

POPULATION LOCAL GOVERNMENT AFFORDABILITY  
JOBS RURAL MANAGEMENT FUNDING TRANSPORT  
POPULATION ECONOMIC GROWTH  
INFRASTRUCTURE CITIES  
VALUE HOUSING REGIONAL  
WATER RATES FUNDING LOCAL GOVERNMENT  
REGIONAL ENVIRONMENT  
GROWTH  
HOUSING

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# The statutory framework of New Zealand's local government sector: is the key legislation working properly?

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## About Simpson Grierson

Simpson Grierson is New Zealand's leading local government law firm. Our expertise ranges from the day-to-day operation of councils in their statutory and political environments, to the highest level strategic developments affecting local government as a whole.

We advise many of the local authorities in New Zealand, including major city and regional councils based in Auckland, Wellington, and Christchurch. We have extensive and long-standing networks with key policy and decision makers throughout local government.

## Report authors



**Jonathan Salter**  
Partner

**DDI:** +64 4 924 3419

**M:** +64 21 480 955

**E:** [jonathan.salter@simpsongrierson.com](mailto:jonathan.salter@simpsongrierson.com)



**Duncan Laing**  
Partner

**DDI:** +64 4 924 3406

**M:** +64 21 434 713

**E:** [duncan.laing@simpsongrierson.com](mailto:duncan.laing@simpsongrierson.com)



**Matthew Hill**  
Associate

**DDI:** +64 4 924 3588

**E:** [matthew.hill@simpsongrierson.com](mailto:matthew.hill@simpsongrierson.com)

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# Introduction and overview

**This paper, commissioned by Local Government New Zealand (LGNZ), takes a high-level look at the interrelationships between the Local Government Act 2002 (LGA), the Resource Management Act 1991 (RMA) and the Land Transport Management Act 2003 (LTMA). It comments on the coherence of the statutory framework for local government and on how this statutory framework is holding up in the face of current challenges.**

In exploring our brief there were a number of factors which create an important context for developing this paper. The challenges facing New Zealand, and in particular local government, are significant.

A recent Blue Skies discussion document about New Zealand's resource management system by MartinJenkins, also commissioned by LGNZ, notes a number of issues including rising income inequality, declining water quality where land is used intensively, localised strong population growth, extreme rates of biodiversity loss and steadily rising carbon emissions.<sup>1</sup>

That report, together with others, refers to the importance of the interface between the three acts:<sup>2</sup>

*"Although the RMA is at the heart of the [resource management] system, the Local Government Act (LGA) and the Land Transport Management Act (LTMA) have a significant bearing on the location, nature and timing of infrastructure development. Decisions under these three Acts affect the nature of both urban and rural development patterns and influence, or sometimes even determine, the extent of property rights and actions of individual landowners."*

In particular, the RMA has come under intensive scrutiny regarding its perceived contribution to the housing crisis, but also more generally in relation to its

perceived constraint on economic growth. A recent report from the New Zealand Productivity Commission entitled *Using land for Housing* stated that the "planning system is not adequately responsive to changes in demand [for land]".<sup>3</sup> According to the Commission, *"the process requirements in the planning system and the lack of integration between land use, infrastructure and transport planning can make it difficult for local authorities to act promptly and consistently"*.

The latest proposed amendments to the resource management system in the Resource Legislation Amendment Bill (currently before Select Committee) continue this theme. The stated objectives of the Bill include "better alignment and integration across the resource management system".

The spotlight is currently on the need to align the strategic decision-making as it relates to urban areas, making the interrelationship between the LGA, RMA and LTMA particularly important. The need for lined up decision-making goes beyond urban planning and is relevant for addressing many issues facing New Zealand – the relationships between urban growth and energy use, urban growth and water quality, water quality and rural productivity, mining activities and conservation areas.

Our brief from LGNZ did not require us to take a strictly legal approach to the issues, but to incorporate our experience in advising many local authorities over a number of years.

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<sup>1</sup> A 'blue skies' discussion about New Zealand's resource management system: A discussion document prepared for LGNZ by MartinJenkins, (Local Government New Zealand, December 2015)

<sup>2</sup> Page 4

<sup>3</sup> Using Land for Housing (Productivity Commission Report, September 2015)

# A summary of our key findings

## 1. NOT BROKEN, JUST WORSE FOR WEAR

Our major finding is that overall the statutory framework for local government in New Zealand as provided for in the LGA, RMA and LTMA is not broken, but simply worse for wear. For so long as the purpose of local government includes enabling democratic local decision-making and action by, and on behalf of, communities, the consultation and engagement focus in the LGA remains appropriate. Establishing local mandates for infrastructure and its funding takes time.

