13 Statutory framework, institutions and governance

Key points

- A future planning system should:
  - enable land use to be flexible and responsive to changing needs, preferences, technology and information;
  - provide sufficient development capacity to meet demand;
  - promote mobility of residents and goods to and through the city;
  - safeguard the natural environment by defining the boundaries within which development and land-use activities must operate; and
  - recognise and actively protect Māori Treaty interests in the built and natural environments.
- Future planning legislation needs clear statutory objectives and principles for the built and natural environments, and principles that, by setting out the limits and scope of regulation, together guide regulatory decision making and review of plans.
- A Regional Spatial Strategy (RSS) should be the platform for all plan making in a region. The RSS, a Regional Policy Statement for the Natural Environment, and District Plans should be developed together as a package, and reviewed by an Independent Hearings Panel (IHP) appointed for the purpose.
- IHPs should be appointed by an independent statutory agency (ISA), evaluate submissions and have the power to amend notified Plans. There should be no appeals on merits from the decisions of an IHP; appeals on points of law should be to the Environment Court.
- The ISA should be governed by a board appointed by Ministers after consultation with stakeholders. The ISA should be independent in its appointment of IHP members. It should develop a pool of competent panel members, provide guidance to IHPs on procedures and processes and provide guidance to central government on continuing refinement of the planning system.
- Currently, the stewardship of the planning system is unclear and fragmented across a number of Ministers and departments. A future planning system should have clear and capable leadership on the built and natural environments, with regulatory stewardship obligations clearly assigned to an appropriate central government agency.
- To carry out its stewardship role, central government needs stronger capability to monitor the performance, conditions and risks of the planning system, and to provide advice on improvements and on well-informed and timely interventions in that system.
- Central and local government need to develop constructive relationships based on agreed principles that support meaningful engagement and effective dialogue. They should work together to develop information systems that provide up-to-date granular information on both the built and natural environments.
- A future planning system should provide for a National Māori Advisory Board on Planning and the Treaty of Waitangi; and introduce tikanga Māori and mātauranga Māori into methods to monitor and assess the performance of the planning system.

13.1 The main features of a high-performing urban planning system

Urban planning makes an important contribution to urban development by managing its potential negative effects on other people and the environment; making fair and efficient collective decisions about the provision of local public goods; and coordinating the provision of infrastructure (Chapter 3).

Chapters 3, 8, 9 and 10 all, in various ways, stress the complex, adaptive nature of urban systems and the natural environments in which they are situated. Urban planning has to recognise and take account of this complexity in the social, economic, physical and natural environments. In particular, planning must provide room for flexible and adaptive responses to emerging and often unpredictable changes.

Previous chapters recommend the major features of a high-performing future urban planning system:

- clear purposes for planning in the built environment, and in particular providing development capacity to meet demand and supporting the mobility of residents through their city (Chapter 8);
- clear purposes and principles to ensure that development occurs within the capacity of the natural environment and the ecosystems that support it (Chapter 9);
- strong guidance on recognising and actively protecting Māori interests in the environment (Chapter 7);
- statutory spatial plans – Regional Spatial Strategies (RSSs) – as the platform for integrated plan making and infrastructure investments in a region (Chapter 10);
- less prescription, better use of discretion, greater certainty and more speed in plan making, guided by clear statutory principles and more immediate and systematic review by Independent Hearings Panels (IHPs) (Chapter 8);
- use of land price information to drive the release of development capacity (Chapter 8);
- more tools for councils to finance, fund and provide infrastructure to meet development needs (Chapter 11); and
- more room for competition in urban land markets; and stronger support for urban development authorities (UDAs) (Chapter 12).

Taken together, these recommendations represent a substantial reform of the current system. This chapter looks at the statutory framework, institutions and governance arrangements that will support a coherent and effective future planning system. This will require new land-use planning and resource management legislation to replace the Resource Management Act 1991 (RMA). Chapter 14 describes developments in culture and capability to support a more effective future planning system.

R13.1

A future planning system should:

- enable land use to be flexible and responsive to changing needs, preferences, technology and information;
- provide sufficient development capacity to meet demand;
- promote mobility of residents and goods to and through the city;
- safeguard the natural environment by defining the boundaries within which development and land-use activities must operate; and
- recognise and actively protect Māori Treaty interests in the built and natural environments.

This chapter discusses five key aspects of the urban planning framework:

- the overarching legislative framework (section 13.2);
- the broad type and hierarchy of planning documents (section 13.3);
- plans and planning processes (section 13.4);
- processes for reviewing and appealing planning documents and consents (section 13.5); and
- stewardship of the planning system (section 13.6).

While this inquiry is focused on urban planning, the Commission does not propose a separate planning system for urban areas. Rather, its recommendations identify how a future planning system can better support effective planning in urban areas. This chapter uses the terms "urban planning system" and "planning system" interchangeably.

13.2 Overarching legislative framework

The current planning system is governed by three main statutes – the RMA, the Local Government Act 2002 (LGA), and the Land Transport Management Act 2003 (LTMA). Each of these statutes has its own purpose and objectives. The RMA primarily regulates land use and resource management, and the LGA aims to promote democratic and effective local government and the efficient provision of infrastructure and local public goods. The LTMA seeks to contribute to an effective, efficient and safe transport system. The connections between these statutes are important, because both land use regulation and infrastructure investments shape the supply of development capacity.

Clear objectives for regulation in the natural and the built environments

The built and natural environments require different regulatory approaches. The built environment requires assessments that recognise the benefits of urban development and allow change within environmentally sustainable limits (Chapter 8). The natural environment requires a clear focus on setting standards that must be met, and defining the conditions (in terms of effects on the natural environment) within which development can occur (Chapter 9).

Current statutes and practice blur the two environments, and provide inadequate security about protection of the natural environment and insufficient certainty about the ability to develop within urban areas. The difficulty can be traced back to:

- ambiguity around the purpose of the RMA;
- an expansive definition of the environment combined with a focus on avoiding, remedying or mitigating adverse effects on the broadly defined environment; and
- a lack of clarity around objectives for the built and natural environments (Chapter 5).

Early critics of the RMA charged that, in leaving so much indeterminacy in the Act's language, Parliament had abdicated its rule-making responsibilities, leaving the courts to resolve difficult issues (McLean, 1992; Harris, 1993). At the local level, as the Parliamentary Commissioner for the Environment (PCE) has observed, the RMA provides little guidance as to which environmental effects councils should focus on when considering resource consent applications; all "are to be avoided, remedied or mitigated – regardless of their importance" (2014, p. 1).

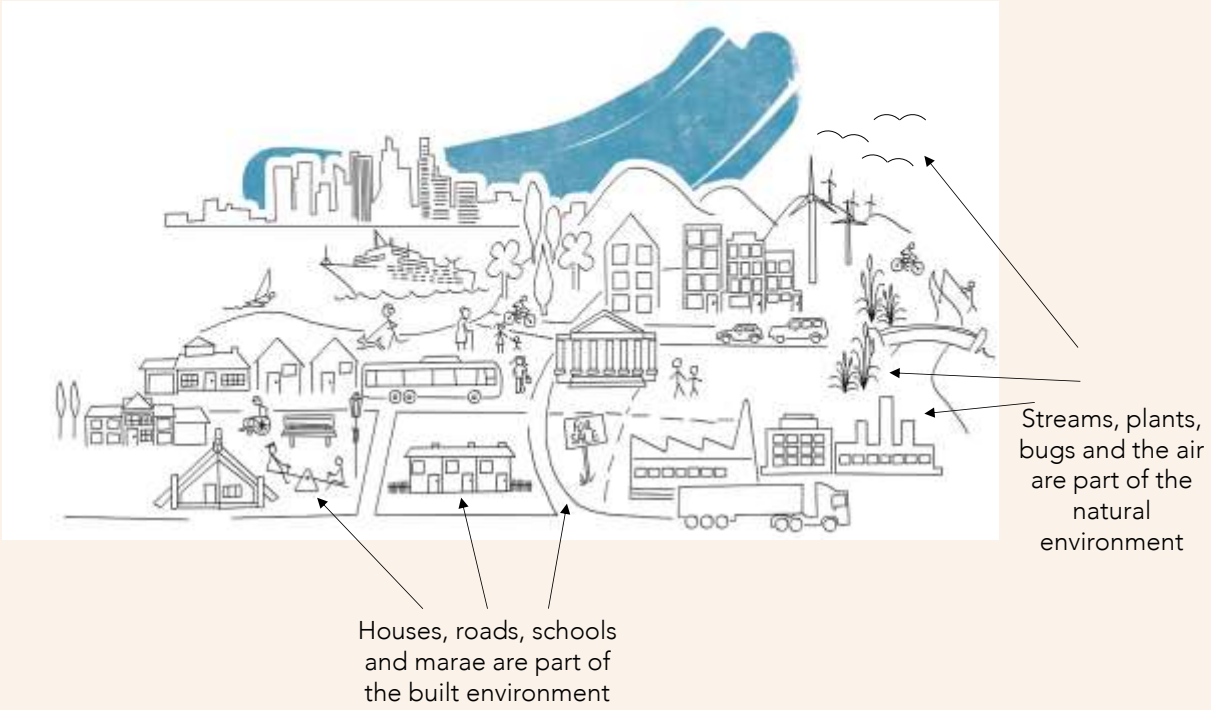
Creating clear objectives for the built and natural components of the environment should be a priority for any future planning system. Clear objectives are vital for promoting accountability, compliance, focus, legitimacy and predictability within the planning system. Chapters 8 and 9 have also highlighted the importance of having clear principles to guide decision making and review of Plans and decisions. Statutory principles will help reduce unnecessary prescription and inappropriate use of discretion. Some principles will apply specifically to each environment and some will be cross-cutting.

Definitions of the built and natural environment

Chapter 1 briefly sets out the Commission's approach to thinking about the built and natural environments and the relationship between them. To be clear, urban areas include both built and natural elements (Box 13.1).

Box 13.1 **The built and natural environments**

Urban areas include built and natural elements.



