REFORM OF THE RESOURCE MANAGEMENT SYSTEM

The Next Generation

Synthesis Report and Next Steps

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Published with the assistance of The New Zealand Law Foundation
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1 INTRODUCTION

1.1 The project

This paper summarises the work that has been completed as part of the continuing EDS project Reform of the Resource Management System, and outlines its future direction for 2019. The project is analysing New Zealand’s resource management system from first principles. We are asking fundamental, future-focused questions about our overall set of laws, institutions and interventions relating to how we manage our natural and physical resources.

The project has been split into two phases. Phase 1, The Next Generation, was completed at the end of 2018. It produced three working papers and culminated in a synthesis report released in February 2019. That report defined the system, broke it down into chunks for analysis, and presented three potential models for future reform. The report, and its key messages, are summarised in Chapters 2 and 3 of this paper.

Phase 2 of the project, A Pathway to Reform, will select and develop a preferred model as well as a transition pathway to it from the current system. It will involve the publication of two working papers and a final report over the course of 2019, as well as extensive engagement. Phase 2 is described further in Chapters 4 and 5 of this paper.

1.2 The context

As we are adopting a wide definition of the resource management system, the scope of the overall project is wide. But at its core are the topics of environmental protection, urban and infrastructure planning, and the ways in which we use our natural and physical resources to achieve the outcomes we want. Simply put: Can we manage our natural and physical resources better? We are optimistic that we can.

As a nation, we are facing an array of challenges, and that is the primary impetus for a system-wide review. Many indicators of environmental health are rapidly declining. The system is also failing to deliver on social, economic and cultural outcomes, including in our urban areas. Our laws have become complex, confusing and inaccessible. At some point the accumulation of issues becomes so suggestive of deeper systemic problems, that it merits sitting back and considering how the system works as a whole.

There is a growing consensus that we have reached this kind of systemic reflection point. A broad appetite for fundamental and integrated reform has emerged. But there is also the future to think about – tomorrow’s problems may look very different to today’s. The system must be prepared to cope with that change.

The government is already pursuing a range of resource management reforms (including short term amendments to the Resource Management Act 1991 (RMA), a new Housing and Urban Development Authority, and fundamental reform of the three waters system). When combined, such measures contemplate significant change, even though they are not usually talked about in terms of “system” reform. A key part of a first principles review must be to shape these initiatives or provide a coherent narrative that can link them well.

The government has also signalled its intention to begin its own first-principles rethink of the wider resource management system in 2019. This is welcome news, if it has a sufficiently ambitious scope, goes beyond just another ad hoc review of the RMA, and operates across a number of key ministerial portfolios.

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1  D Parker “Two step RMA reform to start by fixing the previous government’s blunders”, Beehive.govt.nz <www.beehive.govt.nz>.
This chapter summarises the key findings of the synthesis report produced at the end of phase 1 of the project. The bulk of the report provides an analytical framework within which common questions of reform can be asked in a coherent and systematic way. But we are also mindful of the need for analysis to lead to concrete change. The report therefore concludes with the presentation of three potential models for a future system. The synthesis report’s structure is outlined below in Figure 1.

### Chapter 1: Introduction

### Chapter 2: Conceptualising the resource management system

### Chapter 3: Context – the past, the present and the future

#### Part 1: Norms

*What is the system aiming for?*

- Chapter 4: Worldviews and ethics

#### Part 2: Functions

*What does the system need to do?*

- Chapter 6: The rationale for public intervention

#### Part 3: Structures

*The architecture to enable our aims to be achieved*

- Chapter 8: Legislative design

#### Part 4: Tools

*The interventions that influence behaviour*

- Chapter 12: Regulatory tools

#### Part 5: Drawing the threads together

- Chapter 14: Harmonising our tools

### 2.1 Conceptualising the resource management system

In Chapter 2 of the synthesis report we consider why we have a resource management system, how it can be defined, and how it can be deconstructed into meaningful units for analysis. At its most basic (although a more detailed definition is provided in the report), we conceive of the system as the set of public interventions designed to influence how, when, where, why and by whom natural and physical resources are (or are not) used. It is about how we shape our surroundings. The system is a vehicle for defining our collective aims, allowing them to change (or not change) over time, and providing methods to achieve them. It enables us to determine if we are actually achieving what we want and how to change things if we are not.

As well as defining the system, it is also necessary to consider how to break it down into parts for analysis. The report does this by considering “themes”, rather than particular sectors (e.g., agriculture or fisheries), spaces (e.g., urban or rural) or domains (e.g., freshwater or air). A theme refers to the kinds of things the system as a whole must do. We order them into four categories: norms, functions, structures and tools. They are addressed sequentially, and reflect the structure of the report.

### Key points

- The resource management system is the set of public interventions designed to influence how, when, where, why and by whom natural and physical resources are (or are not) used.
- The system must provide a way to define our collective aims, methods to achieve them, and ways to determine if we are achieving them or not.
- The report breaks down the system into analytical units based on “themes” (e.g., principles, legislative design, public participation) rather than domains, sectors or spaces.

### 2.2 Context – the past, the present and the future

In Chapter 3 of the synthesis report we consider the context in which reform would occur, and draw out some key lessons. This sets the scene, and is presented in lieu of a traditional problem definition. We need to think not just about how to fix current problems, but also what our history tells us about our future and what challenges wait around the corner.

First, we consider the system’s historical context. The system we see today is the product of legal and ideological developments over many years, with many of its conceptual and structural foundations laid in a
particularly tumultuous period in the late 1980s. It is also built upon relations between the Crown and Māori.

Secondly, we consider a number of diverse challenges the system is facing. Environmental quality is declining; we have concerns about urban issues; allocative outcomes are questionable; and the overall coherence and operation of the system is less than ideal. But challenges are not all of a similar nature. Systemic challenges exist because the system was not really designed to do some of the things it needs to do now and in the future (e.g., the allocation of resources like freshwater), while other challenges exist because of ad hoc changes that have, over time, resulted in a complicated and fragmented system. Furthermore, some tensions are unavoidable in a system that partly exists for the purpose of resolving them, and these do not represent problems that we should ever expect to be “fixed” by reform. Perhaps most significantly, the system has failed to achieve what it was always meant to, notably in its establishment and defence of environmental bottom lines.

Finally, we consider what the future could hold. A reformed system will need to be forward looking. For example, it needs to be strategic about how it manages increases in population. Core infrastructure vital to New Zealanders’ wellbeing needs to be adequately funded, maintained, upgraded, and enabled. A future system needs to be courageous and think long-term about protecting areas of high natural value from inappropriate and creeping development, and do urban densification well. It needs to engage with an increasingly diverse society in ways that resonate with people of different ages and backgrounds, and regularly evaluate changes in people’s values and preferences where firm bottom lines are not at stake (e.g., in the density of urban living and transport preferences).

If primary production continues to underpin New Zealand’s economy, the system must place clear expectations around where and what kinds of activities are acceptable in the future. New Zealand also has firm international climate change obligations that will have to be met over the coming decades. In order to achieve these, a future system will need to accommodate a great deal of change in a multifaceted approach (not just an emissions trading scheme). It will need to be more directive, proactive, and contemplate land use change. Normative directions about climate change will need to be integrated across the entire system.

In addition, New Zealand faces substantial impacts from climate change and other forms of global change over the coming decades. The system needs to strengthen the resilience of people and nature to respond and adapt in sustainable, timely, and predictable ways. In particular, the system will need to be more proactive, future-focused, and directive in relation to broad land use changes, food production, where infrastructure can be located, how to fund the movement of existing infrastructure, the (re-)allocation of scarce resources, and urban design. Clear expectations around government assistance and compensation need to be set, and tools created to manage this.

New technology poses opportunities for positive change in the future, and a system should be flexible enough to embrace technological advancements as long as opportunities outweigh the risks. In particular, technology
has the potential to improve efficiency in the agricultural sector, but at the same time it could radically change the way food is produced. A reformed system will need to manage any transition with great care.

Finally, increasing economic and political involvement and expectations of Māori, alongside continuing Treaty settlement processes, may drive a future system towards one of greater partnership in how resources are managed. The unprecedented scale of change predicted for the coming decades requires new thinking about traditional governance models, including the need for future-focused institutions, contemplation of greater centralisation of some functions, and consensus-based and durable commitment mechanisms.

