Transport Programme
RMA	Resource Management Act 1991
RMII	Resource Management Act Phase II Reforms
RPS	Regional policy statement
TAG	Technical advisory group – groups appointed by the Government in December 2008 (Phase One), July 2009 (Aquaculture) and January 2010 (RMII, Infrastructure and Urban) to provide independent advice on resource management reform.
The Act	The Resource Management Act 1991
The Ministry	The Ministry for the Environment
UTAG	Urban Technical Advisory Group

## Appendix 2: Glossary

**Disclaimer:** These definitions provide a basic understanding of key concepts used in this document. They do not constitute legal advice and should not be relied upon as being the interpretation the Courts will apply in any given case.

Words in *italics* indicate that a separate glossary definition is provided for that word or phrase.

Amenity values	The natural or physical qualities and characteristics of an area or place that make it pleasant and attractive. Amenity values also include qualities or characteristics that help people appreciate the cultural value or significance of an area, or its attractiveness and usefulness for recreation.
Board of inquiry	A panel of experts, normally chaired by a current or retired judge, appointed by the Minister for the Environment to consider and make decisions on <i>resource consent</i> , <i>plan change</i> , or <i>notice of requirement</i> applications concerning projects or matters of <i>national significance</i> .
Call in	The process in which the Minister for the Environment determines if a matter or proposal is of <i>national significance</i> and identifies the body which should make a decision on it.
Compulsory acquisition	A process under the Public Works Act 1981 for acquiring land for a government or public work when the landowner is not willing to sell. The landowner is entitled to compensation based on the current <i>fair market value</i> of the land, and may be eligible for compensation to cover moving costs, mortgage repayments and loss of business.
Consent authority	A <i>regional council</i> , <i>territorial authority</i> or <i>unitary authority</i> , or other bodies who make decisions on resource consent applications.
Controlled activity	Activities that require a <i>resource consent</i> but where consent cannot (generally) be declined by the <i>consent authority</i> . A plan sets out a range of matters over which ‘control’ is retained and conditions can only be imposed for those matters.
Design and build (design-build)	An approach to delivering a project where both designing and building the project are combined into a single contract, as opposed to having separate tender and contracts processes for design and construction.
Designation	A provision in a <i>district plan</i> that signals the intent and ability of a <i>requiring authority</i> to use land for a particular work or project whether the district plan normally permits that use or not. It also prevents others from doing anything in relation to the land that would prevent or hinder the work. How designations work is more fully explained in Appendix 5.

District plan	A plan prepared by a <i>territorial authority</i> or <i>unitary authority</i> to help manage the environmental effects of the use, subdivision and development of land. Rules in district plans determine whether a <i>resource consent</i> is required.
Economic infrastructure	Facilities and assets that enable or improve economic and social activity (both business and domestic) and productivity. Examples include telecommunication networks, transport and freight networks, financial institutions and energy supply systems.
Environment Court	A specialist court, similar in status to the District Court, that decides appeals against decisions on resource consents, plans and plan changes, designations, and a range of other matters related to the environment.
Environmental Protection Authority (EPA)	A government agency that will receive and administer applications for <i>resource consents</i> , <i>plan changes</i> , and <i>notices of requirement</i> related to projects of <i>national significance</i> . The EPA will not make final decisions on applications, but provides support services to the <i>board of inquiry</i> or the <i>Environment Court</i> who do. It is expected to be operating by 1 July 2011.
Fair market value	The price that would have been agreed on had there been a willing buyer and a willing seller for land (or some other product or service).
Government Policy Statement on Transport (GPS)	A policy document that sets out the Government's priorities for expenditure for transport over the next 10 years, including how activities such as road safety, state highways, local roading and public transport are to be funded.
Grandfathering	Use of a legal clause that allows pre-existing powers or processes to continue until they naturally expire, despite a law change that prevents further new uses of that power or process.
Incompatible development	Developments that should not be sited together because the effects of one activity are not appropriate in the context of the other. For example, the location of an outdoor jet engine testing facility next to a hospital.
Infrastructure	See definitions for <i>economic infrastructure</i> and <i>social infrastructure</i> .
Local authority	A term used to refer to all types of councils (regional, city and district).
Macroeconomic	Economic factors and processes at a large or general scale.
National environmental standard (NES)	A type of environmental regulation that is set by the Government and which everyone must comply with. National environmental standards operate a bit like rules that prohibit or allow activities, or require a person to obtain a <i>resource consent</i> . A NES may set limits on a particular activity (for example, the discharge of particles into air) or specify that a particular method be used (for example, to measure water flows).