The built and natural environments have varied definitions. The Australian Bureau of Statistics provides an example developed for statistical purposes:

> The built environment is the human-made surroundings where people gather to live, work and play. It encompasses both the physical structures where people do these activities and the supporting infrastructures, such as transport, water and energy networks… The natural environment is a concept which encompasses climate, atmosphere, natural resources, water, land, ecosystems and biodiversity. (2015)

K. Palmer suggests

> the built environment is that part of the physical environment constructed by human activity … A broader definition …is that the built environment consists of the following elements: land use patterns, distribution across space of activities and buildings that house the activities, transportation systems, physical infrastructure or roads and other services systems, and urban design. (2017, p. 35)

The RMA identifies "all natural and physical resources" as part of its very broad definition of the environment. Natural resources include "land, water, air, soil, minerals, and energy, [and] all forms of plants and animals (whether native to New Zealand or introduced)" (s 2).

The expansive definition of "the environment" in the RMA reflects the complex relationships that the built and natural environments have with the broader social, cultural and economic environments (Chapter 9). The Resource Management Law Association submitted:

> The definition of the environment in the RMA is necessarily broad so as to encompass the complex interrelationships between natural and physical resources, and recognise different ways that reflect our social, cultural, and economic values and aspirations. (sub. DR115, p. 3)

Yet, the broader the definition of the environment used, the more important it is that future planning legislation provides clarity on key objectives and priorities for the built and natural environments. A clear focus is needed to achieve key outcomes such as the supply of sufficient development capacity to meet demand (and so avoid escalating land prices in fast growing cities) (Chapter 8); or the protection of natural habitats from the cumulative effects of agricultural discharges into waterways (Chapter 9). Associate Professor Ken Palmer noted of the RMA:

> The bundling together of objectives for land, air and water regulation under s 6 (matters of national importance) and s 7 (other matters) has been confusing and lacking in clarity. (2017, p. 3)

Clear statutory purposes and objectives for regulating the built and natural environments

Future planning legislation should set out a clear purpose or purposes for the built and natural environments. The purpose statement should be developed through a process of wide consultation and reflect contemporary perspectives (K. Palmer, 2017).

The purposes should reflect the positive benefits from land uses that meet the social, cultural and economic needs of New Zealanders, while safeguarding the integrity of the natural environment.

The Commission recommends that new planning and resource management legislation should provide additional guidance through the use of high-level *objectives* and *principles for both the built and natural environment*. The objectives and principles should aim to secure the desirable outcomes for both the built and natural environments set out in Chapters 8 and 9. K. Palmer advised the Commission that,

> with effective definition, cross reference and recognition of other consequential factors, separate and complementary objectives for the built and natural environments could be maintained in legislation. (2017, p. 3)

The precise wording of objectives and principles, and whether they are best placed in primary or secondary legislation, are matters that should be decided on the basis of extensive consultation and expertise in legislative drafting. Generally, objectives that are likely to change in the medium term, as a result of improving scientific knowledge or better information on environmental outcomes, are best placed in secondary legislation, such as National Policy Statements (NPSs) and National Environmental Standards (NESs). These instruments are easier to adjust and more responsive than primary legislation (NZPC, 2014b).

Objectives and principles for regulating the built environment

As proposed in Chapter 8, the key objectives for the built environment should be to:

- ensure the supply of sufficient development capacity to meet demand;
- enable residents to get to jobs and other activities;
- enable travel between businesses and their suppliers, customers and workers; and
- provide active protection of tāngata whenua Treaty interests in the built environment.

Principles specific to the built environment could include principles to guide decision makers in weighing the benefits of development against any adverse effects on other residents and businesses in the built environment. This would include guidance on avoiding, remedying or mitigating any such effects.

K. Palmer notes that "[b]roader elements of social wellbeing may be included as part of the objectives of the built environment. A number of these elements are implicit in the definition of sustainable management in s 5 of the RMA" (2017, p. 35). Chapters 3 and 5 discuss the relationship between urban planning and broad social objectives.

Objectives and principles for the built environment should be balanced by a corresponding set for the natural environment and by cross-cutting principles (those that apply to regulation in both the built and natural environments).

Objectives and principles for regulating the natural environment

Possible statutory objectives for regulating the natural environment include:

- safeguarding the integrity of the natural environment;
- maintaining biodiversity;
- protecting places of outstanding natural character; and
- recognising and actively protecting tāngata whenua kaitiakitanga interests in the natural environment.

Principles for regulating the natural environment should cover, at least, principles to assist prioritisation of regulatory effort to safeguard the integrity of the natural environment. The PCE, for instance, has proposed such principles. Large-scale, cumulative, irreversible, and increasing adverse effects on the environment deserve particular attention, particularly if they carry a risk of tipping an environmental system into another state (PCE, 2014).

R13.2 Future planning legislation should provide a clear statutory purpose covering the built and natural environments and their relationship; clear statutory objectives to guide regulation of activities impacting on each of the built and natural environments; and clear principles to guide decision makers on how to give effect to the statutory objectives.

Cross-cutting principles

Land-use planning and resource management is mostly about regulating the effects on the natural environment of development in the built environment. The guiding principles should include some principles that span the two environments. These principles might cover:

- the setting of minimum environmental standards and environmental limits within which development can occur;
- decisions on development in the built environment that is within the established minimum standards and environmental limits, but which has some adverse effects on the natural environment; and
- decisions about avoiding, remedying or mitigating adverse effects of development on the natural environment.

Future planning legislation should provide another set of cross-cutting principles to guide efficient, fair, transparent, focused and proportionate decision making and processes. Chapter 8 reviewed current planning practices and established a clear need for such principles. Statutory principles of this type should guide plan making and IHP reviews of plans – together providing an impetus to improving the quality of plans and raising the capability and culture of plan makers (Chapter 14).

Principles to guide decision making and processes could include:

- using regulation only where it can reasonably be considered the most efficient and effective means of achieving the purposes of the legislation;
- using the minimum amount of prescription necessary to achieve the purposes of the legislation;
- using discretionary powers in a way that is appropriate to the significance and nature of the decision being made;
- using timely, efficient, consistent and cost-effective processes that are proportionate to the functions or powers being performed or exercised (Resource Management Amendment Bill, 2015);
- specifying how and when, and with what protections, the public interest can override conventional private property rights;

- pursuing only those outcomes directly related to the purpose of the legislation;
- ensuring effective community engagement when preparing plans and policies;
- using collaborative processes as appropriate to resolve conflicting positions on proposals; and
- ensuring that policies and plans are clearly written and accessible to the public.

In 2013, the government proposed an amendment that would have inserted a "methods" section into the RMA. The amendment aimed to create an expectation that councils would follow best practices when performing functions under the Act. It would have required, among other provisions, councils to ensure restrictions imposed on private land use and development were reasonable in light of the purpose of the RMA (New Zealand Government, 2013). The 2013 proposals did not proceed. The Resource Legislation Amendment Bill introduced in 2015 also contained procedural principles that, for instance, would require the proportionate exercise of powers under the Act and that policy statements and plans include only matters relevant to the purpose of the Act (clause 8). These proposed provisions, like the principles proposed by the Commission, were aimed in part at reigning in regulatory overreach.

R13.3 Future planning legislation should set out principles to guide the content of plans and the conduct of planning processes and decision making, so that planning is efficient, fair, transparent, focused on clearly defined and restrained statutory objectives and proportionate to the planning matters being regulated or decided.

Separate statutes or a single planning and resource management statute?

The inquiry draft report asked participants to comment on the advantages and disadvantages of two approaches to future planning and resource management legislation. The two approaches are:

- the development of two separate Acts – one covering the built environment, the other covering the natural environment; or
- a single Act, but with clearly distinguished objectives and principles for the built and natural environments.

Factors influencing this choice include the need to:

- avoid adding complexity to the system;
- retain an integrated approach to resource management;
- manage the interface between the natural and built components of the environment effectively;
- avoid arbitrary "boundary issues" between "urban" and "non-urban" areas; and
- enable effective integration of land use with infrastructure and transport planning.

The majority of inquiry participants strongly opposed establishing two separate Acts and none gave unequivocal support to two separate Acts. Many highlighted the inherent link between the built and natural components of the environment and the need to consider these components in an integrated fashion (Box 13.2). Local Government New Zealand (LGNZ), for instance, expressed concern that two Acts would undermine integrated management of resources and subsequently lead to a diminished focus in regulation on adverse effects of development on the natural environment (sub. DR113).

Other submitters argued that two statutes would create additional complexity, and increase misalignment across regulatory objectives (eg, Resource Management Law Association, sub. DR115). This would raise costs for both developers and councils (Auckland District Law Society, sub. DR70). Some observed that treating the built and natural components of the environment separately ran counter to the principles of kaupapa Māori (Ngāti Whātua Ōrākei, sub. DR76; Auckland Council, sub. DR86; Ngā Aho & Papa Pounamu, 2016b).

Box 13.2 **Separate legislation for built and natural components of the environment? Some views from submissions**

Greater Wellington Regional Council

> Creating separate regimes is of particular concern and problematic as the boundary between the built environment and natural environment is not clear cut. We consider that the built environment is a part of the natural environment, and that a regulatory separation of the two may be both impractical and counterproductive. (sub. DR80, p. 2)

Auckland Council

> The council considers separating planning from environmental protection law within an urban planning context could simply exacerbate existing legislative misalignments and lead to further deterioration of the environment. In theory, while it may provide potential to enable simpler and faster consenting in urban areas, legislative interpretation and implementation could be challenging. (sub. DR86, p. 15)

Allison Tindale

> I believe [separation] would be contrary to integrated management of the entire environment, and could lead to effects on the natural environment from the urban environment being ignored. Urban development has considerable potential to result in declining water quality, if soil erosion and stormwater are not adequately controlled at source. (sub. DR110, p. 10)

Trustpower

> Trustpower accepts, in principle, that there may be merit in splitting the RMA into two distinct pieces of legislation… That said, it is noted that the sustainable management of the built environment and natural environment is inextricably linked and integrated management is required in order to ensure the best outcomes for natural and physical resources. (sub. DR61, p. 7)

SmartGrowth

> SmartGrowth prefers keeping a single resource management law with clearly separated built and natural environment sections. Establishing two separate laws will add to the complexity of the planning system. There are also a number of situations where the built and natural environment overlap and one affects the other. Keeping the two together in a single statute would help to ensure more streamlined processes. (sub. DR063, p. 4)

Water New Zealand

> In terms of the two options, Water NZ considers the first option may lead to a more complex piece of legislation but may be better at showing the clear inter-relationship between the built and natural environment sections. While the second option may provide a greater focus on the two areas there is the potential for a silo approach to be taken and for natural environment law to be a secondary consideration (if it is considered at all). However, as noted in the [Commission's Draft] Report, the second approach may allow better integration of land use with infrastructure and land transport planning. (sub. DR067, p. 13)

Associate Professor Ken Palmer advised against separate legislation for regulation in the natural and built environments. Though stating that such separation would be a feasible option, Palmer noted that:

- doing so would risk losing the advantages achieved by the RMA in offering a generally "one-stop shop" approach to resource consents; and
- given the different (albeit overlapping) purposes, timeframes and spatial scales of processes under local government legislation (currently the LGA), land transport legislation (the LTMA) and the RMA, the advantages in combining provisions relating to the built environment in one piece of legislation would be minimal; rather, doing so would likely add complexity (2017).