### Key points

<table>
<thead>
<tr>
<th>The system we have now is a product of an important historical and cultural context, and the past will influence the future.</th>
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<tbody>
<tr>
<td>We are currently facing a number of significant resource management challenges and problems that need to be addressed.</td>
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<tr>
<td>The future will be significantly different from the present, and the system must be capable of meeting the challenges of tomorrow, not just today.</td>
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#### 2.3 Worldviews and principles

In Chapters 4 and 5 of the synthesis report we consider big picture questions about ethics and principles. This includes the basic ways in which we see ourselves in relation to our surroundings and the natural world. Many different ethical theories exist in the context of the environment, but they all seek to strike a balance between resource use and protection. Neither one of these things is ever absolute. There are four key questions here: how to distribute costs and benefits amongst people alive today, between current and future generations, between private and public interests, and between humans and non-humans (nature). Although it is a dramatic simplification, it can be useful to think of Western theories about the environment as being anthropocentric (human-focused) and ecocentric (nature focused).

An economic approach to anthropocentrism tends to reduce the natural and physical world to monetary terms. A non-economic anthropocentric worldview focuses on the weighing of a broader range of human values concerning the environment, and rejects money as the only measure of value. In contrast, an ecocentric worldview sees the natural world as having intrinsic value, dignity and rights beyond its usefulness to humans. Māori worldviews – Te Ao Māori – are more closely aligned to Western notions of ecocentrism than to anthropocentrism or an economic worldview. However, they are by no means the same thing. Te Ao Māori is a specific way of seeing the world, developed over centuries and incubated within an integrated social and cultural setting.

Overall, we consider that a future system will need to reflect multiple worldviews. However, embracing synergies between ecocentrism and Te Ao Māori more within a plurality of ethics may provide a positive direction of travel.

A society’s basic worldviews and ethics provide the normative foundation of its resource management system. But it is important to operationalise worldviews through the recognition or development of more detailed principles. In Chapter 5 of the synthesis report we provide a short exploration of key principles that have been developed in the field of resource management, and which could form the basis of a future system. These include sustainability, environmental justice, distributional equity, intergenerational equity, polluter-pays, common but differentiated responsibilities, subsidiarity, the principles of the Treaty of Waitangi, Māori concepts like kaitiakitanga and mātauranga, resource development, conservation, precaution, participation and efficiency.
2.4 The rationale for public intervention, and the roles of a future system

In Chapters 6 and 7 of the synthesis report we explore the grounds on which it would be appropriate for a future system to intervene in people’s lives. In Chapter 6, we consider which basic test we should use, and in Chapter 7 consider what that means for the more specific roles the system needs to play.

Rationales for public intervention

Public authorities can intervene in a wide range of things. The real issue is whether they should. Are there occasions where we should categorically not use public interventions to influence outcomes, and instead let private persons get on with doing it themselves? If so, what test should we use to determine what those occasions are? It is often unclear exactly where public responsibility should stop and private freedom should start.

It is useful to have a shared expectation about when public intervention or private choice is more desirable. One general test would be the internalisation of externalities. This reflects an economics-focused way of defining the role of the system, and may be too narrow to encompass what we need it to do. An alternative test would be where intervention is demanded by the public interest. This has significant advantages, but it also raises the risk of uncertainty and regulatory overreach. Other rationales for intervention could be to protect people from their own poor choices, and to distribute rights to use resources (which some may not see as a matter of public interest).

The protection and promotion of Māori interests is not the same thing as the public interest, although there may be overlap. How these interact is an intensely political, unpredictable and complex area. It may mean that we cannot justify intervention only on the grounds of the public interest but we must also contemplate intervention in order to discharge the Crown’s Treaty of Waitangi obligations.

We are in no doubt that system change is needed. This is not because we think society’s expectations are wrong, but because of the increasing disjunct between our society’s aspirations for the future and what the system is actually producing. The system, in practice, does not get on with doing it themselves? If so, what test should we use to determine what those occasions are? It is often unclear exactly where public responsibility should stop and private freedom should start.

Because the public interest can change over time, so too can the roles performed by the system. In Chapter 7 we suggest that a future resource management system should have seven core roles. Each of these is conceptually distinct, and should be exercised to the extent necessary to secure the public interest and recognise Māori interests. This recognises that private and personal freedoms and choices are also important in New Zealand society. In short, a future system should:

1. Impose environmental bottom lines
2. Manage trade-offs above bottom lines
3. Fund and ensure the delivery of public goods (including infrastructure)
4. Pursue “good” outcomes (not just prevent or manage “bad” outcomes)
5. Protect and promote Māori interests
6. Resolve disputes
7. Allocate rights to use non-private resources

Imposing bottom lines

In particular, a future system needs to impose firm environmental bottom lines. Environmental bottom lines are not about balance or mitigation. They are outcomes-based lines in the sand that need to be defended strictly and vigorously against erosion by cumulative human actions. They are not just about preventing harm; in some cases securing bottom lines is about enhancing the environment to bring it back to an acceptable state. This requires regulatory action to be firmly linked to predictable and effective funding and resourcing.

That said, a system that allows inflexible limits to be set in places, or for issues, that do not align with the balance of society’s values may undermine their long-term durability. We need to be careful to focus and put limits on the things that are really essential, not treat all our aspirations in the same way. Not all our desires are “bottom lines”.

A future system may need to think about bottom lines in a more progressive way than it currently does. More specifically, it may need to:

- Be much clearer and more honest about the hierarchy of our basic objectives (such as affordable housing and freshwater quality) where they may come into conflict.
- Clarify which outcomes require long-term, durable and strict bottom lines, and which are preferences that may change over time.
- Clarify that the purpose of the RMA (or its future equivalent) itself sets high level bottom lines for truly long-term and essential matters, not just that it allows them to be made if authorities choose to. It should impose obligations to set them at all levels of government.
- Transform general policy bottom lines (ie those that require interpretation through discretionary consenting decisions) into specific and measurable ones (where possible) in planning instruments. Big picture bottom lines – protecting ecosystem integrity – are ineffective if not supported by little picture ones – rules and standards.
- Not continue to operate in a way that requires recourse to a general provision like Part 2 of the RMA to determine bottom lines.
• Be more proactive in reconciling provisions in policy instruments and plans that have unclear relationships between them.
• Be much more rigorous about an integrated approach to bottom lines that cascades down through a vertical hierarchy. A comprehensive suite of bottom lines at the national level could be created (through, eg, a single Government Policy Statement on the Environment) and flow down through all levels of planning instruments. National bottom lines could be targeted at the regional level, to recognise important differences in how they are expressed.
• Take a more strategic approach to bottom lines – not just in the form of static rules and directive policies, but also in the form of meeting binding targets over time (eg the carbon budgeting approach).
• Ensure that bottom lines are clear, but also incorporate buffer zones as a precautionary approach.
• Consider carefully which bottom lines are place-based (eg particular wilderness areas or landscapes) and which are value-based (applying across the whole country).
• Consider the points at which bottom lines bite. Are they an ambulance at the bottom of the cliff, only to be assessed when harm is imminent, or important in preventing activities before harm becomes likely?

Managing trade-offs above bottom lines

It is not enough for the system just to impose bottom lines and walk away. It also needs to balance and make trade-offs between interests above bottom lines or for things where true bottom lines do not really exist. In particular, the system has a role to play in making trade-offs where communities wish to balance different wellbeings or to enhance the environment above bottom lines.

The current system conflates the concepts of bottom lines and trade-offs. For some things we require bottom lines, but the current system does not deliver them to the extent needed. For other things we require balance, but the system doesn’t talk about one important side of the equation – the positive effects of resource use and urban renewal. It strains to do both, and the product is confusion, uncertainty and an underwhelming commitment to either. A future system could usefully make a clearer distinction between the two.

Providing public goods and pursuing positive outcomes

The provision of public goods is another crucial role that a future system will need to play. Whether a good is "public", and thus requires intervention in some form, can be debatable. One approach is based on market failure, and another is based on community preference for public provision. However, a public interest in goods and services does not necessarily mean they should be funded or delivered by public bodies. The system also has an important role to play in coordinating development. This includes aligning the planning, funding and delivery of public goods and services.

However, setting bottom lines, facilitating trade-offs and providing public goods are not enough to secure the public interest. A future system must also be better at actively pursuing positive outcomes. Public authorities have a key role to play here. Authorities should have clear mandates, linked to predictable sources of funding and resources, to pursue positive outcomes, not just prevent or manage potentially negative ones. We need to encourage and incentivise activities which have synergistic benefits (those that can achieve multiple wellbeings at the same time), in a strategic and planned way. Furthermore, as it restricts undesirable activities or behaviours, a future system could more actively manage a transition towards something else – a practical vision for the future that provides similar levels of social, economic and environmental wellbeing.

Protecting and promoting Māori interests

A future system will need to protect and promote Māori interests. This is not just about adopting or co-opting Māori concepts in laws and plans. It involves much more difficult questions about partnership and power (institutional arrangements are explored in Chapter 9). Among other things, the system needs to recognise and protect wāhi tapu (ancestral sites) and Māori relationships with key components of the natural world more generally. That needs to encompass intangible impacts, such as effects on spiritual wellbeing. Mātauranga Māori needs to inform, even if it does not determine, decisions.