National infrastructure plan (NIP)	A plan that outlines the Government's infrastructure priorities and planned investment in infrastructure, and which provides an overview of current public and private infrastructure assets, operations and proposals. The first edition was released by Treasury in early 2010.
National policy statement (NPS)	A form of mandatory guideline that is produced by the Government, and that all <i>local authorities</i> must follow when making decisions under the RMA. Local authorities must amend their plans so the provisions contained in them implement the direction contained in the NPS.
National significance	Something is deemed to be nationally significant under the RMA if the Minister of the Environment decides it to be so. The Minister makes the decision having regard to a range of factors including: whether the matter has aroused widespread public concern; impacts on international obligations; whether significant and irreversible adverse effects on the environment will occur; impact in regard to Treaty of Waitangi obligations; and whether it assists the Crown (Government) in fulfilling its public health, welfare, security or safety obligations and functions.
Natural and physical resources	Land, water, air, soil, minerals, energy, all forms of plants and animals (whether native to New Zealand or not) and structures (for example, buildings and physical infrastructure).
Non-notified application	An application for a <i>resource consent</i> where effects are considered to be minor and no person is considered to be adversely affected (or those persons have provided their written permission to the application).
Notice of requirement	A formal request to a <i>territorial authority</i> or <i>unitary authority</i> by a <i>requiring authority</i> that a <i>designation</i> be included in the council's <i>district plan</i> so that a particular use can be made of the land regardless of what district plan provisions may otherwise allow.
Operative	In relation to a <i>regional policy statement</i> , <i>regional plan</i> , or <i>district plan</i> (or any part of these), 'operative' means all outstanding challenges ( <i>submissions</i> and appeals) have been dealt with or resolved, and the date the <i>local authority</i> has <i>publically notified</i> for the plan being operative has passed. When a plan is made operative, any previous plan it replaced no longer needs to be complied with.
Outline plan of works	A plan provided to a <i>local authority</i> by a <i>requiring authority</i> that provides details as to the scale, location and shape of a particular work or project covered by a <i>designation</i> , as well as any landscaping, earthworks, vehicle access and environmental effect management measures that are proposed. Outline plans are not required if this information was already included in the <i>notice of requirement</i> . Outline plans are not <i>publicly notified</i> .
Permitted activity	Use or development of land or a <i>natural or physical resource</i> that can be undertaken without a <i>resource consent</i> .

Plan change	The process through which <i>local authorities</i> amend or update <i>operative regional policy statements, regional plans, and district plans</i> . The process usually involves public <i>submissions</i> and hearings.
Private plan change	A <i>plan change</i> that is requested or initiated by a party other than the <i>local authority</i> responsible for a plan, and which the <i>local authority</i> has not adopted as its own.
Prohibited activities	Activities identified in a <i>regional plan</i> or <i>district plan</i> that cannot be carried out, and for which no <i>resource consent</i> can be applied for.
Proposed plan	A <i>regional</i> or <i>district plan</i> that has been <i>publicly notified</i> but which has not passed the stage where it is beyond challenge through <i>submissions</i> or appeals. It is therefore not yet <i>operative</i> .
Public notification (publically notified)	The process of alerting members of the wider community that a particular <i>resource consent</i> application, <i>notice of requirement, proposed plan</i> or <i>plan change</i> is available for viewing and that <i>submissions</i> can be made on it. The notice is usually in newspapers and on the local authority's website, and is sent in the mail to people the local authority thinks will be directly affected.
Public-private partnership	A contractual agreement between Government and business where the Government pays business to deliver infrastructure or services over a long period of time. A common model is for the responsibility for delivering the service or infrastructure to be retained by Government, but for financial responsibility for the condition and performance of the infrastructure or service to rest with the business partner.
Roll-over	When a new plan automatically includes provisions (such as <i>designations</i> ) from an old plan without having to redraft and consider the provisions as if they were completely new.
Regional coastal plan	A type of <i>regional plan</i> prepared by a <i>regional council</i> or <i>unitary authority</i> specific to managing the coastal environment. Regional coastal plans are the only regional plans that are mandatory.
Regional council	A council that is set up to (among other things) manage effects on the quality of air, water and soil of a region, maintain biodiversity, allocate <i>natural and physical resources</i> , and coordinate the provision of <i>infrastructure</i> with the use of land.
Regional plan	A plan prepared by a <i>regional council</i> to help it carry out its functions under the RMA, particularly in regard to managing environmental effects on water, air and soil. Rules in regional plans determine whether a <i>resource consent</i> is required for specific activities (for example, the discharge of contaminants or the taking, use, damming, draining or diversion of a waterway).
Regional policy statement (RPS)	A strategic-level document prepared by <i>regional councils</i> and <i>unitary authorities</i> under the RMA that identifies the resource management issues of the region and provides direction for the integrated management and resolution of those issues through

objectives, policies and methods. A RPS contains no rules, but must be reflected and implemented through *regional* and *district plans* that do contain rules.