Instead, Palmer favours clearer objectives for the built and natural environments within a single planning and resource management Act, with better cross-referencing and improved alignment of processes across the three types of legislation (discussed further in section 13.4).

The Commission agrees with this analysis and with the majority of submitters. While two statutes would bring into focus specific objectives for the built and natural environment, this is likely to come at the cost of greater complexity and less integration.

The interactions between the natural and physical environments are deep and intrinsic (Chapter 9). These links favour an integrated approach to environmental regulation. If designed well, a single statute should achieve the same (or greater) level of clarity than two separate statutes while better reflecting the connections between the built and natural components of the environment. This will encourage and support better-integrated and more-efficient regulatory decisions.

R13.4 The primary statutory base for a future planning system should be a single piece of legislation covering land-use planning and resource management. The single piece of legislation should have clear and separate objectives for regulating the built and natural environments. There should continue to be separate legislation covering land transport management and the constitution and operation of local government.

A decisive shift from the Resource Management Act

The Commission proposes a revised statutory purpose and clear objectives for regulating the built and natural environments. This represents a significant and profound shift from the current provisions under the RMA.

The RMA lacks clarity in purpose and objectives, and has proved to be complex, cumbersome, inefficient and inaccessible in practice, while failing to provide a clear guide to the limits of regulation (Chapters 5 and 8). In addition, as shown by the failure of fast-growing cities to provide adequate development capacity, the RMA has provided insufficient focus on the benefits of urban development.

While a new statute would retain some of the conceptual strengths of the RMA (such as a hierarchy of planning documents, an emphasis on effective community engagement and integrated consent processes), it would introduce institutional arrangements and checks and balances aimed at improving planning outcomes at the local, regional and national level.

The Commission also stresses that legislation is only one (albeit important) component of the planning system. A deep change in culture and capability, and improved national stewardship, are also needed to achieve better planning outcomes for the built and natural environment (Chapter 14 and section 13.6).

13.3 The hierarchy of planning documents

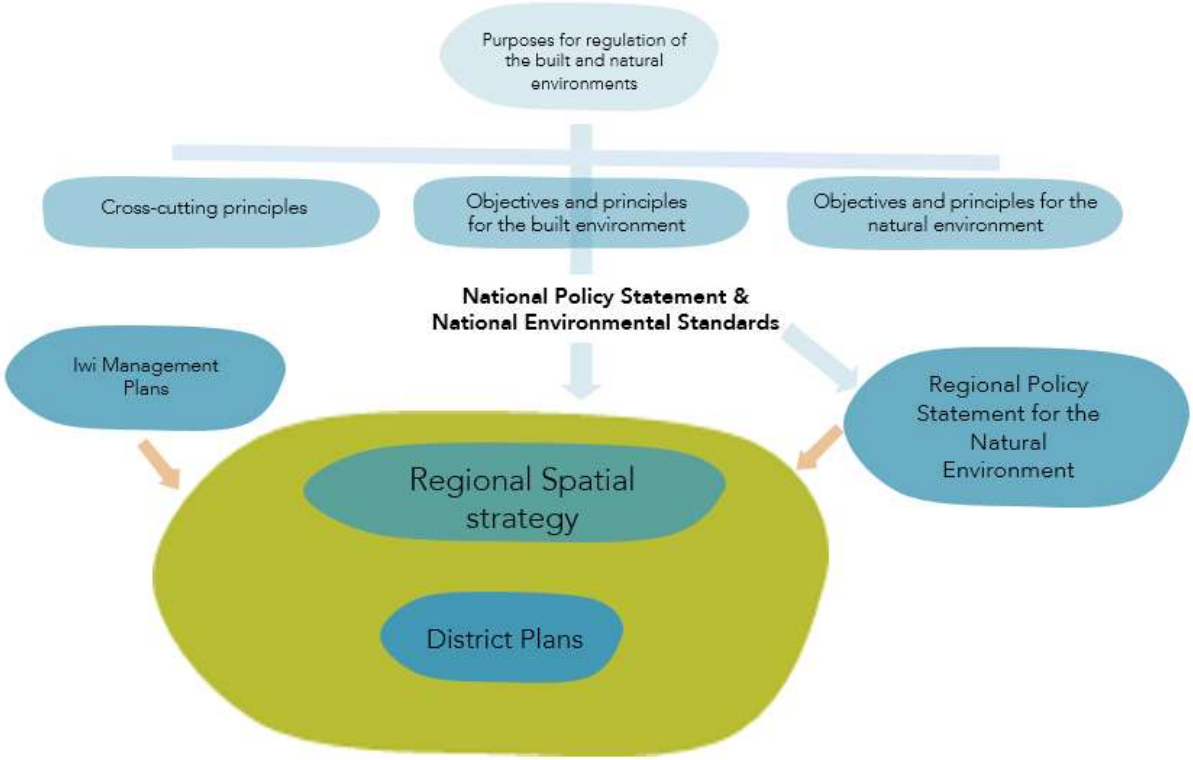
This chapter and previous chapters have set out the Commission's proposals for the main elements of legislation and planning instruments in a future planning system (section 13.1). These cover:

- purposes, objectives and principles for the built and natural environments (section 13.2);
- the Regional Spatial Strategy (RSS) (Chapter 10); and
- the Regional Policy Statement for the Natural Environment (RPS-NE) incorporating current elements of Regional Policy Statements (RPSs) and Regional Plans that regulate the natural environment (Chapter 9).

The main difference from current arrangements is the clearer distinction between spatial planning as a platform for land-use planning and infrastructure investments; and planning for protection of the natural environment. In addition, as discussed in sections 13.4 and 13.5, the Commission proposes that the RSS, the RPS-NE and district Plans be developed together as a coherent package and reviewed as a package by an IHP. Legislation will require local authorities to take into account the relevant provisions of an Iwi

Management Plan (IMP) in developing an RSS and District Plans (Chapter 7). The RSS, RPS-NE and district Plans will be required to give effect to the provisions of NPSs and NESs (Figure 13.1).

Figure 13.1 Land-use and resource-management plans in a future planning system



National guidance

One criticism of the current planning system is the failure of central government to provide sufficient guidance to assist councils to carry out their planning responsibilities (Chapters 5, 7, 8 and 9). Section 13.6 discusses the role of system stewards in proactively promoting issues of national importance and the sound operation of the planning system.

NPSs and NESs would continue to have the purpose and functions that they have currently but would likely play a stronger role in clarifying objectives and providing guidance to councils. Chapter 7, for instance, proposes an NPS on giving effect to the Crown's Treaty of Waitangi obligations in land-use planning and resource management.

Currently only the Coastal Policy Statement is mandatory in legislation. The Commission believes a future planning Act should specify a core suite of mandatory national instruments. For instance, the NPS covering the Crown's Treaty obligations in planning should be mandatory.

For the natural environment, the "core national instruments" could cover:

- air quality;
- water quality;
- biodiversity conservation; and
- coastal management.

For the built environment, the core national instruments could cover:

- heritage protection priorities;
- electricity transmission;
- telecommunications facilities; and
- urban development capacity (UDC).

The Government Policy Statement (GPS) under the LTMA will continue to provide guidance on transport-related issues.

It will be important for central government to develop clear and transparent criteria for selecting "nationally important" issues. In particular, these criteria should cover *the distributions of cost and benefits emerging from the issue*. When costs and benefits are contained locally then local, rather than national, decision makers should have responsibility for setting priorities.

Independent panels of experts, with deep knowledge of the relevant area, should advise on the development of NPSs and NESs. This is particularly important for guidance on regulation in the natural environment. Up-to-date and authoritative environmental science, knowledge of current environmental outcomes and an understanding of the interface between the built and natural environments are essential (Chapter 9).

Central government can also usefully provide informal guidance in various ways on how local authorities could best carry out their regulatory responsibilities. Providing guidance is a part of central government's role as system steward (section 13.6).

13.4 Types of plans and planning processes

This section provides more detail on the Commission's proposals for land use Plans and planning processes.

The Commission proposes three main types of statutory plans to regulate land use.

- An RSS would:
  - integrate indicative land uses with provision for future corridors for water and transport infrastructure and land for community facilities (eg, schools, hospitals and recreational spaces), and natural hazard management (Chapter 10); and
  - recognise and actively protect sites and natural features of special significance to Māori (such as whenua taonga, whenua tapu and mahinga kai); other sites with recognised heritage or ecological value, and outstanding natural features and landscapes (Chapters 7 and 10);
- An RPS-NE would establish the ecologically sustainable limits within which development in the region must occur; standards for ecosystem services; and would establish standards that reflect community preferences for protection of the natural environment (Chapter 9);
- District Plans would set out rules to regulate decisions on land use. District Plans would have functions broadly similar to current district plans.

Regional Spatial Strategy

Inquiry participants strongly supported spatial planning as a formal part of a suite of instruments for land-use planning (Chapter 10). The Commission proposes that regional councils will lead the development of spatial plans in the form of RSSs. Regional councils and the constituent territorial authorities in each region will jointly sign off on the RSS.