Allocation

Allocation is a distinct role the system needs to play, and one that presents significant challenges. It involves debates not just about environmental values, but also about fairness. But when allocating rights to take or use public resources, the system can be doing quite different things. We need to determine which one we want it to do, because that may have ramifications for how the system does so.

First, a future system could treat allocative questions as, essentially, an economic transaction. If people were made to pay for the enjoyment of non-private resources, the proceeds could be used for the benefit of New Zealanders or even channelled back into measures designed to enhance the resource being used. Secondly, a future system could simply treat allocative decisions as requiring a predictable process for obtaining rights (such as a first in, first served model). However, under the RMA, this has presented significant issues. Thirdly, the system could more actively influence allocative decisions by establishing an overarching set of principles (or resource-specific principles), or facilitating the development of regionally or locally based principles, for decision-makers to implement. Fourthly, the system could be more proactive in picking winners – allocating resources to particular kinds of activities in which there
is a strong public interest. Methods of allocation are considered in Chapters 12 and 13.

### Key points

- It is often unclear at which point some form of public intervention is appropriate, and when private freedom of action should prevail.
- Different rationales for intervention include internalising externalities, correcting market failure, securing the public interest, and protecting/promoting Māori interests. We suggest a test based on the public interest and protection/promotion of Māori interests.
- A future resource management system should perform seven core roles: impose environmental bottom lines; manage trade-offs above bottom lines; fund and ensure the delivery of public goods (including infrastructure); pursue “good” outcomes (not just prevent or manage “bad” outcomes); protect and promote Māori interests; resolve disputes; and allocate rights to use non-private resources.

### 2.5 Legislative design

Chapter 7 of the synthesis report considers the seven core roles that a future system will need to perform. However, the reality is that these roles will be performed not within the “system” generally, but within particular statutory frameworks having different purposes and design features. How we split up our statutes to perform these overall roles is an important question – one of legislative design – and is explored in Chapter 8. In this chapter we first explore several “design principles”. In short, we consider that resource management legislation should be coherent, certain, accessible, durable, integrated, tailored to New Zealand circumstances, and efficient.

Good legislative design demands that statutes are divided in a way that makes sense. In particular, while we can divide our statutes in many different ways (see Figure 2), a consistent rationale for doing so needs to be maintained across the whole system if we are to ensure it is coherent. Here, the concept of “lenses” can be useful. A lens is, essentially, about what our main concern is when we slice and dice legislative boundaries. If we have a broad, outcomes-based framework like the RMA, for example, it can undermine coherence if we then introduce an act regulating the environmental impacts of those sectors.

"Outcomes” is the primary lens that has been used to divide legislation in the current system. That means most of the system’s content is found in a small number of statutes based on broad outcomes, which apply across all (or most) sectors, spaces and domains. Domains form a secondary lens that fill the gaps left by outcomes-based legislation. Location forms a third lens, which fills gaps relating to the needs of particular geographical locations (e.g., national parks). Sectoral statutes also fill remaining gaps. However, legislation is not needed for all sectors, only those where laws are necessary to safeguard the public interest (e.g., for the public provision of some infrastructure). Institutional statutes tend to fill gaps left

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<table>
<thead>
<tr>
<th>Lens</th>
<th>Explanation</th>
<th>Example</th>
</tr>
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<tbody>
<tr>
<td>Outcomes</td>
<td>We have particular statutes for particular kinds of outcomes.</td>
<td>One act for the protection and restoration of the natural environment, one for allocating public resources, and another for encouraging exploitation of resources</td>
</tr>
<tr>
<td>Institutional</td>
<td>We have separate statutes for specific institutions.</td>
<td>One act for local government, one for an Environmental Protection Authority, another for the Environment Court</td>
</tr>
<tr>
<td>Sectoral</td>
<td>We have particular statutes for specific sectors or industries.</td>
<td>One act for agriculture, one for fisheries, another for mining</td>
</tr>
<tr>
<td>Domains</td>
<td>We have particular statutes for specific domains.</td>
<td>One act for freshwater, one for soil, another for the climate</td>
</tr>
<tr>
<td>Location</td>
<td>We have particular statutes for specific locations or areas.</td>
<td>One act for urban areas, one for rural areas, one for marine areas, another for conservation areas</td>
</tr>
</tbody>
</table>

**Figure 2:** Potential lenses through which we can look when designing legislation
by previous lenses, although some sectors (eg water and transport) are dealt with within institutional legislation (eg the Local Government Act 2002).

Figure 3: Lenses used to design statutes in the current system. The decreasing thickness and increasing transparency of each lens illustrates the fact that progressively less resource management content is found within statutes created using lower lenses.

We consider that outcomes-based statutes like the RMA should form the core of a future system, and that domain-based and location-based statutes should generally fill gaps. The order in which we apply a sectoral and institutional lens (eg whether we regulate sectors within institutional statutes or institutions within sectoral statutes) is more difficult. This is relevant to the question of how we treat the Local Government Act and Land Transport Management Act 2003. Some have suggested that we should integrate the infrastructure planning and funding components of these acts with each other and with the land use planning components of the RMA (in a single Planning Act). That could assist with the integrated management of urban growth and renewal.

The strength of connection needed between components of the local government system, and between land and other domains under the RMA, may mean that legislative separation between the RMA, Local Government Act and Land Transport Management Act is desirable in a future system. Connections can be made through aligning planning processes under each. Some may, however, see the connection between infrastructure planning and land use as more significant, especially in high growth urban areas. That could see the integration of the infrastructure and land use components of the three acts within a single statute.

Some have also pointed to shortcomings in the RMA’s scope, pointing to its reactive, effects-based character. Arguably it is concerned with preventing “bads”, not pursuing positive outcomes. Although in practice the Act has been used to pursue a much wider range of outcomes
than just impose biophysical limits, the active pursuit of people's social, economic and cultural wellbeing could be more explicitly incorporated into a broad, outcomes-based statute like the RMA (as long as this was subject to firm biophysical bottom lines). The different kinds of tools deployed under various other outcomes-based statutes (eg the Biosecurity Act 1993 and Hazardous Substances and New Organisms Act 1996) may provide reason to keep them separate.

A key question is whether we should split up the RMA itself. There are risks and difficulties in carving out urban issues, the built environment, or land use planning from the Act. But in Chapter 8 we explore the idea that statutory separation between bottom lines and balancing, and the development of an Environmental Protection Act, may help to protect the former. An Environmental Protection Act would have a firm purpose and principles that did not contemplate the consideration of non-protective matters or trade-offs. It would operate primarily through the imposition of clear and precise rules and performance standards in subordinate instruments that flow from a clear purpose statement, not through extensive use of discretion and interpretation of policy in the consideration of permits.

To complement an Environmental Protection Act, a separate statute – a Resource Stewardship Act – could be enacted to provide a framework for balancing wellbeing above biophysical bottom lines, as well as enhancing the environment through seeking convergence and mutual reinforcement between the different wellbeing. Balancing should not just be a race to the bottom.

Other key legislative design features of a future system can be traversed more briefly. We could enact a separate Allocation Act to allocate non-private resources like freshwater, or alternatively we could incorporate allocative decision-making into more general, outcomes-based legislation (eg the RMA or future equivalent) concerned with the adverse environmental effects of activities. We could integrate domain-based legislation (eg for climate change mitigation and the coastal marine area) into more general outcomes-based legislation like the RMA. Alternatively, these could be kept separate if the kinds of tools or approaches used under each were an inappropriate fit for more general statutory frameworks. A future system could integrate protective location-specific statutes (eg the Conservation Act 1987 and National Parks Act 1980) into a Protected Areas Act. It may also be possible to integrate sector-specific statutes concerned with protection (eg forestry) into more general outcomes-based frameworks, although it seems more sensible to separate building legislation from more general frameworks (with the outcomes sought by each being more aligned). The protection of some resources (such as fish) within a framework focused on their exploitation may not be the best way to improve ecological outcomes or achieve holistic ecosystem-based management. It is crucial that any future system uphold existing Treaty settlement legislation, but there may be room for improvement in how this is integrated into more general frameworks.

Finally, one option for reform is to enact an overarching piece of strategic legislation – an Environmental Strategy Act – that influences all other resource management statutes. This could even be given some form of constitutional protection (eg entrenchment). It could be the integrative framework under which spatial planning for land and sea occurs, and the place where an overarching resource management strategy (discussed in Chapter 11) is produced.

### Key points

- Legislation should be coherent, certain, accessible, durable, integrated, tailored to New Zealand circumstances, and efficient.