## 2. THE THREE STATUTES WERE ORIGINALLY WELL-ALIGNED

Each of the Acts (especially the LGA and RMA) was the product of a comprehensive policy debate producing robust, coherent legislation. This is shown by the high degree of initial alignment amongst the purpose provisions of the three Acts. While each Act has different purposes (reflecting the fact they are designed to do different things) by 2002 when the LGA was enacted there was a strong commonality of purpose. All three Acts referred to sustainability, and both the LGA and RMA were concerned with the social, economic, cultural and environmental well-being of communities. In consequence, the underlying context of decision-making was aligned.

## 3. AMENDMENTS HAVE ERODED THE ALIGNMENT

Over the past decade or so, there has been a noticeable trend showing a reduction in the alignment of the three Acts. Multiple recent legislative changes, particularly to the LGA and RMA, have undermined the coherence and commonality of purpose of the three Acts. The changes to the purpose provisions in the LGA were a clear signal that the Government wanted local authorities to focus on efficiency and cost-effectiveness over other considerations. Equivalent changes were not made to the purpose provisions of the RMA, which retains its focus on sustainable management whilst balancing the four well-beings.

## 4. FOCUS ON ECONOMIC EFFICIENCY AT THE EXPENSE OF LOCAL DEMOCRACY

We have identified a trend in recent legislative amendments away from local democracy and toward economic efficiency. Recent changes to the LGA and RMA have had the effect of limiting local decision-making and public participation and had an emphasis on "efficient" outcomes rather than quality ones with wider or longer term benefits. While this is a Government's prerogative, it is producing an incremental reform to the concept of local democracy by stealth (and the Local Government Act 2002 Amendment Bill (No 2) appears to be another instance of this).<sup>4</sup>

## 5. RECENT LEGISLATIVE CHANGE HAS BEEN SOMEWHAT HASTY

Recent amendments to the legislative framework have been reactive. They have focussed on specific issues, some of those being real (for example, housing affordability crises in certain urban areas) and others more perceived (for example, unconstrained scope of local authority activity), with the aim being to achieve quick solutions. There has generally been a dearth of consultation and informed policy analysis to support the changes (again the Local Government Act 2002 Amendment Bill (No 2) is a case in point).

There are also instances of mixed messages making the legislation less rather than more effective and efficient.

What has been lacking is a measured, consultative process, taking an integrated approach to the wider situation. Genuine engagement with the stakeholders with actual knowledge of the issues and processes (including local government itself) would also aid the development of effective legislative solutions.

## 6. LESS HASTE, MORE COHERENCE

We suggest better outcomes would be achieved by taking more time to develop coherent, sustainable enhancements to the existing legislation. As a starting point, perhaps the core Acts could be administered by a single well-resourced agency instead of the three disparate agencies as at present: the Department of Internal Affairs, the Ministry for the Environment and the Ministry of Transport. Such an agency would need a strong mandate to engage properly with local government, and the community at large.

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<sup>4</sup> Please refer to our paper Commentary on the Local Government Act 2002 Amendment Bill (No 2) for some further commentary on this Bill.

## 1. Not broken, just worse for wear

**We acknowledge there to be significant and urgent issues facing local government in New Zealand, along with increasing pressure on the statutory framework for local government. However, in our view the system and framework is not broken and a complete overhaul would be unwise and unjustified.**

It makes sense that the framework be based on three separate statutes, with different spheres of operation.

No one would seriously suggest that the pursuit of national productivity should override the need for local, place-based democracy.

The establishment and constitution of local government itself is contained in the LGA. Through the sophisticated accountabilities of the LGA, communities have a say in what will meet their own current and future needs and well-being, and how that will be funded. Ultimately, this is what the LGA was intended to provide for when it was enacted, and fundamentally it still does.

Transport networks, far more than infrastructure, integrate more than one local area (and, in respect of the State highway system, the whole of the country).

It is therefore appropriate for the planning and management of those transport networks to be focussed nationally and regionally. The LTMA achieves this with local authorities participating through regional land transport committees.

Once democratic local government is provided for at a local level, and land transport is planned and managed at a regional (and national) level, there still needs to be a set of rules governing the use of natural and physical resources and the planning of urban and rural spaces. It is through the RMA that the mechanism exists to balance different private and public rights in respect of the use of resources. Local authorities participate in RMA processes both as a regulator and as a participant in its processes (for example, an applicant for a consent).

Fundamentally, the system is not only functional, but represents a logical and coherent approach to what are essential questions around enabling and providing for democratic local decision-making, managing and providing for communities' needs and well-being, and allocating scarce resources while protecting the environment.