Local authorities and other agencies such as the New Zealand Transport Agency (NZTA), together with iwi and hapū authorities, and water, transport and social infrastructure providers, will work collaboratively to develop the RSS. Councils will also need to identify and engage with other parties (such as developers,

landowners and groups representing particular interests, and the wider community) who will be affected by the provisions set out in an RSS. The Commission proposes that local authorities have the flexibility to use the most appropriate engagement methods and processes to gauge views and resolve conflicts (Chapter 8).

The RSS would lay out the spatial bones of an urban area and make available options for using land for infrastructure. It would not specify the specific form or detail of that infrastructure. Infrastructure providers, in developing their investment plans, would be required by statute to take into account the provisions of an RSS.

For instance, regional councils would continue to lead the development of Regional Land Transport Plans (RLTPs) under the LTMA (or equivalent legislation). The RLTP reflects central government spending priorities set out in the GPS on land transport, but will also need to take into account the provisions of an RSS. Currently, the RLTP needs to consider any relevant RPS.

Likewise, the RSS will provide a platform for local authorities to coordinate their water and transport infrastructure investments with land-use planning. The RSS process will also provide an opportunity for local and central government to discuss possible collaboration (including joint funding) of large, city-shaping infrastructure with national benefits (Chapter 10).

Good processes can improve coordination of infrastructure investments with land use. Chapter 10 describes how "facilitated discussions" can be a means to iterate towards a closer-to-optimal set of interdependent investment decisions.

The RSS will need to give effect to any mandatory provisions of an NPS, NES or the RPS-NE (Chapter 9). There should also be capability, perhaps provided by central government agencies, to ensure that RSSs deal efficiently and effectively with cross-regional issues. NZTA already carries such a role in dealing with inter-regional transport issues.

The RSS will replace the spatial elements of the current RPS.

Regional Policy Statement for the Natural Environment

Regional councils will lead the development of, and sign off, the RPS-NE. Developing the RPS-NE will be a collaborative process, with similar participants to the RSS. Central government agencies with responsibility for the natural environment (currently, for instance, including the Ministry for the Environment (MfE) and the Department of Conservation) would also be involved. The RPS-NE will give effect to the high-level objectives for the natural environment and relevant national direction through NPSs and NESs.

A well-founded science base and up-to-date and granular information on natural environment outcomes in a region will be essential for an effective RPS-NE (Chapter 9). An RPS-NE should include plans for monitoring of environmental outcomes in the region, and provide for analysis and dissemination of data as it becomes available.

The RPS-NE will include the elements of current RPSs and Regional Plans that deal with regulation of the natural environment. Generally, current Regional Plans primarily deal with such regulatory matters (K. Palmer, 2017). Under the RMA, regional plans are not mandatory; but, in practice, regional councils invariably operate a number of regional plans, each covering different aspects of environmental regulation.

Under the Commission's proposals, the RSS and RPS-NE would replace the current RPSs and current Regional Plans. The Commission considers that this division of function between the RSS and the RPS-NE will lead to greater clarity in land-use planning and resource management.

Regional Coastal Policy Statements could remain separate as at present. Yet it should be possible to incorporate the elements that regulate the natural environment into the RPS-NE and those that regulate the built environment (eg, coastal structures) into the RSS or District Plans.

Environmental monitoring and enforcement in the regions

In its draft report the Commission noted that regional councils had failed to provide sufficiently robust monitoring and enforcement of environmental priorities (Chapter 6). The Commission asked whether more

environmental regulatory responsibilities should be shifted to a national organisation; or, alternatively, whether central audit and oversight of regional council performance should increase.

A majority of submitters did not favour assigning responsibility for monitoring and enforcement to a central government agency. Adding a new agency, particularly one with enforcement responsibilities, could increase the difficulty of integrating regulatory design (which would remain with regions) with measures to promote regulatory compliance (Greater Wellington Regional Council, sub. DR80; Horticulture New Zealand, sub. DR73). Instead, Greater Wellington Regional Council pointed to the benefits of an alternative collaborative approach among regional councils to improve performance in securing compliance with environmental regulation. The Council referred in particular to the work of the Regional Managers Group in developing the Strategic Compliance Framework and a new national qualification (sub. DR80).

Auckland Council and Wellington City Council both submitted that more work needed to be done to understand the causes of poor environmental outcomes, rather than simply attributing them to poor enforcement (subs. DR86 and DR77). Auckland Council argued that more effective monitoring needed to be undertaken at the regional and local level (rather than at the national level) to recognise the environmental complexities at those levels (sub. DR86).

Associate Professor Ken Palmer (2017) pointed out that the MfE, on behalf of the Minister for the Environment, is already responsible for monitoring the performance of the regulatory system. Greater Wellington Regional Council (sub. DR80), Environment Canterbury (sub. DR72) and LGNZ (sub. DR113) made a similar point. In addition, the Minister has the power to intervene in particular circumstances to ensure councils carry out their regulatory responsibilities if they are failing to do so (RMA ss 24, 24A, 25 and 25A). Whanganui District Council supported an enhanced external audit (sub. DR95, p. 22).

The Environmental Defence Society thought there could be "merit in an external regulator to depoliticise environmental enforcement" (sub. DR57, p. 6). Christchurch City Council also saw benefit in moving monitoring and enforcement of regulation to a national organisation (sub. DR90). Employers and Manufacturers Association Northern favoured "a system of audits of council performance and monitoring … with an enforcement capability of those councils that fail to report and monitor" (DR87, p. 4). Federated Farmers submitted that an agency independent of councils should make any decision that might result in criminal prosecution (sub. DR96).

On reflection, the Commission considers that regional councils should continue to have the primary responsibility for setting regional environmental standards and implementing, monitoring and enforcing regulation of the natural environment in regions.

First, integrated planning for land use and resource management is central to the Commission's proposals for a future planning system. A separate agency, focused on monitoring and enforcing regulation of the natural environment, would make integration more difficult. In any case, currently no national organisation appears to have capabilities to take over the primary responsibility for monitoring and enforcing environmental regulation in the regions (K. Palmer, 2017).

Second, under the Commission's proposals, regional councils will have a central role in leading spatial planning through the RSS and integrating other plans in the region into a coherent package. Continuing responsibility for setting, monitoring and enforcing regulatory standards for the natural environment through the RPS-NE and issuing air and water permits (for instance), is a natural fit for regional councils. Regional councils already have some expertise in the environmental sciences to support this role (McDermott, 2016).

Third, some key environmental standards are set nationally (reflecting the national benefits) and so relatively susceptible to focused and consistent monitoring and enforcement by a regional agency (whether part of a national body or a regional council). Yet most standard setting related to protecting the natural environment is necessarily highly dispersed through particular provisions in district Plans, and through the issuing of permits and consents, with or without conditions.

In addition, enforcement is only one of a range of tools to secure compliance. Two other complementary approaches, to consider together, are the design of the regulation and education (LGNZ, sub. DR113). For instance, the way Plans and consent conditions are written has an important bearing on compliance and

enforceability (Newhook, 2016). It follows that information on how environmental outcomes relate to regulatory effort should provide feedback to improving local regulatory performance over time. While a separate monitoring and enforcement agency would possibly be better at focusing on priority environmental outcomes specified in national standards, such an agency would risk attenuating the regular flow of information at the local council level.

Yet experience has shown that territorial authorities, in particular, currently lack the scientific knowledge and fit-for-purpose information systems to generate and analyse key information on environmental outcomes to improve regulatory performance (Chapter 9). Central government agencies, as system stewards, need to work collaboratively with regional and territorial authorities to develop the science base and information systems to improve monitoring and design of regulatory effort (in particular to support adaptive management) (section 13.6).

A collaborative approach should be backed up, as at present, by a central government agency (currently the MfE) with the statutory responsibility to monitor the performance of the regulatory system, and to initiate corrective action as required. The central agency could exercise the monitoring responsibility on behalf of the Minister (as at present) or be assigned it under statute (K. Palmer, 2017).

Finally, the benefits and costs of regulation of the natural environment are shared among national, regional and local communities. So, there is no clear principle to justify monitoring and enforcement by a national body alone (NZPC, 2014b). On balance, the arguments support regional councils continuing to have the primary responsibility for monitoring and enforcement of regulation for the natural environment in the regions.

R13.5 In a future planning system, regional councils should continue to have the primary responsibility for monitoring and enforcement of regulation for the natural environment in the regions.

District Plans

As at present, district Plans will be guided by national objectives and principles, NPSs and NESs. In the future , their format and some provisions will also be standardised through the use of a national planning template (Chapter 8). Plans will also need to give effect to mandatory provisions in the RSS and RPS-NEs, and otherwise take their provisions into account. As described below, all district Plans in a region will be developed together with the RSS and RPS-NE as a package; this will provide an opportunity to align objectives and provisions.

Active protection of Māori Treaty interests and recognition of Iwi Management Plans (IMPs)

Chapter 7 recommends that a future planning system should carry forward and build on current regulatory provisions to give effect to the Crown's Treaty obligations by enabling the expression and active protection of Māori interests in the environment. Currently the RMA requires councils to take into account relevant provisions of an IMP in developing RPSs and Plans. The Resource Legislation Amendment (RMLA) Bill 2015 (including proposed changes) would require councils, on the initiative of iwi and hapū, to enter into iwi participation arrangements (to be known by the dual name Mana Whakahono a Rohe/Iwi Participation Arrangement) (MWaR/IPA) (MfE, 2016j).

The Commission considers that the RSS provides a major opportunity to strengthen Māori participation in planning processes. Mana whenua will participate in developing the RSS and may, in particular, bring to the table IMPs that set out their interests in the built and natural environments. Even those mana whenua who have not yet developed an IMP will have an opportunity to set out their interests and reach agreement on how these interests should be protected through land-use planning regulation.