- We can divide statutes in many different ways, but a consistent rationale for doing so needs to be maintained across the whole system.

- It is desirable for one or more broad, outcomes-based statutes like the RMA to form the core of a future system.

- It may be possible to integrate the subject matter of existing statutes in some ways (eg land use and infrastructure planning) and/or to fragment them in others (eg the built and natural environments). These options all have pros and cons and need to be considered very carefully as part of wider system reform.

- A statutory separation could be drawn between establishing bottom lines and balancing such as with an Environmental Protection Act and a Resource Stewardship Act.

- One option is to enact a higher piece of strategic legislation that harmonises other statutes such as an Environmental Strategy Act.

### 2.6 Institutional design

In Chapter 9 of the synthesis report we consider the kinds of public institutions we have in the resource management system, and what they should do. The institutional landscape in the current system is extremely complex.

First, we outline a general framework for thinking about questions of institutional design. We then explore the general characteristics that institutions can have. Finally, we consider what characteristics our institutions may require in the future when performing the system’s seven core roles (which were identified in Chapter 7).

Providing checks and balances on the exercise of public power is one, but not the only, important reason we split up our resource management institutions. Different combinations of institutional characteristics offer us different strengths. We need to look, in a systematic way, at different possible combinations of characteristics that our institutions can have, before we decide which ones we may want (see Figure 4).
1. **The degree of an institution’s independence**

An institution can be independent of political influence (such as the Environment Court) or politically accountable (such as Ministers and regional councils). Independent and accountable institutions offer different things, but it is the **balance between them** that is most important when looking at the system as a whole. In particular, independent institutions are most valuable where decisions are about implementing (rather than determining) values, where efficient management is important, or where they are necessary as a check and balance on accountable institutions.

2. **The degree of an institution’s centralisation**

An institution can be central in that it functions across the whole country (such as a government department) or locally (such as a district council). Both central and local institutions can be accountable or independent. The principle of subsidiarity is important when determining how local or central institutions should be for a particular role or task. Decisions should be taken by those reflecting the appropriate community of interest. However, the efficiencies that can be gained by exploiting economies of scale are also important when considering centralisation or regionalisation of functions.

3. **The extent of an institution’s subject focus**

An institution can focus narrowly on specific resources or domains (such as the Queen Elizabeth II National Trust, concerned with open space) or have a wide focus (such as the Ministry for the Environment). A wide subject focus is crucial at a strategic and national level. At the policy and operational levels, there is value in having institutions with more targeted focuses, to guard against objective overload.

4. **The extent of an institution’s geographical focus**

An institution can focus narrowly on a specific geographical area (such as the Fiordland Marine Guardians) or on a broad area (such as the Department of Conservation). The formal creation of a geographically focused institution can be useful where the context of an area is truly unique. However, we should resist the temptation to throw new layers of institutions at particular problems as they arise.

5. **The nature of an institution’s task**

An institution can have different kinds of tasks. Among other things, it can create policy, impose regulation, or enforce decisions. The key question is the extent to which multiple tasks should be the responsibility of a single institution, or distributed across different ones. There are advantages and disadvantages of both integrating and separating tasks.

6. **The formality of an institution’s creation**

Some institutions can be formally created (such as by statute), while others are created in a more informal way (such as by Cabinet decision). Formality of creation is particularly important where an institution’s specific position and durability in the system is important to achieve our long-term objectives, and where it is likely to require protection from outside pressure.
7. The nature of an institution’s mandate

An institution can have a protective mandate (such as the Department of Conservation), or it can have an exploitative mandate and seek to secure the benefits of resource use (such as the Ministry for Primary Industries). The word “exploitative” is not intended to have any negative connotations. It simply means driving resource uses that are considered to be in the public interest. Integrating mandates within an institution can promote synergies and integrated management. However, there are risks in combining quite different mandates within an institution, notably that one may get weakened in practice.

8. The extent of an institution’s power

An institution can have binding powers (such as a Minister who imposes a National Environmental Standard) or a recommendatory power (such as the Parliamentary Commissioner for the Environment inquiring into an environmental issue).

Figure 4: Spectra of institutional characteristics
Desirable institutional characteristics can be reflected through either well-considered internal design of an institution (e.g., a council-controlled organisation has elements of both independence and accountability), or through the separation of institutions that then interact with each other in a defined way (e.g., councils are highly accountable, while the Environment Court is highly independent, and their roles are carefully distributed).

After exploring the general characteristics that institutions can have, we consider which ones may be desirable for institutions performing particular roles identified in Chapter 7 (setting bottom lines, making trade-offs, providing public goods, proactively pursuing positive outcomes, protecting and promoting Māori interests, resolving disputes, and allocating resources).

Both independence and accountability are needed in some measure for setting bottom lines, and this is best done by consciously separating our independent and accountable institutions. To the extent that decision-making on bottom lines is about implementing shared values rather than determining them, there may even be a greater role for independent institutions. There may also be a role in a future system for a wider ranging independent watchdog, in the form of a Resource Management Commission. Central government could also take a more proactive and comprehensive role in setting environmental bottom lines through, for example, the creation of a comprehensive Government Policy Statement. The system could provide for greater centralisation, or shared responsibilities, for the enforcement of environmental bottom lines.

A future system also needs to make trade-offs above bottom lines. This is a values-based exercise, and requires a significant focus on accountability. However, independent institutions can have important roles in providing advice and in constraining the politicisation of issues. A future system could also define relevant central and local communities of interest in a clearer and more predictable manner.

Current institutional arrangements for the provision of public goods and services are varied, and some depend upon historical circumstances. Where the relevant community of interest resides is crucial, as are questions of efficiency (both economies of scale and efficiencies from adopting commercial institutional models). The funding tools available to different kinds of institutions, and incentives, are extremely important. Funding is explored in Chapter 13.

Turning to the pursuit of positive outcomes beyond the provision of public goods, we consider that two kinds of outcome require a more proactive approach, and could be assisted by a degree of institutional change. The first is urban planning, and the second is environmental enhancement. We shine spotlights on these in Chapter 9.3.

Institutions must protect and promote Māori interests in a future system, but there are different ways in which that could occur. To some extent the role can be discharged by existing institutions that are subject to sufficiently strong directions to do so. Alternatively, institutions could be modified to be more reflective or representative of Māori interests. Another option would be to recognise or strengthen specifically Māori institutions as decision-makers in their own right, or provide for greater partnership.

It may be possible in a future system to draw a sharper distinction between a policy role (for accountable institutions) and a legal dispute resolution role (for independent institutions). It would also be possible for many different kinds of institutions to allocate non-private resources (e.g., freshwater). Their ideal characteristics will, however, depend on what we think the allocative role is for, as discussed in Chapter 7. Accountable institutions are important for deciding values (a principles-based approach to allocation), but independent ones could facilitate technocratic exercises (such as auctioning). Institutions’ degree of centralisation may depend on the nature of the resource in question. Collaborative groups are one possible way forward for allocative questions, although they have their risks.

### 2.7 Public participation

In Chapter 10 of the synthesis report we consider the role of public participation in the resource management system: what it can mean, its advantages and disadvantages, how it is treated in the current system, and how it could be approached in a future system. Much depends on the purpose for which we want the public to engage. Sometimes institutional reform (discussed in Chapter 9) can be an alternative to changing participatory rights.

Public participation refers to the involvement in a decision-making process, of a public nature, by those who are affected by a decision but do not make it. Participation provides a number of benefits, but can also incur significant costs. In particular, how the system approaches participation has implications for the provision
of information, the durability of decisions, the nature of relationships between authorities and the public, fairness and legitimacy, the quality of decisions, consultation fatigue, time and cost. Extensive participatory rights can delay action and reduce the ability of the system to respond to rapidly changing conditions. But participation has much to offer the resource management system, supporting better decisions and promoting transparency and fairness. The challenge for a future system is to incorporate participatory processes that deliver benefits that outweigh their costs. As discussed in Chapter 3, the system’s approach to participation is often not a “problem” per se – it is a tension between legitimate concerns and values.

The extent of participatory rights will differ depending on the type of decision being made and the scale of potential impacts. Values-based policy and the imposition of regulations which impact property rights will merit greater participation. Decisions with broader public impact merit greater public participation than those with localised impacts. Less public participation may be warranted when there are strong regulations in place to protect biophysical bottom lines.

At its inception, the RMA provided for very extensive public participation rights, partly because it gives decision-makers the power to erode people’s property rights. In particular, plan making under the Act comes with a set of strong legal rights for submitters. However, participatory rights more broadly (eg for resource consent applications) have been narrowed substantially in recent years.