Requiring authority	A status given to a Government minister, <i>local authority</i> , or a Government-approved company that operates a network utility (for example, a railway or roading system, electricity transmission lines or gas pipeline). Requiring authorities are the only people or companies able to use <i>designations</i> . More information on how they work is provided in Appendix 5.
Resource consent	A formal permission from a <i>consent authority</i> to use or develop a <i>natural resource</i> or land in a way that is not permitted by the <i>regional</i> or <i>district plan</i> , or a <i>national environmental standard</i> .
Reverse sensitivity	A term used to describe the impact of a new land use setting up near an existing, lawfully established activity, and the new activity objecting to the effects generated by the existing activity, thereby threatening the latter's continued operation. For example, new housing being built close to an established quarry such that residents who move in are exposed to noise, dust and vibration from the quarry. Reverse sensitivity can result in the threat of, or actual, restrictions being placed on the existing land use, which can undermine its ongoing operation and may force it to close or move elsewhere.
Social infrastructure	Assets that accommodate social services such as health (hospitals), education (schools and universities), state housing, justice (police stations, courts and prisons) and community recreation (halls, sport stadiums and parks, for example).
Solatium	A payment made as compensation for grief or stress caused. In the context of this document it is used for the acquisition of land for a particular project, when that land has a person's private house on it.
Spatial plan	A 20–30 year strategy that sets the strategic direction for a community and which serves as the basis for the coordination of decision-making, infrastructure, services and investment. It is a means of aligning other council plans. A spatial plan provides a visual illustration of the intended future location and mix of residential, rural and business areas, along with the critical infrastructure required to service those areas and any relevant environmental constraints (for example, hazards or areas that need to be protected from development).
Structure plan	A plan that guides the development (or redevelopment) of an area by showing proposed future development and land-use patterns, areas of open space, the layout and nature of <i>infrastructure</i> (including transportation links), and other key features for managing the effects of development.



Submission	A written statement outlining support, opposition, and/or commenting on a particular proposal ( <i>resource consent, plan change or designation</i> , for example). They must follow a particular format, but can be lodged with a <i>consent authority, local authority, or board of inquiry</i> in paper or electronic form (email, for example).
Sunset clause	A provision under which a process, protocol, power or agency is to be abolished after a specified period of time (or particular event has occurred).
Territorial authority	City and district councils with functions for controlling land use (ie, what activities can take place on land and where, and their scale) and subdivision of land (such as for future housing developments). Territorial authorities are normally smaller in area than regional councils, and there may be several territorial authorities in a single region.
Unitary authority	A single council that has the functions and roles of both a <i>regional council</i> and a <i>territorial authority</i> .
Urban amenities	Features, places or services in a town or city that are beneficial because of some useful purpose they provide or which add to the enjoyment of residents. Examples include, water treatment facilities, hospitals, libraries, schools, stadiums, public meeting areas and parks, theatres and other recreational facilities.
Urban design	The design of the buildings, places, spaces and networks that make up our towns and cities, and the ways people use them. It ranges in scale from a metropolitan region, city or town down to a street, public space or even a single building. Urban design is concerned not just with appearances and built form, but also with the environmental, economic, social and cultural consequences of design.

# **Appendix 3: The existing planning system for urban areas**

The New Zealand urban planning system is made up of various planning documents under three separate statutes: the Resource Management Act 1991 (RMA), the Local Government Act 2002 (LGA) and the Land Transport Management Act 2003 (LTMA). Further detail on planning documents under each of these statutes is set out below.

## **Resource Management Act 1991**

The RMA is the main piece of legislation for managing the environment in New Zealand. Its purpose is to promote the sustainable management of natural and physical resources. The RMA provides for the range of planning documents described below to manage the effects of activities on the environment.

### **National environmental standards**

National environmental standards (NESs) are regulations designed to achieve certainty and consistency in the way specific environmental matters are dealt with across the country. They may set the minimum requirements and thresholds that need to be applied when managing a resource; dictate that a specific methodology be used in measuring or managing a resource, or both. A NES is a powerful tool in that it can override local council plan rules and bylaws and water conservation orders if the rule, bylaw, or water conservation order is less stringent than the NES. A NES also prevails over designations and resource consent applications made after the NES comes into force.