The system is undoubtedly worse for wear – not least due to the combination of current issues putting pressure on the system alongside continuous legislative interventions that, in our view, have complicated rather than simplified the issues.

## 2. The three statutes were originally well-aligned

**At the point at which the LGA was enacted we believe that there was a reasonably high degree of alignment in the purposes of all three Acts. Fundamentally we also believe that the original Acts were sound, coherent law.**

The process that was followed for the development and enactment of the LGA covered a period of over two years. In late 2000, the Government released a statement of policy direction in respect of local government. The statement took the position that the Local Government Act 1974 imposed costs on local authorities and required constant amendment to meet changing circumstances. The Government intended to replace the 1974 Act with legislation that clearly established the position of local government in New Zealand's democratic system of government and set out local government's powers, roles and responsibilities.

During 2001, a consultation document was released and submissions received. The Local Government Bill was introduced to Parliament in December 2001, and reported back from the Local Government and Environment Select Committee in December 2002 (which recommended significant amendments to the Bill). It received Royal assent in December 2002 and generally came into effect from 1 July 2003.

At the time of its enactment, the LGA represented a fundamental reform. It picked up decades of developments and changes in local government legislation and took it forward with a rationalised, purpose- and principles-based, regime. Fundamental to this regime was engagement with local communities through well-prescribed accountability and decision-making provisions.

The same can be said of the RMA. In 1988, the Government began a review of a number of statutes dealing with town and country planning, water rights and regulation, air pollution, mining licences, noise control and geothermal energy. At the same time, the Ministry for the Environment prepared a report on the implications for New Zealand of the United Nations World Commission on Environment and Development Report called *Our Common Future*.<sup>5</sup> The report provided various policy recommendations, including to ensure the sustainable use of renewable resources such as fisheries, forestry, soil and water.

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<sup>5</sup> This Report is commonly known as the Brundtland Report (named after Gro Harlem Brundtland, ex-Prime Minister of Norway and the Chairperson of the Commission).

There was significant and extensive public consultation with public bodies, interest groups and individuals across New Zealand, and a number of working papers were prepared, before the Government issued a report in December 1988 on its proposals for resource management law reform. The essence of the proposals was that a single statute would replace the various separate rules and processes across several existing Acts.

The intention was that the new Resource Management Act would resolve the problems with the old regime in that it would provide a coherent and consistent framework for managing natural and physical resources in a sustainable way. It was the culmination of a three year process.

When it was enacted in 2003, the LTMA reflected a shift in purpose away from a previous perceived focus on roads (under the Transit New Zealand Act 1989) to the broader land transport system as a whole. It was the product of a process of refinement and improvement which had begun in 1989.

Schedule 3 to this paper addresses the history of the legislation in more detail.

Each of the Acts has a unique purpose reflecting the fact each is designed to do different things:

- The LGA provides for the constitution and empowerment of multi-functional local authorities and their democratic accountabilities
- The RMA addresses the management of natural and physical resources
- The LTMA provides the framework for the delivery of transport networks

At one level the LGA takes precedence as it provides the framework for democratic local government. Local authorities have responsibilities to deliver a wide range of infrastructure including transport networks and to provide regulatory functions including under the RMA.

However, the RMA is the over-arching general legislation regulating any form of development. It therefore regulates local authorities exercising their responsibilities to deliver infrastructure and services, and the Crown and local authorities exercising responsibilities to provide transport infrastructure and networks under the LTMA.

The coherence amongst the three statutes is shown by the alignment of their purpose provisions (these are provided in full in Schedule 1 to this paper). In 2003, the purpose of each of the LGA, RMA and LTMA was relatively well-aligned with each of the others. The purposes all included reference to “sustainability” in one form or another. The LGA referred to providing for local authorities to play a broad role in promoting the well-being of their communities “taking a sustainable development approach”. In 2003, the purpose of the

Land Transport Management Act 2003 referred to a “sustainable” land transport system. The RMA refers to promoting the “sustainable management” of natural resources.

In addition, both the LGA and the RMA were about promoting (or balancing) social, economic, cultural and environmental well-being. The LTMA was about integrated, safe and responsive transport systems.

Over the past decade or so, this level of coherence has been eroded.

### 3. Amendments have eroded the alignment

**The purpose provisions of the Acts have changed over the past decade or so, dramatically in the case of the LGA and LTMA.**

The Local Government Act 2002 Amendment Act 2012 changed one arm of the purpose of local government from:

*“promoting the social, economic, environmental and cultural well-being of communities”*

to:

*“meeting needs to communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.*

This change from what were known as the “four well-beings” to a focus on cost-effectiveness is clearly a change directed to the promotion of efficiency over well-being.