Ngāti Whātua Ōrākei submitted:

> NWŌ see active and meaningful engagement in spatial planning, undertaken with a true partnership approach, to be fundamental in enabling a step change in Māori participation. It is absolutely essential to emphasise that to be effective, spatial planning needs to be undertaken in a fully participatory manner - there needs to be a paradigm shift away from traditional "plan and consult" methods of engagement. This is essential if a partnership approach in line with the principles of Te Tiriti o Waitangi is to be realised. Here, we point to the approach of Sea Change – Tai Timu Tai Pari (The Hauraki Gulf Marine Spatial Plan) as an example of emerging good practice. (sub. 76 p. 2)

The Christchurch City Council likewise proposed that

> [t]he development of strategic or spatial plans should be undertaken with Māori participation on the basis of collaborative planning processes that recognise them as partners. (sub. DR90, p. 12)

Future planning legislation should convey a strong expectation that local authorities work in good faith with mana whenua to recognise and provide for active protection of Māori Treaty interests in the built and natural environments. Proposed changes to the RMLA Bill, for example, would insert a set of principles in the RMA to guide the formation of MWaR/IPA (MfE, 2016j). This type of approach would encourage good practice in engaging mana whenua in spatial planning.

Because the RSS, the RPS-NE and district Plans will be developed as a package, recognition and active protection in the RSS and the RPS-NE of Māori interests should flow through to related provisions in district Plans. This will have the added benefit of easing the consultation burden for mana whenua. Mana whenua will be able to engage in a single process to have their interests recognised in the full package of plans. Ngā Aho and Papa Pounamu identified the diversity of local authorities as a significant barrier to mana whenua engaging in planning processes (2016b). Some iwi have to engage with up to nine different councils on land use and resource management planning (Te Puni Kōkiri, 2013). Māori engagement in planning would be reinforced by a statutory requirement for the RSS, the RPS-NE and Plans to contain a chapter on measures to recognise and actively protect Māori Treaty interests in land-use and resource management planning.

Instruments for land-use planning will also be able to reflect relevant provisions arising from Treaty settlements, such as those involving co-governance arrangements (Chapter 7). As Professor Hirini Matunga notes:

> [B]etter alignment between Planning legislation and Treaty legislation remains critical…the two often cover the same or similar territory, spatial context and institutional jurisdiction – but currently function in parallel and sometimes quite divergent or conflicting ways. (pers. comm., 30 January 2017).

Professor Matunga also notes that:

- The process certainly for preparing these Chapters would need to be well defined to ensure full and equitable Māori participation;
- Māori participation in regional and local government decision making processes to hear and approve these policy statements and plans would also need to be clarified and made compulsory rather than discretionary;
- The diversity and multiplicity of Māori groupings in a region or district would also need to be acknowledged, rather than homogenised into a unitary 'Māori position' across a region or district;
- However, so called 'unitary Māori policy/planning positions' could possibly be supported through collegial processes and collective assent … and/or articulated at a high enough level to allow a diversity of iwi/Māori positions to come through. (pers. comm., 9 February 2017).

The Commission proposes (in Chapter 7) that an NPS on Planning and the Treaty of Waitangi is used to provide guidance to councils on how they should give effect to the Crown's Treaty obligations to recognise and actively protect Māori interests in the natural and built environments. The Commission also proposes that IHPs review the RSS, the RPS-NE and district Plans together. One review criterion will be consistency with the provisions of statutory guidance through NPSs and NESs.

R13.6

In a future planning system, local authorities should be required by statute to include (in the Regional Spatial Strategy (RSS), the Regional Policy Statement for the Natural Environment (RPS-NE) and in district Plans) a chapter on measures to recognise and actively protect Māori Treaty interests in land-use and resource-management planning.

Local authorities should, in preparing an RSS, an RPS-NE, or a district Plan, be required by statute to:

- engage in good faith with mana whenua;
- have regard to relevant provisions of iwi management plans (or their equivalent) in their region; and
- endeavour to reach agreement with mana whenua on how the RSS, RPS-NE or Plan can give effect to relevant provisions of iwi management plans.

A regional package of policies and plans

The Commission proposes that the RSS, the RPS-NE and district Plans are developed together as a coherent package in a region. The use of a national planning template will provide for more standard definitions and layouts across district Plans, which will make the process of developing a coherent package easier (Chapter 8; Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122). Palmer and Blakeley indeed proposed that each region should have only one district Plan.

Local authorities will need a process to develop provisional policy statements and plans, subject to adjustments to ensure that they are aligned. This will help overcome a past lack of alignment in some regions around key objectives such as how best to accommodate growth pressures (K. Palmer, 2017). Future legislation will need to specify processes carefully so as to provide ample opportunity to align provisions in the package of policies and plans before they are individually subject to formal review and legal challenge.

A coherent regional package of plans should deliver payoffs in greater consistency and less duplication in planning approaches; better integrated provision for future infrastructure; and greater certainty to residents, developers and infrastructure providers.

A single, coherent process in a region will also make it easier and less onerous for mana whenua groups and infrastructure providers to engage in the formation of plans (rather than having to engage separately with a diverse group of local authorities with potentially different approaches to land-use planning).

As with all planning processes, the RSS will need to bring together competing interests and views on development. The Commission proposes that an IHP reviews the RSS, the RPS-NE and all district Plans as a package before they become operative (Chapter 8). This process will provide a further opportunity to resolve any outstanding differences, including those among the constituent local authorities in a region, or between local authorities and mana whenua. There would be no appeals on merit from IHP decisions. The ultimate aim would be to align the RSS, the RPS-NE and district Plans on key objectives.

Aligning consultation and decision-making processes across planning statutes

Under current planning statutes, RPSs, Regional Plans and district Plans are used to regulate changes in land use. Long-Term Plans and Annual Plans set out local government infrastructure investment intentions (among other budgetary intentions). The GPS and RLTPS set out central government's investment plans for transport infrastructure. As a result, central government and local government make investment decisions and land-use decisions in parallel processes (with separate but overlapping governance arrangements). These parallel processes mean that across the different statutes (the RMA, LGA and LTMA):

- planning is coordinated only loosely and through iteration; and (typically)

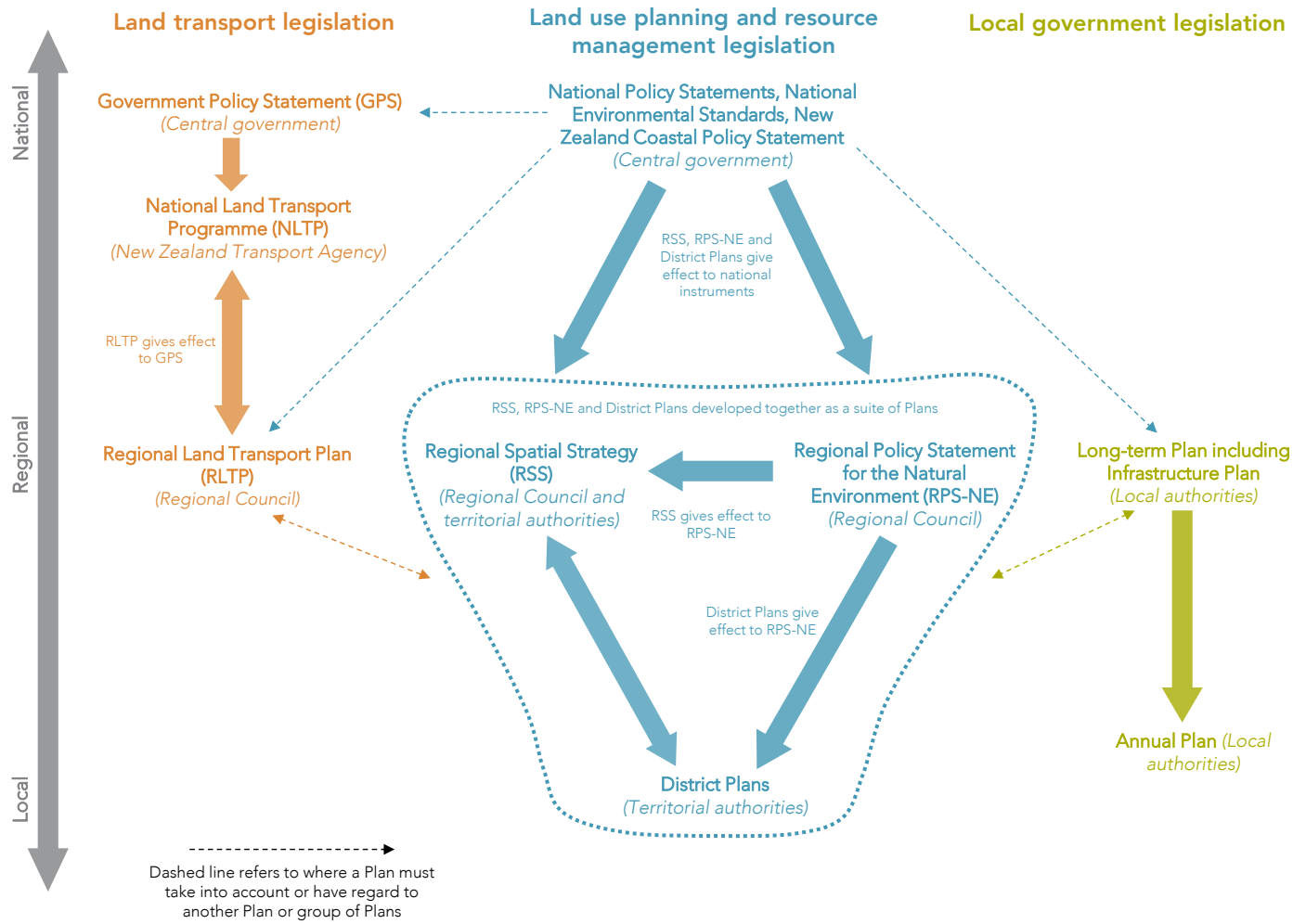
- separate consultation processes are used when developing Plans.

The Commission is proposing that land-use and resource management planning legislation remain separate from legislation that governs central government and local government infrastructure investment decisions (section 13.2). This leaves a question about how much a new planning system could provide for better coordination of plans and more efficient and effective consultation processes across the separate statutes. For example, the Commission recommends that central and local government providers of infrastructure are required to take into account the provisions of the RSS (Chapter 10).