A variety of mechanisms also has been used to enable Māori to participate in resource management decisions. Some of these, such as the obligation on councils to consult or notify, place Māori in a passive role. More recent approaches have enabled iwi and hapū to initiate engagement and more actively protect their own interests. To some, the way forward may be less about strengthening participatory rights and more about institutional reform and partnership in decision-making (discussed in Chapter 9).

A future system could take different approaches to public participation in several areas, although all come with risks and trade-offs. For example:

- If more certainty is built into plans, there will be less need for participation in consenting decisions, as the outcomes will be more predictable.
- A future system could potentially combine public participation processes across several statutes.
- Non-notification of resource consents can result in poor decisions due to the council being unaware of Māori and/or public concerns. To address this, non-notification could be replaced by a category of consent which is publicly notified but where submitters do not have hearing or appeal rights.
- Achieving a fair process in the courts requires active measures to “level the playing field” between those with greater and lesser resources to run their cases.

- Simply providing the opportunity for members of the public to make submissions will not likely result in the broad range of interests being expressed. A future system may need to adopt a more proactive approach to public participation, to ensure all relevant voices are heard. This may necessitate the use of novel mechanisms.
- Two key purposes of participation, the provision of information to decision-makers and providing a check and balance on developers and councils, could potentially be provided (at least in part) by other elements of the system, including institutional measures (eg providing appeal rights to a Public Defender’s Office).
- The ability to lodge merits appeals to an appellate court (the Environment Court) is not merely a duplication of the first-instance hearing, but provides an important independent check and balance on devolved decision-making. Therefore while single hearing planning processes can substantially reduce the time it takes for a plan to become operative, they need to be carefully designed to ensure both rigour and fairness.

### Key points

<table>
<thead>
<tr>
<th>Public participation refers to the involvement in a decision-making process, of a public nature, by those who are affected by a decision but do not make it.</th>
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<td>Providing for public participation has significant benefits but can also have significant costs.</td>
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<td>The system’s approach to participation is often not a “problem” per se – it is a tension between legitimate concerns and values.</td>
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<tr>
<td>The extent of participatory rights will differ depending on the type of decision being made and the scale of potential impacts.</td>
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<tr>
<td>Participatory rights for Māori are important, although by some they are seen as inadequate, ineffective, or no substitute for institutional measures (eg power sharing).</td>
</tr>
<tr>
<td>A number of reforms would be possible, but they require careful thought, have pros and cons, and have implications for other aspects of the system (eg institutional arrangements).</td>
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### 2.8 Strategic, regulatory and non-regulatory tools

Having considered the norms, functions and structures of the system, in Chapters 11–14 of the synthesis report we turn to the tools that it could use. “Tools” is a broad label we are using to describe public interventions that are intended to influence human behaviour directly – both public institutions and private persons. They are interventions that bite in some way.
Strategic tools

In Chapter 11 we explore strategic tools. A strategic tool is an overarching instrument that guides the actions of public authorities over time without being binding on people as a matter of law. Some have criticised the current system for not being strategic (forward-thinking) enough, and a future system could embrace strategic tools more in performing most of its core roles identified in Chapter 7. In particular, the system could require the government to promulgate a single, overarching resource management strategy. This could have three defining features:

1. It would be mandatory.
2. It would be integrated across all domains, sectors, spaces and institutions.
3. It would have a clear and firm legal pathway to implementation under all relevant statutory frameworks.

The spatial components of such a strategy could be implemented through national and regional spatial planning. Spatial planning already occurs in the current resource management system, but it could be deployed more widely, in a more integrated and strategic way, and with greater legal influence over more detailed decision-making.

Alternatively, or in addition, under the RMA (or future equivalent), central government could express its expectations and requirements through an integrated government policy statement rather than relying on ad hoc, fragmented and overlapping instruments like National Policy Statements, National Environmental Standards, National Planning Standards and other regulations.

Statutory purpose statements can also be powerful strategic tools in their own right. If the system is to drive change, it needs to do so through statutes that are premised on the need for it and which mutually reinforce each other. Targets and budgets are other strategic tools that could be embraced more in a future system, although they may not apply to all roles and contexts. A strategic approach to government spending and investment could also drive significant change.

Key points

| A strategic tool is an overarching instrument that guides the actions of public authorities over time without being legally binding on private persons. |
| A future system could embrace strategic tools more, including through the development of an overarching New Zealand resource management strategy. |
| Strategic spatial planning would be an important complement to this wider strategy. |
| An integrated and strategic approach under the RMA could be achieved through the creation of a single government policy statement rather than ad hoc National Policy Statements and National Environmental Standards. |
| Other measures that could be taken include greater use of statutory targets, budgets (eg in the sense of carbon budgets), and public investment strategies. |
Regulatory tools

The defining feature of regulatory tools is that they have teeth – they can result in sanctions on people if they do not comply. They tell people what they can and cannot do. However, regulatory tools are not just “regulations” in the traditional sense. There are many ways in which people can be compelled or coerced into acting or refraining from acting. In Chapter 12 we explore some of these.

Property and other rights are important regulatory tools, even if they are not usually thought of as such. Although the privatisation of resources is not a sure-fire way to ensure responsible stewardship of them, creating environmental human rights and rights for nature are other ways in which the system can use rights to protect the environment. On a more prosaic level, some rights will be necessary in a future system to provide investment certainty (that people can continue to use a resource for a specified amount of time). However, such rights need to bow to the public interest in environmental bottom lines, and may be better characterised as privileges.

It would also be possible for a future system to use regulatory tools to allocate rights to use non-private resources, if it had reasonably precise principles upon which these decisions could be made. However, reallocating resources and “de-allocating” over-allocated resources pose greater challenges. This is particularly problematic for freshwater. Māori interests may need to be resolved before a regulatory or principles-based approach to the allocation of some resources can be deployed widely. This is vexed question, and one that is ultimately reliant on political will.

Regulatory tools are crucial for protecting environmental bottom lines. They require expression through clear regulatory restrictions in order to be effective as a safety net. But regulatory tools can be used to make people do positive things, not just to restrict or prevent them from causing harm. Public authorities need to be obliged by statute to discharge regulatory and other functions, accompanied by adequate resourcing and institutional checks and balances (see Chapter 9). Particularly important are duties to monitor the state of the environment. A future system could more effectively tie the results of such monitoring to a requirement to take action in response.

In a libertarian political context, it is much more challenging to force private people to take action through regulatory means if it is not linked to adverse effects that they are causing. However, offsetting using a principle of net gain (if used carefully) provides one option for requiring private action, and firmer duties may be possible if the funds and resources are provided for people to comply with them. The prospect of future or conditional regulation can also encourage people to act voluntarily, and regulatory processes can be made simpler or easier for desirable activities relative to undesirable ones.

In Chapter 12 we also consider plans, as instruments within which a variety of tools come together. Some of these are primarily regulatory plans, as under the RMA.

In relation to these, we suggest that a future system is likely to require both an effects-based and activity-based approach to planning. That said, greater predictability and precision could be injected into plans, with less reliance on contextual and discretionary decision-making at the permitting level (particularly for bottom lines). Alternative plan-making processes could be embraced, such as using a single stage hearings panel (rather than relying on a first instance hearing followed by appeal rights). That is also touched upon in the context of public participation in Chapter 10.

Effective compliance and enforcement of regulatory tools is an essential component of any future system. A number of options may be possible here, from using existing mechanisms better (eg the development of national direction under the RMA), to significant structural change (eg relocating enforcement functions to different – including central – institutions).

### Key points

- Regulatory tools can result in sanctions on people if they do not comply.
- Environmental human rights and rights for nature are regulatory tools that could be used in a future system, although they pose challenges.
- Rights to use resources will continue to be important for investment certainty, but they need to bow to the public interest in environmental bottom lines.
- Regulatory tools could be used to allocate rights to use non-private resources in a more proactive way (eg freshwater), but they face significant challenges relating to fairness and Māori interests, including where there are issues of reallocation or “de-allocation”.
- Environmental bottom lines require expression through clear regulatory restrictions in order to be effective as a safety net.
- Regulatory tools can be used to prevent harm or require remediation, but have limitations when it comes to enhancing the environment (making people take action). However, offsetting based on a principle of net gain could have promise.
- Plans bring a variety of tools together. They could usefully have greater precision and predictability.
- Compliance, monitoring and enforcement are essential for effective regulation, and a number of options are possible for reform.

### Non-regulatory tools

In Chapter 13, we explore non-regulatory tools. While regulatory tools are important for defending bottom lines, imposing regulatory minimum outcomes is a recipe for
long-term environmental and social mediocrity. There are limits to how much regulation can drive positive change. Non-regulatory tools – including economic instruments – will be important in driving a race to the top.