The other arm of the purpose, enabling democratic local decision-making by, and on behalf of, communities has remained unchanged.

The LTMA’s purpose has changed from:

*“achieving an integrated, safe, responsive, and sustainable land transport system” (“affordable” was included in 2008 amendments).*

to:

*“achieving an effective, efficient, and safe land transport system in the public interest”.*

While the inclusion of “the public interest” reveals a certain parallel with the original purpose of local government in the LGA (being the four community “well-beings”), the 2013 amendments have some resonance with the amended purpose of local government in the LGA. The focus is on effectiveness and efficiency rather than on the land transport system being “integrated” and “sustainable”.

The purpose provisions of the RMA have been relatively static over the period since its original enactment in 1991. The principal purpose of the RMA in section 5 has not changed from promoting the sustainable management of natural and physical resources. The four community well-beings continue to have statutory recognition in the RMA.

There have been some changes to sections 6 of the RMA (being the matters of national importance to be recognised and provided for by decision-makers) and section 7 (being other matters persons exercising functions and powers under the RMA are to have particular regard to). The changes have effectively been the insertion or removal of matters, rather than any fundamental shift in the relative weightings of matters.

Schedule 2 to this report sets out in detail the amendments made to each of the three Acts over their history.

## 4. Focus on economic efficiency at the expense of local democracy

**A theme running through the three key Acts has been the Government’s concern with local government getting the “right” answer as an outcome of its processes. In the recent past and at present, the primary focus of the Government’s approach to the overall framework and its statutory amendments has been economic outcomes over allowing for effective local democracy.**

Although a purpose of local government remains to “enable democratic local decision-making and action by and behalf of communities”, changes to the LGA since 2010 have had the effect of limiting local democracy.

This can be seen in the following:

- The change to the purpose of local government creates an objective test for what it is lawful for a local authority to be involved in. The test of “meeting communities’ needs cost-effectively” replaces the community-defined test of “promoting community well-being”. This change hampers a local authority’s ability to balance competing interests and values (a central aspect of democratic representation) by casting debate in an economic cost-benefit light, limiting activity to options that are most “cost-effective”.
- Allowing for Ministerial benchmarks to control outcomes is another way that communities lose the ability to define and put into effect their own values (which may or may not put economic values first).

- The opportunities for direct Ministerial intervention have been increased significantly.

As originally conceived, the primary accountability of local government provided for in the LGA was to communities though the very extensive transparency regime of the Act.<sup>6</sup> This accountability regime included and includes:

- general requirements that apply to all decision-making found in Part 6 of the Act;
- explicit obligations to identify and assess different options when making any decision and to consider community views and preferences (found in sections 77 and 78);
- consultation based on several principles (section 82);
- mandatory consultation requirements in certain instances (for example, in relation to strategic assets);
- a three-yearly cycle of audited 10-year plans with extensive prescribed content (**LTPs**); and
- annual planning and reporting cycles.

Since 2010, a series of amendments have been directed to making consultation and engagement with communities more effective (to encourage participation) by providing more targeted documents on which to engage with communities. Those documents include, for example, a financial strategy, an infrastructure strategy with a 30 year focus, a pre-election report and simplified consultation documents for the LTP and annual plan.

Unfortunately, these attempts to improve engagement have been highly detailed, and there has been an increase in prescription as to content and process.

The increased prescription in the content and style of consultation material has been slightly off-set by a “streamlining” of engagement by:

- repealing sections 88, 97(1)(c) and (d) which related to specific consultation obligations;
- simplifying sections 77 and 78 relating to decision-making engagement generally;
- reducing the use of the special consultative procedure in favour of consultation principles; and
- removing the need to consult on an annual plan where there are no material differences from the long-term plan.

The jury remains out on whether community engagement has been improved. The changes have generally made compliance more complicated and

<sup>6</sup> Contrast this with the old local government regime with “hard” financial accountability mechanisms through, for example, borrowing restrictions.

uncertain especially around critical areas such as rates. The processes themselves certainly do not generate efficiencies.

The recent and proposed changes to the RMA also effectively limit opportunities for effective public participation, for example, by removing steps from the process. However, in common with changes to the LGA, the RMA is becoming more directive of particular outcomes, and with a move to greater national standardisation.

Many of the amendments to the RMA over the past decade were intended to make the Act more “forward-leaning” and “development-friendly”. The current Resource Legislation Amendment Bill is in a similar “directory” vein. It includes the trimming down of consultation obligations (a key public accountability and engagement mechanism) to facilitate the Government’s desired outcomes.