A NES can relate to the management of any environmental issues covered by the RMA, including land use and subdivision, noise, water take and use, use of the coastal marine area and discharges. They can also require monitoring, particularly if the standard is aimed at improving the environment.

### **National policy statements**

National policy statements (NPS) serve as a type of mandatory guide designed to ensure that RMA decision-makers, policy statements and plans give appropriate weighting to matters of national significance, and provide direction on how those matters of national significance are to be managed. As with NESs, a NPS can be a useful tool for promoting consistency in the management of natural and physical resources across New Zealand.

NPSs are prepared by the Minister for the Environment and outline objectives and policies for matters of national significance. Local authorities are required to incorporate NPSs as part of their policy statements and plans, and decision-makers under the RMA are required to have regard to any relevant NPS.

## Regional policy statements

Regional policy statements (RPS) are prepared by regional councils to provide an overview of the resource management issues of their region and the objectives, policies and methods to ensure those issues are managed in an integrated way.

Operating at a lower level than a NPS or NES, the RPS can be a useful tool for achieving regional consistency on issues common to several councils in a region, as both regional plans and district plans of all councils in the region must actively implement it. A RPS can be used to help a regional council carry out any of its RMA roles, including that of ensuring strategic infrastructure (such as major transport routes and water supply facilities) are coordinated and integrated with land use (new areas of housing or major business centres, for example). In this way they have the potential to be more than a tool for providing direction on issues around air, water or soil.

## Regional plans

Regional plans are developed by regional councils to help them manage environmental issues, such as those associated with use of the coast, natural hazards, and air, water and soil quality. There may be one combined regional plan, or many regional plans dealing with particular resources or issues (depending on the approach taken by the regional council).

Objectives, policies and rules in regional plans can be used to govern the allocation of resources (such as water or space in coastal waters), manage pollution through controls on discharges to air, water, soil and the coastal environment. Regional plans can also control the use of land for soil conservation and to manage water quality, hazards and maintenance of ecosystems and biodiversity (for example, protecting the habitat of native birds, insects, fish and plants, including those within urban areas).

It is the rules in regional plans that determine whether a particular activity requires a resource consent (so that its effects can be more closely considered), can take place without a resource consent, or is prohibited entirely. No provision in a regional plan can exist for longer than 10 years without review. However, any person can request a change be made to a regional plan before 10 years has passed.

## District plans

District plans are prepared by territorial authorities (district and city councils) to help them manage the use of land (such as the placement and size of buildings and other structures), subdivision and noise. They also have some overlap with regional plans for managing hazards, and maintaining biodiversity. Managing these matters is through objectives, policies and rules set out in the district plan.

As with regional plans, it is the rules in district plans that determine whether a particular activity requires a resource consent, can take place without a resource consent, or is prohibited entirely. As with regional plans, no provision in a district plan can exist for longer than 10 years without review. However, any person can request a change be made before 10 years has passed.

## Combined RMA documents

The RMA provides that a single document within a region can perform any combination of functions of a regional policy statement, regional plan and/or district plan. Some councils already have combined regional and district plan documents, and others having been working on combined RPS and regional plan documents.

## Iwi management plans

Iwi planning documents, more commonly known as iwi management plans (IMPs), are a plan prepared by an iwi, iwi authority, rūnanga or hapū, and are recognised by the RMA.

The contents of an iwi management plan will depend on the priorities and preferences of the iwi/hapū preparing the plan. IMPs are often holistic documents that cover more than resource management issues under the RMA. Some IMPs will address economic, social, political and cultural issues in addition to environmental and resource management issues. Much like council plans, IMPs may include issues, objectives, policies and methods relating to ancestral taonga (such as rivers, lakes, seabed and foreshore, mountains, land, minerals, wāhi tapu, wildlife and biodiversity) and places of tribal significance. IMPs often detail how the iwi/hapū expect to be involved in the management, development and protection of resources, and outline expectations for engagement and participation in RMA processes.

The RMA states that when preparing or changing any regional plan (section 66) or territorial plan (section 74), councils shall have regard to any relevant planning document recognised by an iwi authority and lodged with that council, to the extent that its content has a bearing on resource management issues of that region or district.