Requirements to take into account provisions in plans under other planning statutes

Cross-references between statutes can help ensure that councils developing plans under one planning statute take into account the provisions of existing plans under the other statutes. Cross-referencing from the LTMA and the LGA to the RMA is currently adequate. Yet the RMA lacks adequate references to the other two statutes (K. Palmer, 2017). Future planning legislation should address this lack of cross-referencing (Figure 13.2).

Figure 13.2 Links across future planning legislation



Consultation and engagement requirements

Over time, legislative cross-references have strengthened links and possibilities for joint consultation processes across the RMA, LGA and LTMA. Consultation requirements for preparing RLTPs under the LTMA currently use the same principles and processes available under the LGA.

In its draft report, the Commission asked whether it would be worth moving to common consultation and decision-making processes and principles for decisions on land use rules, transport and infrastructure provision. In particular, in its *Land for housing* inquiry, the Commission considered the merits of removing the separate RMA consultation procedures for setting and changing land use controls, and relying instead

on the more flexible LGA consultation principles and processes. At the time, the Commission decided not to proceed with the idea because of concerns that this may lead to poorer-quality regulation (NZPC, 2015a).

Some submitters supported using common consultation and decision-making processes across different aspects of planning, and, in doing so, often favoured the more flexible processes provided for under the LGA (Retail New Zealand, sub. DR74; Greater Christchurch Urban Development Strategy, sub. DR83; Greater Wellington Regional Council, sub. DR80; Horticulture New Zealand, sub. DR73; Property Council New Zealand, sub. DR118).

These and other submitters also identified limits to the use of common processes. Allison Tindale pointed out that the consultation required to arrive at a broad strategy is necessarily different in scope and timing to consultation with property owners required to consider the effects of detailed planning rules on their property (sub. DR110). Similarly, Horticulture New Zealand did not think that the LGA processes would be appropriate for consulting with property owners and occupiers directly affected by a proposal (sub. DR73).

LGNZ pointed out that different legislative frameworks necessarily operate at different spatial scales, and warned against standardising consultation processes arbitrarily. LGNZ argued for "making [processes] more flexibly empowering so that alignment can be better negotiated at the local or national level" (sub. DR113, p. 4). Consistent with this, the Commission recommends greater flexibility in statutory provisions for consultation and engagement in planning (Chapter 8). Clear objectives and principles to govern decisions (section 13.2), combined with systematic independent review of plans (section 13.5), will allow greater flexibility in consultation processes, without compromising the interests either of the general public or of particular property owners affected by land use controls.

Yet, even with more flexible consultation processes, new planning and resource management legislation should pay particular attention to statutory references to the LTMA and the LGA (or their equivalents). References should enable, where practical and efficient, common consultation and engagement processes in developing land-use and infrastructure investment plans.

R13.7

A future land-use and resource-management planning statute should contain cross-references to land transport management and local government statutes that:

- enable joint consultation and engagement processes when developing plans under the different statutes, where this is practical and efficient; and
- require plans developed under one statute to take account of provisions in existing plans under the other statutes.

Future planning legislation could also better align principles and processes under different statutes that require councils to engage with Māori in planning processes. Ngā Aho and Papa Pounamu recommended greater consistency in how Māori values, rights and interests are recognised across different pieces of planning legislation (2016b). Yet the different purposes and subject matter of land use and resource management planning; local government; and land transport management legislation may legitimately require different relationships between councils and Māori. Better alignment across planning statutes of principles and processes for engaging with Māori requires careful thought and consultation with a range of Māori interests.

Consenting processes

A primary advantage of maintaining a single statute for land-use and resource-management planning that covers both the built and natural environments is that it better enables an integrated process for granting resource consents (section 13.2). The Commission does not propose big changes to current consenting processes. Yet, clearer statutory objectives and principles for the built and natural environments offer scope for greater clarity in the purposes of, and criteria for, granting consents.

Section 87 of the RMA provides for five types of consent:

- land use consents;
- subdivision consents;
- coastal permits;
- water permits; and
- discharge permits (covering discharges of contaminants into water, on land, or into the air).

K. Palmer observed:

> Within those categories there is an implied recognition of the focus and relevant matters for the consents. The land use and subdivision categories will essentially focus on implementing development of the built environment. The coastal permit may include both elements of development of the built environment through wharf structure, reclamations, and other coastal installations, but will also have a focus on protecting the ecology of the marine coastal marine area with a natural environment focus. The remaining types of consents, for a water permit and a discharge permit, focus on regulation and protection of the natural environment. (2017, p. 27)

K. Palmer proposed that new planning legislation should provide for separate purposes for the different types of consents that would relate to the separate statutory objectives for the built and natural environments (2017, pp. 57–58). This would allow for greater efficiency and better focus in consent decisions (than under the RMA), and could allow for an appropriate presumption in favour of development for some types of consents, but not others.

> Where a presumption can be appropriately added to the granting of consent, such as in respect of the built environment, it could facilitate approvals. Conversely in respect of natural environment protection, it may be inappropriate to have any presumption on matters which involve potential emission of contaminants into the air or onto land, and regarding the use of water resources. (2017, p. 37)

The Commission finds this analysis persuasive.

R13.8 To provide greater clarity and focus in decision making, future planning legislation should provide for specific purposes and criteria for granting different types of resource consents. These purposes and criteria should be based on the separate statutory objectives established for the built and natural environments.

13.5 Independent Hearings Panels

The Commission is proposing that local IHPs, appointed for the purpose, review all Plans and significant Plan changes (Chapter 8; section 13.4). The IHP review is a crucial part of the Commission's proposals for a future planning system. An IHP will:

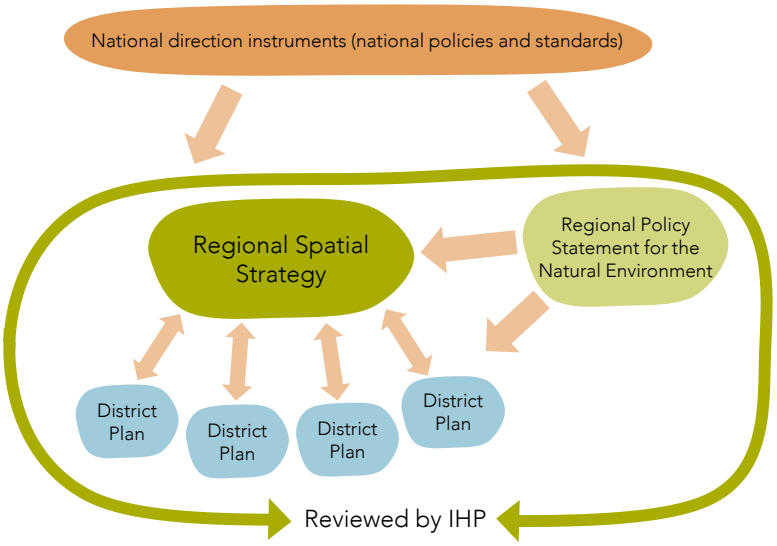
- review notified Plans or Plan changes against matters raised in submissions and against the purpose, objectives and principles set out in statute and secondary legislation (section 13.2); and
- resolve conflicting and contested provisions to produce a final version of the Plan on the merits.

Using an IHP review will remove the need for further appeals on merit, and provide a single-stage comprehensive review of the package of plans (the RSS, the RPS-NE and district Plans) in a region (Figure 13.3). Together, these review provisions will reduce the time taken for Plans to become operational, provide for greater coherence among Plans, provide greater certainty about the outcome of planning processes, and create steady pressure for improvements in the quality of Plans and planning culture over time (Chapter 14).

The output from an IHP would comprise a Plan or Plan change and reasons for any changes made to the notified version of the Plan. This Plan would be subject to appeal to the Environment Court on points of law

(Chapter 8) and judicial review in the High Court. Councils will have the power to initiate further Plan changes if they consider these are required.

Figure 13.3 Package of plans for an IHP to review



Chapter 8 provides more detail on the Commission's proposals for how IHPs will operate.

Capabilities of Independent Hearings Panels

To fulfil the role of a credible final decision maker on merits, an IHP must:

- be truly independent (and appointed by an independent statutory agency (ISA) that is at arm's length from central government);
- have the appropriate expertise to be able to consider scientific, engineering and other expert evidence;
- know and understand tikanga Māori – particularly as it applies in the local area;
- have a sound knowledge of local conditions; and
- have sufficient legal expertise available, and an understanding of fair processes that meet statutory requirements, but at the same time are accessible to non-experts without legal representation.

The availability of appeals on points of law and judicial review will provide the discipline needed for an IHP to use fair and lawful processes and apply well-founded criteria to decisions.

An independent statutory agency to appoint and support IHPs

A diverse group of participants in planning processes have an interest in seeing that Plans and Plan changes are completed and reviewed in a way that provides confidence in the fairness and competence of the planning system. Participants include the councils that prepare and notify Plans; residents and businesses affected by Plan proposals, in particular those who make submissions; infrastructure providers; and central government agencies that secure the national interests in local planning outcomes.

The Commission considers that, to secure the perceived and actual independence of IHPs, a future planning system should provide for an ISA to appoint IHP members and support the operation of IHPs. In particular, central and local government should not be directly involved in appointments to local panels (Chapter 8).

The ISA should also be responsible for oversight of, and the design and content of, training and certification for IHP members; and for issuing guidance to IHPs on processes and procedures. Through its operations to support IHPs, the ISA will receive ongoing feedback about how IHPs are functioning. The ISA could supplement this information with more formal reviews of IHP processes and outcomes, including examining

the basis for any successful appeals on points of law. This would inform the content and focus for training panel members, and of guidance to IHPs.

It would likely be efficient for the ISA to assume oversight of training and qualifications for council and independent hearings Commissioners – a process currently overseen by the MfE. This includes the "Making Good Decisions" courses that also provide training for consent hearing Commissioners (MfE, 2016j).

The ISA should have governance arrangements that, while maintaining its independence from particular decision makers, reflect the broad interests impacted by its role. For instance, the ISA could be governed by a board whose members are appointed by Ministers after consultation with:

- local government;
- infrastructure providers;
- mana whenua and other Māori communities; and
- the legal community with an interest in planning and resource management law.