Alongside the resource management law reforms (including the current Bill) is the fact that the RMA itself already has a number of tools for Government to utilise to achieve national policy outcomes (for example, national policy statements and national environmental standards). Many of these tools are only just beginning to be properly used, and yet the underlying legislation continues to be amended.

## 5. Recent legislative change has been somewhat hasty

**In addition to the general focus of the recent changes discussed above, a feature of these legislative developments is that they are reactive, focused on particular issues and legislative provisions, and the result of limited policy analysis or debate.**

The local government statutory framework obviously applies to all local authorities in New Zealand and, given the diversity of issues facing different regions, it is essential that the framework be flexible enough to apply appropriately to different circumstances. While some districts experience rapid growth others are in decline. Many of the recent legislative changes have been responses to specific identified issues which are not necessarily of universal national concern. For example, the supply of land for housing is a major issue in growth centres of the country (especially Auckland), but not for all regions. The Housing Accords and Special Housing Areas Act 2013 can be seen as enabling a location-specific solution to housing issues. By circumventing the RMA process it enables fast-tracked development. The long term consequences for local authority infrastructure remain to be seen.

While there is always room for legislation to be improved, not all issues facing the local government sector (and not all outcomes the Government wants local government to achieve) can be solved through amendments to legislation. In our experience, many issues relate to practice rather than deficiencies in the legislation itself. Improving practices takes time, but can lead to more sustainable benefits.

Given the pace of change, there has been limited time for appropriate policy analysis or debate to inform the statutory changes. The nature of the amendments, and especially what we have found in interpreting them, is that they have had the effect of tinkering with the Acts and making them somewhat more confusing and difficult to apply.

A consequence of this approach has been a tendency to create mixed messages. Examples include:

- requirements for local authorities to develop 30 year infrastructure strategies at a time when there is **immediate** demand for essential services to housing development;
- the reduction in the availability and certainty of development contributions, and the proposed repeal of financial contributions, which force urgent growth-related infrastructure spending on to ratepayers, at the same time as other changes create statutory pressures to **reduce** rates funding;
- narrowing the role of local authorities by particularising the purpose provision, then urging them to play a wider part in solving national problems (for example, housing and economic development) which are now arguably out of scope.

Again, not all problems are best solved by legislation. Section 155 of the LGA requires local authorities to specifically decide whether legislating by making a bylaw is the most appropriate way of addressing a perceived problem. Something similar might apply to legislation. As noted earlier, national coherence could have been achieved in the resource management area more effectively if the Crown had progressed key national policy statements much earlier.

In 2012, the Minister of Local Government launched an aggressive campaign on local government with a programme entitled *Better Local Government*. Based on perfunctory analysis, random examples, and information about rates and debt increases (but no analysis of the reasons), this provided a platform for ongoing statutory interventions.

There is now an impatience about change that has not acknowledged, at a national level, which is the essential tenet of the LGA – that engagement with the community produces better and more sustainable decision-making.



## 6. Less haste, more coherence

**It will be evident from the above that we see better, more sustainable solutions to the diversity of issues and circumstances across the country, if more effort were put into engagement ahead of legislative change.**

The frameworks of the three Acts are sound, but there has been a fragmented approach to amending them to address particular issues. What is needed is a more measured approach and more coherence. Policy development should be better informed by those at the coal-face, and this importantly includes local authorities.

Policy development would also benefit from being more joined-up. As a random suggestion, perhaps the core Acts could be administered by a single well-resourced agency instead of the three disparate agencies as at present: the Department of Internal Affairs, the Ministry for the Environment and the Ministry of Transport. Such an agency would need a strong mandate to engage properly with local government, and the community at large.

# SCHEDULE 1

## The current purpose provisions of the three statutes

### Local Government Act 2002

#### 3 Purpose

*The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—*

- (a) states the purpose of local government; and*
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and*
- (c) promotes the accountability of local authorities to their communities; and*
- (d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.*

#### 10 Purpose of local government

- (1) The purpose of local government is—*
  - (a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
  - (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.*

*(2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—*

- (a) efficient; and*
- (b) effective; and*
- (c) appropriate to present and anticipated future circumstances.*

### Resource Management Act 1991

#### 5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
  - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

### Land Transport Management Act 2003

#### 3 Purpose

*The purpose of this Act is to contribute to an effective, efficient, and safe land transport system in the public interest.*

## SCHEDULE 2

### A brief history of the amendments to the three statutes

#### **Amendments to the Local Government Act 2002**

##### **Local Government (Auckland) Amendment Act 2004 (2004 No 57)**

The purpose of this Act was to improve the Auckland regional land transport system, and funding for storm water in the Auckland Region. It was repealed by the Local Government (Auckland Transitional Provisions) Act 2010.