## Local Government Act 2002

The LGA outlines the purpose, role and powers of local authorities. Its purpose is to provide for democratic and effective local government that recognises the diversity of New Zealand communities. The LGA provides for the development of long-term council community plans (LTCCPs) and annual plans to facilitate local government activities.

## Long-term council community plans

Every six years, local authorities are required to identify community outcomes for the immediate and long-term future of their district or region. The process enables parties such as local authorities, central government agencies and the community to determine what they consider important socially, economically, environmentally and culturally. The outcomes from this process form the basis on which local authorities develop their LTCCPs.

It is mandatory for every local authority to prepare a LTCCP which provides a long-term focus for decision-making and coordination of its resources, and describes the community outcomes sought. Such plans must cover a period of not less than 10 years.

Unlike regional and district plans under the RMA, the LTCCP contains no rules. Nonetheless, where there is sufficient buy-in, the LTCCP can be used to coordinate plans across a full range of council functions and coordinate the provision of services with parties outside of a council

(such as providing housing or new transport infrastructure). Importantly, the financial component of the LTCCP provides direction and coordination for funding of strategic projects through the more detailed annual plan (which is focussed on shorter time frames).

## **Annual plans**

Annual plans contain a statement of a local authority's proposed annual budget and funding impact for the financial year, and often lists the particular major projects or services for which funding is set aside. They also support the LTCCP in providing integrated decision-making and coordinating the local authority's resources, as well as extending opportunities for participation by the public in decision-making processes.

## **Land Transport Management Act 2003**

The LTMA governs the planning and funding of land transport. Its purpose is to contribute to achieving an affordable, integrated, safe, responsive and sustainable land transport system. Regional councils, city and district councils, the New Zealand Transport Agency (NZTA) and other approved organisations under that Act can receive money from the National Land Transport Fund for the land transport activities they deliver, such as constructing and maintaining state highways, local roads and public transport services. The LTMA provides for a range of documents to facilitate planning and funding.

## **National Land Transport Strategy and New Zealand Transport Strategy**

The LTMA enables the Minister of Transport to prepare a national land transport strategy. However, no such strategy has yet been prepared. There is a non-statutory document called the New Zealand Transport Strategy, which is referred to in the Government Policy Statement on land transport funding.

## **Regional land transport strategies**

Regional councils are responsible for preparing and reviewing regional land transport strategies (RLTS). These provide an overview of the current and future trends and pressures on a region's transportation systems, the outcomes sought, and options to achieve an integrated, safe, responsive and sustainable land transport system (along with the funding of those options). A RLTS cannot be inconsistent with the NZTS and the RPS that is in force for the region.

The RLTS is a long-term document prepared every six years, but covers issues and strategic options over the next 30 years. As such, the RLTS has a large role to play in ensuring that transport infrastructure is planned to meet the current and future needs of an urban area, and to provide certainty to those who make decisions to ensure the development of land and provision of infrastructure is coordinated and integrated.

## **Government policy statement**

The Government Policy Statement on Land Transport Funding (GPS) is the Government's main guiding document to focus the land transport funding system, generally over a 10-year period. The GPS is issued by the Minister of Transport and details the Government's desired outcomes and funding priorities for using the National Land Transport Fund to support activities in the land transport sector. The GPS covers what the Government wishes to achieve from its investment in land transport, how it will achieve this by funding certain activity classes, how much funding will be provided and how this funding will be raised.

## **National Land Transport Programme**

The New Zealand Transport Agency is responsible for developing the National Land Transport Programme, which gives effect to the GPS and is issued every three years with a 10-year outlook. It lists transport activities/packages of activities expected to be considered for funding for the next three years.

## **Regional land transport programme**

Each local government region needs to develop a 10-year regional land transport programme (RLTP). A RLTP must be consistent with the GPS and be developed every three years with the ability to be adjusted annually. It lists and prioritises activities (excluding local road maintenance, renewals, minor capital works and expenditure on existing public transport operations) where funding will be sought in the next three years.

## Appendix 4: Differences between different types of urban planning

This appendix compares different planning approaches and terminologies used within New Zealand and in other countries:

- land-use planning
- Resource Management Act (RMA) planning
- Growth Management or Urban Development Strategies
- spatial planning.