How the activities of public institutions are funded is a crucial consideration. Often, not much can be achieved without money. For one, a future system must properly fund the policy and regulatory responsibilities of public authorities, including those of local government. There may be several ways of doing this better. Of particular importance are the funding pressures and constraints on local government, which have significant implications for the delivery of core goods and services (eg water and transport infrastructure). Some have also suggested that funding incentives on local government – such as a reliance on rates – have led to sub-optimal outcomes (eg a bias against facilitating urban growth). This is partly an argument about who should pay, and in what measure. There are two general ways in which costs can be distributed by using different funding tools: between current and future communities; and between people who benefit and do not. The mix of tools we use may depend on our approach to distributional equity and inter-generational equity. A future system will also need to consider whether to tie particular sources of revenue with particular kinds of expenditure (hypothecation of funds). Funding tools (eg for infrastructure) must be closely linked with regulatory tools (eg land use plans), to ensure that the objectives underpinning both are realised in practice.

Funding tools can have significant implications for how private persons behave. But financial incentives (economic instruments) can also be used in a more deliberate way to shape behaviour, in ways that regulatory tools cannot. Many kinds of economic instruments are available, and some are already provided for in the current system. In Chapter 13 we outline a number of these – such as taxes, subsidies and feebate schemes. A future system could potentially make more use of economic instruments to drive changes in people’s behaviour and catalyse private investment in desirable activities. Non-economic incentives can also be used to change people’s behaviour, including through the use of behavioural “nudges”. Such measures could be deployed in a more systemic and creative way in a future system, if used with care.

Economic tools (such as auctioning, tendering and transferable rights) can also be used as mechanisms to allocate and reallocate non-private resources like freshwater. However, they have potential risks and downsides. In particular, tradeable permits have the potential to enhance efficiency, but need to be subject to careful regulatory constraints to ensure the local environment is protected. To some, reducing allocative choices to monetary terms may be objectionable in principle.

Charging for non-private resources is not just about providing a mechanism for allocation. A resource may not need to be allocated in a proactive way, but may legitimately have a price. A future system could be more active in charging for the use of such resources (eg freshwater or coastal space), even if they are not scarce or associated with a specific need for revenue. That would recognise that the public has an interest in obtaining a return from the private use of such resources. However, widespread charging may face practical and political challenges.

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<td><strong>Non-regulatory tools</strong> do not force people to take action, they only incentivise and enable it. This includes the use of economic instruments, behavioural nudging and funding mechanisms.</td>
</tr>
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<td>Non-regulatory tools will be important in encouraging people to take positive action, in a way that regulatory tools cannot. A future system could potentially make more use of economic instruments to incentivise positive behaviour and catalyse private investment in desirable activities.</td>
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<td>Economic instruments can also be used as mechanisms to allocate and reallocate non-private resources (eg freshwater) in an economically efficient way. However, they have potential risks and downsides, and raise cultural and ethical issues. Similarly, charging for non-private resources has benefits but also faces practical challenges.</td>
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**Harmonising our tools**

In Chapter 14 of the synthesis report we explore ways in which a future system might harmonise strategic, regulatory and non-regulatory tools. This is in both a normative sense (the outcomes that different tools are seeking) and a procedural sense (making sure they interact in clear and timely ways).

The current system could be better aligned in a normative sense, so that the relationships between its aims were made clearer and more consistent. As described in Chapter 12, central government could be required to create a comprehensive and integrated statement of national policy/regulations under the RMA (a Government Policy Statement), recognising that central government is a core actor, rather than just an intervenor, in resource management matters. We should also remember that the goal towards which tools are being aligned is wider than just the pursuit of efficiency, which has implications for how we manage urban expansion (including the use of a rural-urban boundary and whether we adopt a competitive land-markets approach).

As described in Chapter 11, a future system could better align its different goals through an overarching resource management strategy. A spatial planning process could also help align the spatial components of different
Statutory frameworks. Furthermore, economic tools could be used to align the basic incentives for private persons with the broader goals the system is trying to achieve. One far-reaching idea would be to change the basis of the tax system so that it both raised revenue and provided positive incentives for environmental enhancement (through an environmental footprint tax).

It is also important that the tools in a future system align well in a procedural sense – that they interact in clear, coherent, and timely ways. This manifests in different ways. There is the question of whether tools should “overlap”, such as when we use multiple tools to achieve the same goals. To some, that may be inefficient. But overlapping tools may not always be undesirable. For example, there may be potential in a future system for regulatory and non-regulatory approaches to climate change mitigation to co-exist, and be mutually-reinforcing. In particular, the RMA could be more geared towards addressing climate change mitigation alongside a robust emissions trading scheme.

The procedural alignment of regulatory and non-regulatory tools (such as land use regulation and infrastructure funding) is particularly important in the context of rapid urban growth. Generally, it would be possible for connections to be made earlier in the policy and development cycle for land use planning under the RMA and the associated planning and funding of core infrastructure under the Local Government Act and Land Transport Management Act. One approach to create clearer connections within the resource management system would be legislative redesign: to combine the land use and infrastructure planning and funding components of these statutes. An alternative could be the use of an additional, overarching layer of strategic planning. One expression of this could be a national and/or regional spatial plan(s), which could have strategic influence or direct regulatory effect.

But the need for alignment and harmonisation between planning instruments goes beyond the context of urban growth and the three statutes mentioned above. Many planning instruments exist in the current system, and there is a mix of strong, weak and non-existent connections between them. Permitting processes under multiple statutes could also be aligned or rationalised. A “front-of-house” service for permitting, where multiple decisions under different statutory frameworks are made but are integrated from the perspective of the applicant and/or the public, is one possibility. Finally, effective evaluation is essential: in particular, a future system could have clearer triggers requiring some form of policy or regulatory action to be taken in response to the measurement of unacceptable indicators.

Overall, the tools in a future system could be better harmonised in both a normative and a procedural sense through integrated strategic planning – the production of either an overarching strategic plan that filters down clearly to subordinate frameworks, or at least a plan that aligns the spatial components of the system (notably land use and infrastructure). Spatial planning could be done on a national and/or regional basis, and would allow for the regulatory (land use) and funding (infrastructure) components of urban growth and development to be harmonised.
At the end of each chapter in the synthesis report, we present tables of broad options for reform. (For example, one option relating to the chapter on legislative design is for a future system to split the RMA into a Planning Act and an Environment Act.) These options are compiled into a single series of tables in Appendix 1 of the report. They are designed to help readers identify their own preferences and construct the basic bones of their own preferred future system.

In Chapter 15, we conclude the synthesis report with three high-level possibilities for overall reform, based on combinations of options that have been discussed throughout the report. We call these “models”. A great many combinations are possible, and therefore many legitimate models can be produced (not just the three we describe in the report). Our descriptions are structured primarily around legislative design choices, as that gives the best sense of how a model works, but this is not intended to devalue the importance of other themes.

We also emphasise that the synthesis report does not offer a preferred model. The point is simply to showcase how the preceding analysis can be used to produce tangible (and viable) models. The models offer tangible starting points, and we invite readers to play around with them as one might play with Lego blocks – clipping one part out, clipping another part in, and seeing how well those choices fit together in the context of a whole system. Only some features of each model are summarised in the sections below, and we encourage readers to engage with the additional detail and brief assessments contained in Chapter 15 of the synthesis report. We do, however, include diagrammatical summaries of the three models in Appendices 1-6 of this paper.

3.1 Model 1

The most striking feature of Model 1 is the retention of the RMA as an integrated statute at the core of the system for managing natural and physical resources, and for many other structural features of the system to remain the same. Alongside the RMA there would still be the Local Government Act and the Land Transport Management Act, separate legislation for hazardous substances and new organisms, and existing domain and location-specific legislation like the Conservation Act and Climate Change Response Act 2002.

However, Model 1 would see the introduction of an additional layer of strategic legislation, in the form of a
Spatial Planning Act. This would mandate the creation of spatial plans, with the intention of them guiding integrated decision-making under the RMA, Local Government Act, Land Transport Management Act, and the spatial components of other statutes. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) would also be melded into the RMA to form a single statute for the sustainable management of land and sea. Model 1 would also see the expansion of some tools, and the transfer of some institutional responsibilities. The system would remain readily recognisable as the one we have now, but with improvements.

How key existing legislation relates to new legislation in Model 1 is shown in Appendix 1 of this paper. A high level sketch of how Model 1 operates is shown in Appendix 2.

3.2 Model 2

Model 2 involves a greater degree of structural change than Model 1. The RMA would be split into a Planning Act and an Environment Act. The infrastructure planning and funding components of the Local Government Act and Land Transport Management Act would be incorporated in the Planning Act. So too would proposed Housing and Urban Development Authority legislation. There would be a separate Allocation Act, which would deal with the current resource allocation functions of the RMA, Crown Minerals Act 1991, and Fisheries Act 1996. Included in the Environment Act would be the protective elements of the Fisheries Act, Forests Act 1949, heritage legislation, and the Environmental Reporting Act 2015. There would be no separate strategic spatial planning statute, as this would occur under the Planning Act.