Central government agencies, as stewards of the planning system, would also advise Ministers on appointments.

Statutory provision for the ISA could be made in planning legislation, or in local government legislation. The LGA, for instance, currently provides for the establishment of the Local Government Commission. The ISA would ultimately be accountable administratively (through its governing board) to Ministers. Even so, Ministers would have no power to direct the ISA on how IHPs and their members are appointed or how IHPs operate.

IHPs will vary greatly in the scope of the matters they consider. The most important hearings will be around a full package of notified plans in a region, including the RSS, the RPS-NE and district Plans. Regions vary greatly in size and the extent to which they contain fast-growing urban areas that pose particular issues for accommodating growth (Chapter 8; section 13.4). The IHPs will review both new Plans and also significant Plan changes. The ISA will need the flexibility and skill to appoint IHPs and design IHP processes and procedures to match the scale and complexity of the matters under review.

R13.9

A future planning system should provide for an Independent Statutory Agency to:

- appoint and provide administrative support to Independent Hearings Panels (IHPs);
- provide guidance to IHPs on the processes and procedures required to fulfil their mandate;
- develop a pool of capable panel members with the required range of skills; and
- provide advice to government on measures to improve the efficiency and effectiveness of the planning system in achieving statutory objectives.

Chapter 8 sets out the Commission's proposals for IHP reviews of Plans and Policy Statements, the processes under which they will operate, and the role of the Environment Court in hearing appeals on points of law.

13.6 Stewardship of the urban planning system

The planning regulatory system includes the institutions, principles and processes through which regulations are made, implemented, enforced and reviewed. It involves all three arms of government – the Executive, Parliament and the Judiciary. For the system to work well, a level of oversight, supervision, coordination, capability building and a process of continual improvement is needed. This is regulatory management. In its

previous inquiry into *Regulatory institutions and practices* (NZPC, 2014b), the Commission found weaknesses in the institutions responsible for oversight and management of New Zealand's regulatory system.

> The designers and implementers of regulation face escalating expectations, complexity and challenge. In many areas, the capability and performance of the regulatory system in designing and regularly upgrading regulatory regimes falls well short of what it should and can be. There has been some progress through recent initiatives to improve the management of regulation, but these are fragmented and follow-through has been inadequate in some cases. (p. 411)

A recent development to improve the management of the regulatory system is the regulatory stewardship expectations on departmental chief executives responsible for regulation (Box 13.3). These set out the high-level expectations for how departments should be designing and implementing regulatory regimes. Ayto noted that

> [t]he introduction of the stewardship responsibility sends a signal that departments can no longer just be passive, working only on those matters that their minister has deemed to be of interest or a priority. They have a duty to systematically and proactively monitor, review, and advise the minister what can or should be done by the government to ensure New Zealanders obtain the best long-term benefit from the resources or assets for which they are steward. (2014, p. 27).

The stewardship obligation on departmental chief executives is formally provided for in section 32 of the State Sector Act 1988. The Treasury monitors these expectations through its regulatory monitoring process.

Box 13.3 **Initial expectations for regulatory stewardship**

Cabinet expects that departments, in exercising their stewardship role over government regulation, will:

- monitor, and thoroughly assess at appropriate intervals, the performance and condition of their regulatory regimes to ensure they are, and will remain, fit for purpose;
- be able to clearly articulate what those regimes are trying to achieve, what types of costs and other impacts they may impose, and what factors pose the greatest risks to good regulatory performance;
- have processes to use this information to identify and evaluate, and where appropriate report or act on, problems, vulnerabilities and opportunities for improving the design and operation of those regimes;
- for the above purposes, maintain an up-to-date database of the legislative instruments for which they have policy responsibility, with oversight roles clearly assigned within the department;
- not propose regulatory change without:
  - clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust; and
  - careful implementation planning, including ensuring that implementation needs to inform policy, and providing for appropriate review arrangements;
- maintain a transparent, risk-based compliance and enforcement strategy, including providing accessible, timely information and support to help regulated entities understand and meet their regulatory requirements; and
- ensure that where regulatory functions are undertaken outside departments, appropriate monitoring and accountability arrangements are maintained, which reflect the above expectations.

Source: Offices of the Minister of Finance and Minister for Regulatory Reform, 2013.

Currently, the stewardship of the urban planning system is unclear and fragmented across a number of Ministers and departments, with no clear leader or contact point within central government. The Ministry of Transport administers the LTMA. The MfE administers the RMA. The Ministry for Business, Innovation and Employment administers the Housing Accords and Special Housing Areas Act 2013, and has a broader interest in affordable housing and the planning system as it affects business. The Department of Internal Affairs administers the LGA and the Local Government (Rating) Act 2002.

In some Acts, different Ministers are responsible for different components of the Act. For example, under the RMA, the Minister for the Environment is broadly responsible for monitoring the implementation of the Act (s 24). Even so, the Minister of Conservation is responsible for preparing the New Zealand Coastal Policy Statement and monitoring the effective implementation of the Statement (s 29).

In addition to government departments, a number of independent bodies play a role in monitoring aspects of the planning system. For example, in the context of the natural environment, the Environment Act 1986 provides that the PCE can undertake reviews of

> the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources, and to report the results of any such review to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate. (s 16)

Where considered necessary, the PCO is also mandated to "investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable".

More generally, the Office of the Auditor-General is mandated to audit the performance of all public entities, including central government departments and local authorities. The product of a performance audit is a report to Parliament that identifies good practices, raises any issues or concerns, and (where necessary) recommends improvements to the public entity's performance.

A future planning system would see the variety of central government agencies with an interest in planning and the environment organised much more effectively to exercise regulatory stewardship. Clear and capable leadership over the built and natural environment (and their interactions) is needed.

F13.1 Departments, as regulatory stewards, have a duty to systematically and proactively monitor, review, and advise how to improve and get the best value out of the regulatory systems for which they are responsible. Responsibility for stewardship of the urban planning system is unclear and fragmented across a variety of agencies with an interest in planning and the environment, with no clear leader.

R13.10 A future planning system should have clear and capable leadership on the built and natural environments and their interactions, with regulatory stewardship obligations clearly assigned to an appropriate central government agency.

Exercising regulatory stewardship will be most effective when:

- urban planning capability and systems within central government are well developed;
- the relationship and interaction between central and local government is strong;
- Māori input into national stewardship of the planning system is effective; and
- information to understand and manage the urban planning system is adequate.

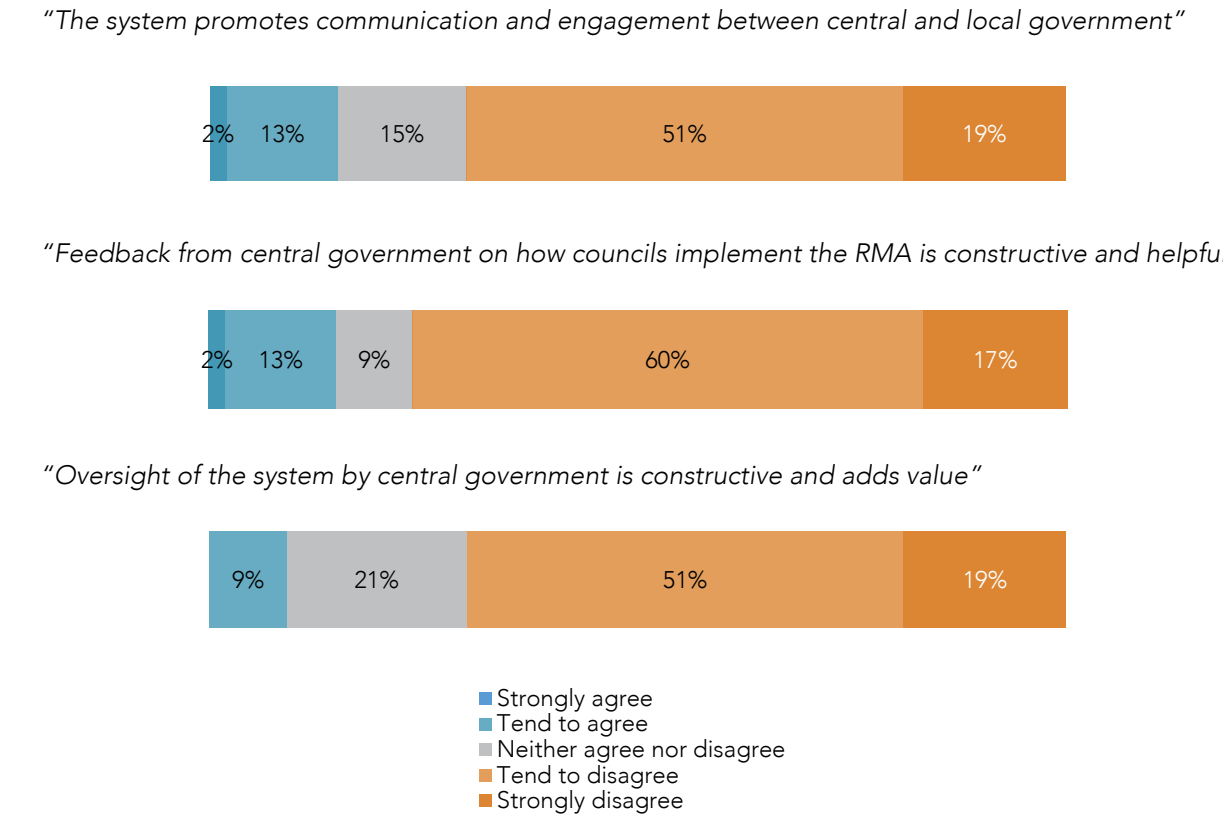
Central government urban planning capability and systems

Central government currently lacks the capability and systems needed to effectively undertake its regulatory stewardship responsibilities, including monitoring the performance, condition and risks of the urban planning system, providing advice on improvements to the system and, if necessary, to support well-informed and timely intervention in that system. Evidence shows poor engagement with local authorities on planning issues (Chapter 14).