Spatial planning is facilitating a change of emphasis by governments in the way they think about the role of planning to support and manage economic growth and improve quality of life through a growing understanding of the dynamics of development, including where and when it occurs. Spatial planning emphasises that planning can be more than the traditional regulatory and zoning practices of land use.<sup>79</sup>

**Table 4.1: Comparison between land-use planning, RMA planning, growth management/urban development strategy and spatial planning<sup>80</sup>**

Attribute	Land-use planning	RMA planning	LGA Regional Growth/Urban Development Strategy	Spatial planning
Purpose	Regulating land use and development through designation of areas of development and protection, and application of performance criteria.	Promoting the sustainable management of natural and physical resources – controlling adverse environmental effects from the use and development of renewable resources.  Some regulation of land use and development through zoning and protection, and application of performance criteria.	Growth/urban development strategies have emerged in recognition of the need to sustainably manage growth/development so that communities can benefit socially, economically and culturally while safeguarding resources for future generations. Their aim is to provide long-term guidance for the management of the urban environment.	Shaping spatial development through the coordination of the spatial impacts of sector policies and decisions.  Considers economic, social and environmental effects of development.

<sup>79</sup> Royal Town Planning Institute. 2007. *Shaping and Delivering Tomorrow's Places: Effective Practice in Spatial Planning*. Report, findings and recommendations. Royal Town Planning Institute.

<sup>80</sup> Adapted from: Communities and Local Government. 2006. *The Role and Scope of Spatial Planning: Literature Review*. HMSO, London.

Attribute	Land-use planning	RMA planning	LGA Regional Growth/Urban Development Strategy	Spatial planning
Form	<p>Schedule of policies and decision rules to regulate land use for the administrative area.</p> <p>Mapping of designation of areas and sites for development purposes.</p>	<p>Schedule of issues, objectives, policies and methods for the administrative area.</p> <p>Mapping of areas (eg, residential zones).</p>	<p>Context, issues, objectives, policies and methods.</p> <p>Methods are regulatory means of implementation (eg, structure plans defining growth issues that relate to particular areas that need to be addressed in a plan change(s)).</p> <p>Base map showing main roads, existing urban areas and local authority boundaries.</p> <p>Maps are schematic.</p>	<p>Strategy identifying critical spatial development issues and defining clear desired outcomes across functional areas.</p> <p>Visualisation of spatial goals and key areas of change.</p>
Process	<p>Discrete process leading to adoption of final blueprint plan.</p> <p>Confrontational process, instigated through consultation on draft plans and political negotiation.</p> <p>Stakeholders use the process to protect and promote their interests.</p>	<p>Discrete process leading to adoption of final plan – option of plan changes.</p> <p>Confrontational process, instigated through consultation on draft plans.</p> <p>Stakeholders use the legal processes to protect and promote their interests.</p>	<p>Some information sharing, driven by debate on alternative development models as part of a collaborative process.</p> <p>Key stakeholders may not be involved and/or have marginal involvement.</p> <p>Development of indicators to monitor progress.</p>	<p>Continuous process of plan review and adjustment.</p> <p>Mutual learning and information sharing, driven by debate on alternative development models as part of a collaborative political process.</p> <p>Stakeholders use the process to achieve their own and mutual goals.</p>
Ownership and policy community	<p>A document of the planning authority providing guidance to other professional planners promoting and regulating development.</p>	<p>A document of the planning authority providing guidance to applicants on the regulation of development and mitigation of environmental effects.</p>	<p>A corporate document of the local authority/some shared ownership with territorial authorities.</p>	<p>A corporate document of the local authority in shared ownership with communities and other stakeholders, partnerships and NGOs.</p>
Procedural safeguards	<p>Final plan determined through adversarial inquiry on parts of plan subject to objections.</p>	<p>Final plan determined through adversarial Environment Court/appeals process on parts of (or the whole) plan subject to submissions.</p>	<p>Final plan incorporated into RPS, which is notified. May change through adversarial Environment Court/appeals process on parts of (or the whole) plan subject to submissions.</p>	<p>Final plan determined by inquisitorial examination of the soundness and coherence of the whole plan.</p>
Methods	<p>Mapping of constraints and collection of sectoral policy demands.</p> <p>Bargaining and negotiation with objectors and other stakeholders, informed by broad planning principles.</p>	<p>Sets out issues, objectives, policies and methods.</p> <p>Criteria-based approach.</p> <p>Environmental effects are assessed.</p>	<p>Sets the scene and makes predictions for the future (ie, District Profile). Examines the current capacity of residential, commercial and industrial areas. Looks at possible new areas for development (ie, land-use zones).</p> <p>Sets out a vision and how it fits with other council documents.</p>	<p>Building understanding of critical spatial development trends and drivers, market demands and needs, and the social, economic and environmental impacts of development.</p>