##### **Local Government Act 2002 Amendment Act 2004 (2004 No 63)**

Most amendments contained in this Act were technical in nature. A Supplementary Order Paper enabled local authorities to provide in their standing orders for a casting vote, in any circumstances where there is an equality of votes. This amendment applied to both council and council committee meetings.

##### **Local Government Act 2002 Amendment Act 2006 (2006 No 26)**

Most of the amendments in this Act were technical. They included minor clarifications (such as when the special consultative procedure is required).

##### **Local Government Act 2002 Amendment Act 2007 (2007 No 69)**

This Act was split from an omnibus bill that made minor technical amendments to 50 Acts (including the LGA).

##### **Local Government Amendment Act 2009 (2009 No 48)**

This Act made a minor technical amendment to the Local Government Act 2002 (the Act was divided from the Gangs and Organised Crime Bill).

##### **Local Government Act 2002 Amendment Act 2010 (2010 No 124)**

This Act made significant amendments to the LGA mainly focussed on making local authority decision-making more transparent and accountable, and restricting local authorities to the provision of core services (within a defined fiscal envelope). The changes included a new definition of "community outcomes", introducing a list of "core services" that local authorities are to have particular regard to, a requirement to periodically assess the expected returns from investments, removal of certain more prescriptive consultation requirements, a requirement for chief executives to produce a pre-election report, changes in relation to the ownership and

management of water assets, and the introduction of the ability of the Secretary of Local Government to make rules specifying performance measures.

##### **Local Government Act 2002 Amendment Act 2012 (2012 No 93)**

This Act introduced more significant amendments to the LGA. The changes included major changes to the purpose of local government (and accordingly local authorities' role and powers) to be more focussed on the provision of infrastructure, public services and regulatory functions (rather than the four "well-beings"), providing for greater mayoral powers (along the lines of the Auckland legislation), a greater ability for central Government to intervene in local authorities, and a "stream-lining" of council reorganisation procedures.

##### **Local Government Act 2002 Amendment Act (No 2) 2012 (2012 No 107)**

This Act made a minor amendment to Part 2 of Schedule 2 (to omit an item relating to the Banks Peninsula District Council).

##### **Local Government (Alcohol Reform) Amendment Act 2012 (2012 No 121)**

This Act made amendments to the LGA required as a result of alcohol law reform.

##### **Local Government Act 2002 Amendment Act 2013 (2013 No 124)**

This Act made minor technical amendments to the LGA.

##### **Local Government Act 2002 Amendment Act 2014 (2014 No 55)**

This Act made an array of changes to the LGA. The changes included amendments to the development contributions regime, making the local board model available for any reorganisation, requiring councils to review delivery of services and consider collaboration with other councils, the replacement of significance policies with significance and engagement policies, removal of some of the requirement to use the special consultative procedure replaced by obligations to consult in accordance with the principles in section 82, and limiting consultation on annual plan to only material departures from the long-term plan.

##### **Local Government Act 2002 Amendment Act 2015 (2015 No 21)**

This Act made minor technical amendments to the LGA.

## **Amendments to the Resource Management Act 1991**

### **Resource Management Amendment Act 1993 (1993 No 65)**

Following the passing of the RMA, a number of technical amendments were recommended to provide clarification. This Act made many minor changes including the provision for esplanade reserves in the case of subdivision and clarifying the procedure for making and changing plans and policy statements.

### **Resource Management Amendment Act 1994 (1994 No 105)**

The aim of this Act was to consolidate discharge controls for the coastal marine area under the umbrella of a single piece of legislation.

### **Resource Management Amendment Act (No 2) 1994 (1994 No 139)**

This Act was largely aimed at removing uncertainty regarding the application of section 32 of that Act. Section 32 is intended to function as a check on unnecessary and unfocused regulations by imposing a duty on Ministers and local authorities to consider alternatives when developing national environmental standards, policy statements, and plans. The amendment sought to clarify the action that must be taken to fulfil the section 32 duty.

### **Resource Management Amendment Act 1996 (1996 No 160)**

This Act made a number of minor changes as well as some more substantive changes to the Planning Tribunal. The more substantive changes included the renaming of the Planning Tribunal as the Environment Court, provision for those who represent some relevant aspect of the public interest to be parties to an appeal and a number of changes to improve efficiencies in the Environment Court process. These changes included increasing the maximum number of judges, removal of the constraint over how many Environment Commissioners may be appointed and a new notification system for proceedings to reduce administration costs.