- Central government's monitoring systems over the planning system vary in their depth and detail. For example, until recently, land price trends across territorial authorities were not regularly monitored. The NPS–UDC now requires local authorities to monitor land prices, and help identify where the urban planning system is under stress (Chapter 8).
- Central government has no clear leader or contact point on planning issues. This means that local authorities can find it difficult to obtain a coherent central government view. Central government agencies have coordinated in preparing submissions to the Proposed Auckland Unitary Plan and Christchurch Replacement District Plan, but these were ad hoc initiatives rather than a regular and established process.
- Unlike higher-level governments in other jurisdictions, central government in New Zealand lacks a significant planning capability. This limits central government's ability to understand local planning provisions and their impacts, assess performance of the planning system, engage meaningfully with councils over the impact and suitability of their proposed land use rules and policies, and identify improvements in design and operation of the planning system. It also limits central government's ability to contribute to better local planning practice.

Given these limitations, it is unsurprising that local authority respondents to a Commission survey were very critical of central government's role in the planning system (Figure 13.4).

Figure 13.4 Local authority responses to the statements...



Source: Colmar Brunton, 2016.

Notes: Because of rounding, totals may not sum to 100%.

F13.2

Central government currently lacks sufficient capability and the systems needed to effectively undertake its regulatory stewardship responsibilities, including:

- monitoring the performance, condition and risks of the urban planning system;
- providing advice on improvements to the system; and
- supporting, if necessary, well-informed and timely intervention in that system.

Evidence also suggests that central government engagement with local authorities on planning issues is poor.

Interaction between central and local government

A recurring theme of the Commission's local regulation inquiry was "the poor state of the relationship and interface between central and local government, across all aspects of the regulatory system" (NZPC, 2013, p. 6). In that inquiry, the Commission concluded that central government's involvement in regulatory regimes that are managed locally needed to improve, particularly in the following areas:

- the interface between central and local government needs to be improved with local authorities recognised as 'co-producers' of regulatory outcomes;
- central government agencies need to enhance their knowledge of the local government sector and increase their capability to undertake robust implementation analysis; and
- meaningful engagement and effective dialogue with local government needs to occur early in the policy process.

These recommendations apply equally to the urban planning system. The Commission heard from inquiry participants that, despite some examples of successful collaboration (such as the Auckland Transport Alignment Project described in Chapter 10), the interaction between central and local government on urban planning matters was poor. Further, as above, the 2016 Colmar Brunton survey of councils indicates that:

- communication between central and local government is poor;
- oversight of the urban planning system by central government is unconstructive and unhelpful;
- the design of planning legislation is disconnected from its implementation on the ground; and
- central government does not adopt a "whole-of-system" approach to urban planning (see pp. 21–22).

Central government agencies are currently not fulfilling at least some of their regulatory stewardship responsibilities (Box 13.3). A more productive relationship and interface between central and local government on land use regulation is possible, and desirable, in helping to fulfil these obligations. A future planning system should therefore encourage:

- both central and local government to provide input (formally or informally) into each other's policy-making processes, and that this be governed by an agreed set of principles;
- meaningful engagement and effective dialogue with local government occurring early in the policy process;
- cooperative approaches to addressing potential issues with implementing new legislation or planning standards and environmental standards;
- the creation of formal and informal feedback loops to identify problems in the urban planning system when they first appear; and
- the spread of information through the system and the sharing of expertise and knowledge.

To make progress, both central and local government need to foster a more open and productive relationship. To this end, the Commission sees significant value, and has previously recommended, that central and local government work together to develop a "Partners in Regulation" protocol (NZPC, 2013). The protocol would articulate an agreed set of behaviours and expectations when developing and implementing local regulation and, more generally, would promote a constructive interface between central and local government (Box 13.4).

Box 13.4 **'Partners in Regulation Protocol'**

The protocol would aim to promote a constructive interface between central and local government by:

- developing a common understanding of, and respect for, the roles, duties and accountabilities of both spheres of government; and
- articulating an agreed set of principles to govern the development of regulations, with implications for the local government sector.

The protocol would be a jointly created document signed by the Government and representatives from the local government sector. To signal strong commitment, the Prime Minister and the Minister of Local Government could sign it. This would increase the protocol's status as a "whole-of-government" document. It is equally important that local government illustrates ownership and commitment to the protocol. For this to occur, the sector must see the signatories to the protocol as legitimate representatives with the authority to "speak for councils".

The Commission does not envisage that the protocol would be a legally binding document. However, the requirements of the protocol should be added to the Cabinet Office Manual, along with a directive that the principles are to be complied with when formulating local regulation in all but exceptional circumstances. At the same time, the performance assessments of relevant central government agencies should include progress towards implementing the protocol. Likewise, the protocol should include a provision that local authorities include a "statement of intent to comply" in their annual reports.

Source: NZPC, 2013.

The central government regulatory stewards could provide less formal guidance and advice on improving and supporting the urban planning system. They could do so by:

- Ministers or central government agencies making submissions to local planning processes where there is a national interest;
- publishing guidance material on key urban planning issues;
- supporting the development of information systems aimed at providing up-to-date feedback on planning and regulatory outcomes;
- providing technical support to councils dealing with issues that call for specialised analytical techniques (eg, the use of real-options analysis, economic instruments); and
- delivering presentations and seminars to local authorities on central government policy initiatives.

R13.11 A future planning system should be based on a constructive relationship and interface between central and local government through:

- both central and local government providing input (formally or informally) into each other's policymaking processes, under an agreed set of principles or protocol;
- meaningful engagement and effective dialogue with local government occurring early in the policy process;
- cooperative approaches to addressing potential issues with implementing new legislation, or urban planning and environmental standards;
- the creation of formal and informal feedback loops to identify problems in the urban planning system when they first appear; and
- the spread of information through the system and the sharing of expertise and knowledge.

Information to understand and manage the urban planning system

At the heart of the regulatory stewardship role of departments is a better understanding of the urban planning system and how well it is performing.

- Is it fit for purpose and achieving its goals?
- Where are possible improvements in design and operation?

Central government will be involved in the planning system in timely and constructive ways when local opportunities and threats have national impacts. It will monitor closely what is working and what is not, foster innovation and disseminate guidance on best practice. This will require more and better information, along with skilled evaluation.

Up-to-date information on the relevant outcomes of the urban planning system is needed at a detailed enough level to inform adaptive responses. This includes analytic capability and scientific knowledge that enables a better understanding of the link between regulatory design and sought-after outcomes from the urban planning system.

This will require regulatory stewards working closely with regional councils and territorial authorities to develop information systems that provide up-to-date granular information on both the built and natural environments. This will inform both national and local decision making, and allow the planning system to be much more responsive. Examples for the urban environment and for the natural environment are noted below.

- For the urban environment, price information indicates whether councils are creating sufficient capacity for more dwellings within their cities. With this information, city growth can respond better to demand, leading to more stable prices.
- For the natural environment, a scientific base and analytic capability would support adaptive management of the cumulative effects of development on the natural environment.

R13.12 In a future planning system, regulatory stewards need to work closely with regional councils and territorial authorities to develop information systems that provide up-to-date, granular information on outcomes in both the built and natural environments.

Effective Māori input into national stewardship of the planning system

Chapter 7 recommends that a future planning system should carry forward and build on current regulatory provisions to give effect to the Crown's Treaty of Waitangi obligations by enabling the expression and active protection of Māori interests in the built and natural environments. Inquiry participants argued that, particularly in view of the Commission's recommendations for greater involvement of central government in stewardship of the planning system, there was a need to strengthen Māori influence at the national level (Auckland District Law Society, sub. DR70; Environment Canterbury, sub. DR72; Auckland Council, sub. DR86, p. 12; Ngā Aho & Papa Pounamu, 2016b).

The Commission proposes that, in a future planning system, a statutory National Māori Advisory Board on Planning and the Treaty of Waitangi joins and assists central government agencies in their system stewardship role. The Board would monitor how the planning system gives effect to the principles of the Treaty of Waitangi, and advise central government on how best to give effect to those principles. The Board would also carry out a Treaty of Waitangi audit of the planning system every five years, taking as a starting point the methodology used by the Independent Māori Statutory Board to audit the Auckland Council (Chapter 8).

R13.13 A future planning system should provide for a National Māori Advisory Board on Planning and the Treaty of Waitangi. The Board should be established under statute and:

- monitor how the planning system gives effect to the principles of the Treaty of Waitangi;
- advise central government agencies (with stewardship responsibilities for the planning system) on policies, regulations, processes and methods that will best give effect to the principles of the Treaty of Waitangi; and
- carry out a Treaty of Waitangi audit of the planning system every five years.

Inquiry participants also argued that a future planning system should give greater recognition to tikanga Māori and mātauranga Māori in designing and implementing environmental regulation; and, in particular in monitoring environmental outcomes and the performance of the planning system more generally (Auckland Council, sub. DR86; Ngā Aho & Papa Pounamu, 2016b).

R13.14 Stewards of a future planning system should collaborate with the proposed National Māori Advisory Board on Planning and the Treaty of Waitangi, and with Māori more generally, to develop ways to introduce tikanga Māori and mātauranga Māori into methods to monitor and assess the performance of the planning system at the national, regional and local levels.

13.7 Conclusion

The Commission's proposals in this chapter for statutory, governance and institutional arrangements for a future planning system collectively represent a large change from current arrangements. In particular, the proposals recommend:

- clear statutory objectives and principles for regulation of the built and natural environments;
- strong statutory principles to constrain regulatory provisions and processes so that they are fair, make appropriate use of regulatory discretion, are proportionate to the scale and nature of the issues addressed, and focused on statutory purposes and objectives;
- a central place for spatial planning in bringing together a suite of Plans in a region;

- timely and systematic review of plans against statutory objectives and principles and the views of stakeholders and the public; and
- central government exercising stronger stewardship of the planning system so that it learns and adapts to emerging environmental outcomes and social, economic and technological trends.

These proposals, in themselves, should provide strong incentives for councils to develop the required capabilities. Over time, a more restrained planning culture should emerge – a culture that is both more modest about what planning can achieve and yet looks to a wider range of tools and disciplines to encourage successful urban development. Chapter 14 discusses in more detail the needed changes in culture and capability.