Attribute	Land-use planning	RMA planning	LGA Regional Growth/Urban Development Strategy	Spatial planning
	Checking of proposals through sustainability appraisal/strategic environment assessment.		Identifies issues and provides means of addressing these so that the vision may be achieved.  Sets out council's philosophy for growth, proposes objectives, policies and methods.	Analysis of options through visioning and strategic choice approaches.  Generation of alternatives and options assisted by sustainability appraisal/strategic environmental assessment.
Delivery and implementation	Seeks to direct change and control investment activity in land use through prescriptive regulation, whilst mitigating local externalities through conditions and planning agreements.	Seeks to manage/mitigate environmental impacts of change through prescriptive regulation and development contributions.	Seeks to manage growth/development through influencing land-use regulation via local level plans/development contributions.	Seeks to influence decisions in other sectors by building joint ownership of the strategy and a range of incentives and other mechanisms, including land-use regulation and planning agreements.
Monitoring and review	Measures conformance of the plan's policies and proposals with planning control outcomes.  Data provides portrait of plan area as general context for implementation of proposals.  Periodic but infrequent review of whole plan.	Periodic but infrequent review of whole plan.	Formal evaluation may be commissioned/little monitoring.  Data beginning to inform development and testing of strategic choice options.  Periodic but infrequent review of whole plan.	Measures performance of the plan in influencing sector policy and decision-making.  Data informs understanding of spatial development and the application of the strategy.  Regular adjustment of components of plan around consistent vision.

# Appendix 5: Existing approval processes for infrastructure projects

The RMA allows for areas of land to be designated for use as network utilities (such as roads and telecommunications facilities) or large public works (such as schools and prisons). These designated areas (or ‘**designations**’) are identified in district plans, usually in the maps.

## Eligibility

Under the RMA, land can be designated for public works or network utilities only by ‘requiring authorities’. These authorities can be:

- a Minister of the Crown
- a local authority
- a network utility operator approved under the RMA.

The requiring authority does not have to own the land, but in order to obtain requiring authority status has to demonstrate they are able to likely undertake or complete the project, work or operation and can undertake any necessary responsibilities (such as financial responsibility). Ministers of the Crown and local authorities are automatically requiring authorities. Network utility operators (organisations that distribute gas, petroleum, geothermal energy, telecommunications, electricity, water and wastewater, or which construct or operate roads, railway lines and airports) have to apply for requiring authority status from the Minister for the Environment.<sup>81</sup>

## Process

A designation is like a ‘spot zoning’ over a site or route in a district or city plan. This spot zoning allows the requiring authority’s works or project to go ahead without the authority needing to get a land-use consent from the relevant district council.

Once the designation is put in place, the requiring authority may do anything allowed by the designation, and the usual provisions of the district plan do not apply to the designated site. The requiring authority will still need to get any resource consents required from the regional council.

If the requiring authority wants to use the land for something outside the scope of the designation, normal district plan provisions apply. In other words, the requiring authority would need a resource consent, unless the activity it proposes is permitted in the district plan.

A designation also places restrictions on what anyone other than the requiring authority can do on the designated land without first getting the requiring authority’s permission and any necessary approvals from the relevant district or city council.

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<sup>81</sup> Section 166 of the RMA defines who are network utility operators.

A network utility operator that is a requiring authority can apply to the Minister of Lands to have land required for a project compulsorily acquired under the PWA.<sup>82</sup> An actual designation is not required for such an application and the provision is used rarely.<sup>83</sup> An owner of land subject to a designation or requirement may also apply to the Environment Court to have the requiring authority purchase all or part of the land under the PWA.

## Decision-making

A ‘notice of requirement’ is the way a requiring authority gives notice to a council that it wants to designate land. Until it has been included in a district plan, a designation is referred to as a requirement.

A notice of requirement for a new designation must go through one of the following decision-making processes before it becomes a designation.

- The application may be heard by the local council, which makes a recommendation to the requiring authority whether it thinks the designation should be confirmed in the district plan (with or without modification and conditions) or withdrawn. The requiring authority decides whether to confirm or withdraw the notice (in other words, to accept or reject the council’s recommendation in part or full). The territorial authority concerned and any person who made a submission on the requirement can appeal the decision of the requiring authority to the Environment Court.
- The notice of requirement may be lodged with the Environmental Protection Authority (EPA) – if the Minister for the Environment considers it is part of a matter of national significance. Such applications are referred to a board of inquiry or the Environment Court, which will make a decision rather than making a recommendation to the requiring authority.
- It may be directly referred to the Environment Court if the requiring authority requests it and the council agrees. In these cases, the Environment Court makes a decision on the notice of requirement.