The EEZ Act would remain separate, as would climate legislation relating to the emissions trading scheme, but conservation and species protection legislation would be integrated into a single Protected Areas and Species Act. Local government arrangements would be overhauled, with the creation of regional-level unitary councils, the decentralisation of land transport planning, and the compulsory creation of regional level council-controlled organisations for the provision of water and waste-water services. Unitary councils would deal with planning, and a beefed-up EPA would deal with environmental regulation.

How key existing legislation relates to new legislation in Model 2 is shown in Appendix 3 of this paper. A high level sketch of how Model 2 operates is shown in Appendix 4.

3.3 Model 3

Model 3 also represents fairly fundamental change to the existing system, but in different ways to Model 2. The RMA would be split into an Environmental Protection Act and a Resource Stewardship Act. This split would not be about built vs natural, or land vs common pool resources (like air and water). Instead, the Environmental Protection Act would be concerned with imposing strict bottom lines under a protective purpose, and the Resource Stewardship Act would be about facilitating trade-offs and pursuing synergies in resource use above bottom lines. The Local Government Act and Land Transport Management Act would remain and perform the same functions as they do now. But there also would be an additional overarching act above these four core statutes: the Environmental Strategy Act. That would provide common principles that would have to be given effect to in all other resource management legislation.

It would also require the production of spatial plans to align more targeted decisions on land use planning and infrastructure funding made under the four core acts mentioned above. A separate Allocation Act would be enacted, incorporating the allocative parts of the RMA and Fisheries Act (but not the Crown Minerals Act, which would remain separate).

To counteract the fragmentary effect of these reforms (i.e., the creation of several additional statutes), a number of existing statutes would be integrated into them. Relevant provisions of legislation concerning the exclusive economic zone, climate change, heritage, pest management, environmental reporting, waste minimisation, conservation land, protection of flora and fauna, and protection of fisheries would be contained in one or more of the six core statutes described above, depending on the kind of role being performed. The plans produced under these acts would therefore be more integrated and wider ranging than at present. More specific frameworks such as hazardous substances and new organisms, civil defence, and construction would remain separate. So too would the Marine and Coastal Area (Takutai Moana) Act 2011. The existing Environment Act would be renamed the Environmental Governance Act, and would subsume provisions that establish permanent institutions like the Environment Court, the EPA, and a new Resource Management Commission.

There would be significant institutional and funding reform. There would be no local government reorganisation per se, but responsibility for setting bottom lines under the Environmental Protection Act would fall to an EPA with a strengthened mandate and greater resources. Transport services would continue to be provided as at present, but the delivery of water and waste-water services would become the responsibility of regional level, arm’s-length Crown entities. That would require bespoke legislation – a Water Services Act – which would also need to be aligned through the spatial planning process mentioned above.

An independent Resource Management Commission would also be established, which would provide independent advice to government and hold it to account in relation to environmental bottom lines, and subsume the Parliamentary Commissioner for the Environment and proposed Climate Commission. Local government funding would come primarily from a regional GST, and at a national level the tax system would be gradually reconfigured on the basis of an environmental footprint tax.

How key existing legislation relates to new legislation in Model 3 is shown in Appendix 5 of this paper. A high level sketch of how Model 3 operates is shown in Appendix 6.
The analysis and models presented in phase 1 of the project (the synthesis report) are ultimately a starting point. They form a principled foundation for more difficult conversations about system reform – ones that involve making choices about the future. That is what phase 2 of the project will do throughout 2019: broker a conversation, and progress and refine a preferred model. A number of hard questions have been raised in phase 1 of the project that will need to be answered.

A preferred model will not necessarily be one of those presented in Chapter 15 of the synthesis report. But the choice of model will not be arbitrary. Indeed, selecting a preferred model will be a crucial first part of phase 2, not a pre-existing choice. It is also unlikely that there will be full agreement as to the preferred model progressed in phase 2. It is therefore important to note that the analysis in phase 1 can stand alone and be used to inform others’ choices and preferences for a future system even if they do not align with those made in phase 2.

Phase 2 of the project will proceed in three key parts over the course of 2019. These parts are:

1. To engage with stakeholders to generate a set of criteria by which a preferred model can be selected, and to select a preferred model based on those criteria
2. To develop the selected model into a tangible prospect for reform
3. To map out a pathway and timetable for reform

By constructing a tangible, holistic architecture for the system as a whole, we are providing government with a blueprint for change. Furthermore, by charting a pathway to realising that option, we are recognising that the process of change is not easy. It must be carefully managed, and does not have to happen all at once or by the same means. However, that need not be a reason to be less ambitious, or compromise, about much needed reform. A model that some may disagree with may seem less objectionable when reasonable timeframes and safeguards are put around the process of getting there.

A number of key questions will be addressed throughout phase 2 of the project. For example:

- What kind of criteria do we adopt when selecting a preferred model, and what weightings do we give them?
- What do those criteria and weightings mean in practice for difficult reform choices that must be made?
- What would the key statutes and statutory instruments of a reformed system look like?
- In what way would we draft key statutory sections, such as purposes, principles and links between statutes?
- What are the key features of a reformed system’s institutional arrangements?
- How would a reformed system apply to a series of topical real world scenarios, including particular issues, domains, sectors and spaces (eg urban)?
- What issues are likely to arise when we seek to transition from the present system to a reformed system, and how do we best address those?
- What does the pathway look like to enable such transition, and how long should it take?
- How should it reflect contemporary and anticipated changes such as moving towards a low carbon economy?
- Which parts of a reformed system could or should be subject to staged implementation and what should we do first?

We welcome any responses to these (or other relevant) questions, which can be sent to RMProject@eds.org.nz.

We expect that the impact of phase 2 will be twofold. First, it will contribute to and influence the reform work that the government plans to do. EDS will be working closely with government over the course of the project, especially as it is likely to overlap in time with the latter’s work on system reform. But phase 2 is also relevant to the multitude of more targeted reform processes that are underway or proposed (such as the Housing and Urban Development Authority and three waters reform) which when taken together have significant implications for the overall operation of the wider system. Secondly, phase 2 will provide people outside government, who wish to contribute to that process and hold decision-makers to account, a robust framework and model for change to reflect on. We are also keen to share ideas with the opposition: cross-party support for resource management reform is highly desirable.

This work presents a rare opportunity to influence a once in a generation political appetite for change. Having laid a robust foundation for reform in phase 1, phase 2 of the project is about translating that into a practical toolbox for policy makers by constructing a specific and concrete model and outlining steps to implement it over time.
New Zealand’s current resource management system is not delivering the environmental, social, economic and cultural outcomes we want. It is increasingly complex, incoherent, and inaccessible. We are convinced we can do better. This is a conversation for all New Zealanders to be a part of. It is not a technocratic exercise just for lawyers and planners, but one that goes to the heart of our values as a nation and as human beings.

Finally, we acknowledge with thanks the support of the New Zealand Law Foundation together with our business partners, Employers and Manufacturers Association (Northern), Property Council New Zealand and Infrastructure New Zealand.

To facilitate this conversation EDS is inviting considered feedback on the synthesis report summarised in this paper. Feedback can be sent to RMProject@eds.org.nz. The full report can be found in electronic form at www.eds.org.nz/our-work/rm-reform-project/. Hard copies of the report are also available for no charge (postage and handling only).