### **Resource Management Amendment Act 1997 (1997 No 104)**

This Act amended some of the provisions introduced by the Resource Management Amendment Act 1994 and also enabled New Zealand's obligations under the International Convention for the Prevention of Pollution from Ships to be implemented. Furthermore, the Act repealed provisions in the RMA in relation to coastal rentals permitting regional councils to adopt occupation charging regimes and introducing coastal tendering. The Act also made less substantive changes, including

alterations to abatement notices, a legislative process in respect of unlawfully claimed land and prohibition on decision makers or consent authorities having regard to the effect of trade competition on trade competitors.

### **Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5)**

This Act's purpose was to impose a moratorium on the granting of coastal permits for aquaculture activities. As part of this the Act aimed to provide regional councils with the opportunity, during the moratorium, to provide in their regional coastal plans and proposed regional coastal plans for aquaculture management areas where aquaculture activities could be undertaken only as a controlled or discretionary activity and areas where aquaculture activities are prohibited.

### **Resource Management Amendment Act 2003 (2003 No 23)**

The aim of this Act was to improve the administration of the RMA. Two major changes were made, the limited notifications of resource consent applications were re-introduced, and the recommendation that the Environment Court should be able to hear appeals on council decisions to not notify a resource consent application was taken out.

### **Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2)**

This Act required explicit consideration of the effects of climate change and renewable energy in the exercise of functions and powers set out in RMA. It provided a stronger legal mandate to take into consideration energy and climate change matters and gave effect to the Government's climate change policies and the National Energy Efficiency and Conservation Strategy 2001 as well as New Zealand's obligations as a signatory to the Kyoto Protocol.

### **Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5)**

This Act made amendments to the RMA to extend the moratorium on coastal permit applications for aquaculture activities, deeming certain existing coastal permits for aquaculture activities to have been "given effect to", reviving other permits that have lapsed because they were unable to be given effect to, and removing the time limit for the early expiry of the moratorium over specified areas.

### **Resource Management Amendment Act 2004 (2004 No 46)**

This Act made minor amendments in relation to Environment Court judges.

**Resource Management (Waitaki Catchment) Amendment Act 2004 (2004 No 77)**

This Act amended the RMA to provide for an improved process to determine the use of water in the Waitaki catchment. The Act provided for the Waitaki Catchment Water Allocation Board to be appointed and for it to develop a water allocation framework for the Waitaki River. It also required a Panel of Commissioners be appointed to consider the consent applications together, within the framework.

**Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94)**

The purpose of this Act was to vest the full legal and beneficial ownership of the foreshore and seabed in the Crown. It aimed to guarantee public access while recognising ongoing customary rights.

**Resource Management Amendment Act (No 2) 2004 (2004 No 103)**

This Act introduced a regime relating to the aquaculture industry, specifically making the RMA the main Act for managing aquaculture. The Act aimed to provide marine coastal users with clarity and certainty.

**Resource Management Amendment Act 2005 (2005 No 87)**

This Act was intended to improve the operation of the RMA in relation to:

- the achievement of nationally consistent standards through national environmental standards and national policy statements;
- the making of decisions by consent authorities and the Environment Court;
- the power of the Minister for the Environment to call in applications for resource consents;
- the development of policy statements and plans by local authorities;
- consultation with iwi and resource planning by iwi;
- the allocation of natural resources;
- other amendments of a minor or technical nature.

**Resource Management Amendment Act 2007 (2007 No 77)**

A minor amendment was made in relation to the eligibility for appointment as an Environment Commissioner or Deputy Environment Commissioner.

**Resource Management Amendment Act 2008 (2008 No 95)**

This amendment related to aquaculture legislation as part of changes to several pieces of legislation.

**Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31)**

The goal of this Act was to "simplify and streamline processes and reduce costs, delays and administrative burdens" under the RMA. The amendment introduced different notification and service requirements in relation to consent processing, specifically requiring full notification if the effects would be more than minor. The Act introduced modified requirements for what a resource consent decision must obtain, in particular, decisions can cross-reference other documents instead of repeating them.

**Resource Management Amendment Act 2011 (2011 No 19)**

This Act related to matters of "national significance". In deciding whether a matter is, or is part of, a proposal of national significance, the Act allows the Minister to have regard to a range of factors. The Minister may also request the EPA to advise him or her on whether a matter is, or is part of, a proposal of national significance. Other minor amendments were made.