An outline plan provides the detail of the proposed work if this has not already been incorporated into the designation. It must be submitted by the requiring authority to the territorial authority before construction can begin. The outline plan must show the height, shape, bulk and location of the work on the site, and the finished contour. The territorial authority can waive the requirement for an outline plan.

## Resource consents

A requiring authority may also require resource consents from the regional council to undertake the work; for example, earthwork consents or discharge permits.

The proposal may also require that approvals are sought under other legislation, such as authorities under the Historic Places Act 1993, or a concession if the land affected is public conservation land administered under the Conservation Act 1987.

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<sup>82</sup> Under section 186 of the RMA.

<sup>83</sup> In the past 10 years, there have been only two applications under section 186 of the RMA.

For more information on designations see *The Designation Process*, in the *Everyday Guide to the Resource Management Act series*, available on the Ministry for the Environment website.

## Other processes available for infrastructure approval

There are two other approval processes that can be used for infrastructure projects, as alternatives to the designation process: the resource consent process and the plan change process.

The **resource consent** process provides an approval for a particular project. The approval is specific to the details provided in the application (changes generally trigger a new approval process). The decision on whether to grant the resource consent is made by the territorial authority.

The **plan change** process identifies the infrastructure site within the district plan, including the controls and standards that apply to any existing and future activities on the site. The decision on whether to allow the plan change is made by the territorial authority.

There is no eligibility restriction on the use of either of these processes. Both processes are therefore available to infrastructure providers who do not qualify as requiring authorities and are therefore excluded from the designation system (for example, electricity generators). Both the resource consent and plan change processes are also open to an infrastructure provider who also qualifies as a requiring authority.

# Appendix 6: Assessing the options

The discussion document published alongside this technical working paper includes a range of policy options to address the potential problems that have been identified. Your feedback on these options, and/or any alternatives you think should be considered, will help the Government decide its preferred package of options.

Your feedback will also help to improve the evidence base supporting the preferred options and final decisions by Government. Any views you have on whether the right problems have been identified, whether the options will deliver the reform's objectives more effectively than the status quo, or whether alternative options should be considered are welcome.

## Purpose of this Annex

The assessment and identification of preferred options will focus on whether the package of options will be more effective than the status quo. That is, how they operate as a coherent system, including how the urban options interact with the infrastructure options.

The assessment criteria below will form a key input into the regulatory impact assessment which will be carried out as part of the final decision-making process. These are set out here to help inform the nature of your submissions to the consultation process.

If Government decides to take forward any legislative changes, the assessment of options will be subject to the usual scrutiny through the Select Committee and legislative processes.

## Assessment criteria

Cabinet has agreed the following criteria to assess the various options in the discussion document, and/or any alternatives identified through the consultation process.

1. Economic efficiency
  - a) Cost, including compliance. Is the nature and level of the costs imposed (direct, indirect, transactional) positive, neutral or negative?
  - b) Certainty. Does it provide certainty for investment decision-making (eg, roles, processes, anticipated outcomes)?
  - c) Competition impacts and property rights. Is the impact on competition, innovation, experimentation, enterprise and property rights positive, neutral or negative (eg, is it a barrier)?
  - d) Timeliness. Is the impact on timeliness (eg, processing and decision-making time frames) positive, neutral or negative?
2. Environmental
  - a) Good environmental outcomes. Is the impact (direct, indirect, cumulative) on environmental integrity positive, neutral or negative?

### 3. Equity

- a) Māori. Is the opportunity for Māori participation positive, neutral or negative?
- b) Equitable outcome. Where do the costs and benefits fall? Is the level of legal redress positive, neutral or negative?
- c) Engagement and buy-in. Is the opportunity for engagement positive, neutral or negative?

### 4. Tools and methods

- a) Minimum necessary. Is the intervention the minimum necessary to address the problem (ie, has the case for regulation been made and the full range of regulatory options been considered)? Is the level of decision-making commensurate with the scale of likely impacts and the degree of technical expertise?
- b) Avoids/minimises duplication. Does it reduce duplication with the RMA and other related Acts?
- c) Generic and simple approach. Is it simple, straightforward and easy to understand? Is it easy to apply (eg, for local authorities, applicants and practitioners)?
- d) Flexible, adaptable and durable. Is it able to cope with diverse and changing circumstances without the need for regular revision (ie, does it include a strong element of ‘future proofing’)? Does it provide a long- versus short-term solution?
- e) Practical. Does it work in practice, both individually or as part of a package or is it overly complex?