There will also be various opportunities to engage over the course of phase 2. We will be conducting interviews with stakeholders, running workshops, and presenting at conferences. We are also happy to receive emails at the address above.
Appendix 1: What will happen to existing legislation in Model 1

<table>
<thead>
<tr>
<th>Primary legislation in the current system</th>
<th>Primary legislation in a future system</th>
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<tbody>
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</tr>
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</tr>
<tr>
<td>Land Transport Management Act</td>
<td>Land Transport Management Act</td>
<td>Biosecurity Act</td>
</tr>
<tr>
<td>Housing and Urban Development Authority Act</td>
<td>Waste Minimisation Act</td>
<td>Waste Minimisation Act</td>
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<tr>
<td>Local Government Act</td>
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<td>Climate Change Response Act</td>
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<tr>
<td>Environment Act</td>
<td>Environment Act</td>
<td>Building Act</td>
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<tr>
<td>Environmental Reporting Act</td>
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<td>Building Act</td>
</tr>
<tr>
<td>Various Treaty settlement legislation</td>
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</tr>
<tr>
<td>Forests Act</td>
<td>Forests Act</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 2: Key features of Model 1

**Well-being**
- Biosecurity Act
  - Pest management plans
  - Pathway management plans

**Treaty settlement and targeted**
- National spatial plan (sign off by Cabinet)
  - Resource Management Act
    - (define “while”, broaden ss 6 and 7 to include allocation, climate change mitigation, urban)
    - Government policy statement on environmental bottom lines (including fisheries) (Ministers for the Environment and of Conservation)

**Spatial**
- EEZ Plans
  - Collaborative process for deallocation
  - Regional policy statements

**Regional plans**
- Unitary plans (regional, local and unitary councils)
  - District plans

**Resource consents**
- Tendering process
  - Notification (council)
    - Decision (independent Commissioners)
  - Appeal (Environment Court)
- Monitoring and enforcement (EPA)
  - Tradeable rights (with limits) (regional councils)

**Front-of house permitting system (EPA)**
- Permit application
  - Concessions, reserve swaps etc
- Various conservation management strategies and plans
- Monitoring and enforcement (DOC)

**Waste Minimisation Act**
- Regulations
  - Product stewardship schemes
  - Waste minimisation levy

**Zero Carbon Act**
- Climate Change Response Act
  - Emissions trading scheme (EPA)
  - Carbon budget
  - National climate change adaptation plan (Minister for the Environment)

**Building Act**
- Building Code
  - Building consents

**Building consents**
- Regulations
  - Permits

**Hazardous Substances and New Organisms Act**
- Various conservation statutes

**Waste Minimisation Act**
- Minimisation Act
  - Building consents
  - Minimisation levy

**Building Act**
- Building Code
  - Various conservation statutes

**Building Code**
- Permits
  - Permit application
  - Concessions, reserve swaps etc

**Various conservation statutes**
- Various conservation management strategies and plans

**Waste Minimisation Act**
- Waste
  - Waste

**Zero Carbon Act**
- Zero Carbon Act
  - Building Code
  - Building Act

**Building Code**
- Stewardship
  - Regulations
  - Product stewardship schemes
  - Waste minimisation levy

**Climate Change Response Act**
- Regulations
  - Emissions trading scheme (EPA)

**Biosecurity Act**
- Pest management plans
  - Pathway management plans

**National spatial plan**
- (sign off by Cabinet)

**Resource Management Act**
- (define “while”, broaden ss 6 and 7 to include allocation, climate change mitigation, urban)

**Government policy statement**
- on environmental bottom lines (including fisheries) (Ministers for the Environment and of Conservation)

**Regional plans**
- Unitary plans (regional, local and unitary councils)

**District plans**
- EEZ Plans
  - Collaborative process for deallocation
  - Regional policy statements

**Significance**
- Black arrows simply indicate the direction of a process without a particular
  - Green arrows: “have regard to”, simple “input”, or equivalent
  - Blue arrows: “be consistent with” or equivalent;
  - Red arrows: “give effect to”, “directly insert” or equivalent;

**Colours**
- Bold text and bold coloured boxes indicates primary legislation; faded boxes of corresponding
  - that may be of particular interest.

**Blue, orange, yellow and purple boxes**
- Denote the “core” frameworks of a reformed system

**Arrows**
- Indicate different relationships between elements of the system
  - Where relevant, decision-makers are included in (brackets).
  - Colours indicate subordinate instruments and tools within that legislative framework.
  - Bold text and bold coloured boxes indicate primary legislation; faded boxes of corresponding
  - that may be of particular interest.
Blue, orange, yellow and purple boxes denote the “core” frameworks of a reformed system that may be of particular interest.

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Where relevant, decision-makers are included in (brackets).

Arrows indicate different relationships between elements of the system.

- Red arrows: “give effect to”, “directly insert” or equivalent;
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- Black arrows simply indicate the direction of a process without a particular normative instruction

**ACRONYMS**

- CCO: council-controlled organisation
- DoC: Department of Conservation
- MBIE: Ministry of Business, Innovation and Employment
- MfE: Ministry for the Environment
- RLTC: regional land transport committee

**Existing funding mechanisms with addition of more systemic, demand-based central government grants**
Appendix 3: What will happen to existing legislation in Model 2

<table>
<thead>
<tr>
<th>Primary legislation in the current system</th>
<th>Primary legislation in a future system</th>
<th>Primary legislation in the current system</th>
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<td>Land Transport Management Act</td>
<td>Local Government Act</td>
<td>Local Government Act</td>
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<tr>
<td>Resource Management Act</td>
<td>Planning Act</td>
<td>Proposed Housing and Urban Development Authority Act</td>
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<td>Heritage New Zealand (Pouhere Taonga) Act</td>
<td>Environment Act</td>
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<td>Environment Act</td>
<td>Allocation Act</td>
<td>Crown Minerals Act</td>
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<td>Fisheries Act</td>
<td>Zero Carbon Act</td>
<td>Climate Change Response Act</td>
</tr>
<tr>
<td>Biosecurity Act</td>
<td>Biosecurity Act</td>
<td>Hazardous Substances and New Organisms Act</td>
</tr>
<tr>
<td>Public Defender’s Office Act</td>
<td>Building Act</td>
<td>Building Act</td>
</tr>
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<td>Various Treaty settlement legislation</td>
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<tr>
<td>Marine and Coastal Area (Takutai Moana) Act</td>
<td>Waste Minimisation Act</td>
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</tr>
</tbody>
</table>
Appendix 4: Key features of Model 2
Orange, yellow and purple boxes denote the “core” frameworks of a reformed system that may be of particular interest.

Bold text and bold coloured boxes indicates primary legislation; faded boxes of corresponding colours indicate subordinate instruments and tools within that legislative framework.

Where relevant, decision-makers are included in (brackets). Arrows indicate different relationships between elements of the system

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CCO = council-controlled organisation
Appendix 5: What will happen to existing legislation in Model 3

<table>
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<tr>
<th>Primary legislation in the current system</th>
<th>Primary legislation in a future system</th>
<th>Primary legislation in the current system</th>
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<tbody>
<tr>
<td>Land Transport Management Act</td>
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<td>Various conservation statutes (eg Conservation Act, National Parks Act, Reserves Act, Marine Mammals Protection Act etc)</td>
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<td>Resource Management Act</td>
<td>Resources Stewardship Act</td>
<td>Heritage New Zealand (Pouhere Taonga) Act Waste Minimisation Act</td>
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<td>EEZ Act</td>
<td>Environmental Protection Act</td>
<td>Fisheries Act</td>
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<tr>
<td>Climate Change Response Act</td>
<td>Allocation Act</td>
<td>Proposed Zero Carbon Act</td>
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<td>Biosecurity Act (pests)</td>
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<td>Forests Act</td>
<td>Environmental Reporting Act</td>
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<td>Local Government Act</td>
<td>Resource Management Strategy Act</td>
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<td>Hazardous Substances and New Organisms Act</td>
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<td>Environmental Protection Authority Act</td>
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</table>
## Appendix 6: Key features of Model 3

<table>
<thead>
<tr>
<th>Environmental Protection Act (bottom lines)</th>
<th>Resource Management Commission Public submissions</th>
<th>New Zealand Resource Management Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Governance Act</td>
<td>Regional and sectoral sub-strategies</td>
<td>National spatial plan</td>
</tr>
<tr>
<td>Resource Management Commission</td>
<td></td>
<td>Regional spatial plan (regional and local)</td>
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<td>Public submissions</td>
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<td>Regional Plans</td>
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<td>Regional Policy statements</td>
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<td>District Plans</td>
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<td>Unitary plans for land and coastal</td>
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<td>marine area</td>
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<td>(regional, local and unitary councils,</td>
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<td>iwi and hapū)</td>
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<td>Comprehensive environmental policies (EPA)</td>
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<td>Public submissions</td>
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<tr>
<td>Re-aquisitioning rights (EPA)</td>
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<tr>
<td>Regulatory allocation (eg to Māori, public</td>
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<td>purposes) (EPA)</td>
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<tr>
<td>Resource auctioning above regulatory allocation (EPA)</td>
<td>Environmental stewardship permit (independent commissioners)</td>
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<tr>
<td>Re-allocation: trading schemes (EPA)</td>
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<td>Treaty settlement and</td>
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<tr>
<td>Environmental Footprint Tax</td>
<td>Environmental protection permit</td>
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### Environmental Protection

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- **Unitary plans for land and coastal marine area**
- **Regional Plans**
- **Regional Policy statements**
- **District Plans**
- **Comprehensive regulatory environmental bottom lines (EPA)**
- **Protected areas management plans (Department of Conservation)**
- **Protected species management plans (Department of Conservation)**
- **Comprehensive regulatory environmental bottom lines (EPA)**
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### Environmental Protection

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- RTLC: regional land transport committee
- HUDA: Housing and Urban Development Authority