**Resource Management Amendment Act (No 2) 2011 (2011 No 70)**

This legislation aimed to simplify planning by removing the requirement for aquaculture management areas to be established before consent applications can be made. The Act removed the requirement for aquaculture management areas allowing for a return to a consent-based regime for aquaculture. The legislation also made several other minor amendments.

**Resource Management Amendment Act 2013 (2013 No 63)**

This Act was intended to help create a resource management system that delivers communities' planning needs, enables growth, and provides strong environmental outcomes in a timely and cost-effective way. Changes intended included:

- improving the resource consent regime
- a streamlined process for Auckland's first unitary plan
- a six-month time limit for processing consents for medium-sized projects
- easier direct referral to the Environment Court for major regional projects
- stronger requirements for councils to base their planning decisions on robust and thorough cost-benefit analysis.

## **Amendments to the Land Transport Management Act 2003**

Prior to the LTMA, the Transit New Zealand Act 1989 was relevant.

### **Transit New Zealand Act 1989**

This Act created a new central land transport authority, Transit New Zealand (TNZ) to replace the National Roads Board and Urban Transport Council. TNZ was tasked to provide a new framework for the planning, funding and development for the planning, funding and development of NZ's land transport system. TNZ took responsibility for State highways and the new Land Transport Fund and a Land Transport Account to pay for state highways, local roads, roads safety public transport and administration. All road maintenance work on these highways had to be tendered. Highways were fully funded through National funding, whilst the territorial authorities managed local roading networks (funded by Government and local rates). The Act required regional councils to establish regional land transport committees, and for both regional and territorial authorities to prepare a regional/district land transport programmes. (Note that this Act is still in force today, but was renamed the Government Roothing Powers Act 1989 in 2008).

### **Transit New Zealand Amendment Act 1990 (1990 No 122)**

Insignificant amendments.

### **Transit New Zealand Amendment Act 1991 (1991 No 57)**

Insignificant amendments.

### **Transit New Zealand Amendment Act (No 2) 1991 (1991 No 86)**

Insignificant amendments relating to excise duty.

### **Transit New Zealand Amendment Act 1992 (1992 No 70)**

This Act required regional councils/unitary authorities to prepare future 5 year focussed regional land transport strategies (RLTS). Regional councils must consult before making these strategies, and both regional authorities and territorial authorities must report annually on progress in implementing their RLTSs.

### **Transit New Zealand Amendment Act 1995 (1995 No 42)**

This Act allowed territorial authorities to take over some aspects of passenger transport from regional councils. A new board, Transfund New Zealand was created, and took over the funding aspects of TNZ's role; though TNZ continued to be responsible for State highways. A new funding regime for land transport, based on the newly

created National Roads Account and the State Highways Account, was established. TNZ was to operate the State Highways Account. Local authorities were to create and maintain Land Transport Disbursement Accounts, to receive the payments from the National Roads Account. Expenditure out of these accounts by TNZ or local authorities, unless the expenditure was subject to a competitive pricing procedure (tendering).

### **Transit New Zealand Amendment Act 1997 (1997 No 6)**

Insignificant amendments.

### **Land Transport Management Act 2003**

The LTMA reflected a shift in purpose, away from a previous perceived focus on 'roads' to a broader 'land transport system'. This Act altered the way transport funding was prioritised and allocated by establishing a more comprehensive framework to guide decision making, to be guided by the New Zealand Transport Strategy (NZTS). Consultation requirements were streamlined. The Act provided for toll roads and concession schemes.

### **Land Transport Management Amendment Act 2004 (2004 No 97)**

This Act amended the principal Act by dissolving for the Land Transport Safety Authority and Transfund, and replacing them by a new entity, Land Transport New Zealand. The new entity is aligned with the Government's New Zealand Transport Strategy and Land Transport Programme.

### **Land Transport Management Amendment Act 2008 (2008 No 47)**

This Act merged Land Transport New Zealand, the office of the Director of Land Transport, and Transit New Zealand into a single statutory Crown entity the New Zealand Transport Agency (NZTA), and introduced a number of measures allowing for improved regional transport funding and planning.

### **Land Transport Management Amendment Act 2013 (2013 No 35)**

This Act "streamlined transport planning and funding framework by simplifying processes and combining regional and national transport planning documents". It removed the ability of regional councils to raise their own regional fuel tax, simplified the process for approving road tool schemes, and established a new policy framework for planning and contracting public transport by regional councils, known as the Public Transport Operating Model.

### **Land Transport Management Amendment Act 2008 Amendment Act 2015 (2015 No18)**

Very minor amendments.

## SCHEDULE 3

### A brief outline of the genesis of the three statutes

#### Local Government Act 2002

Up until the mid-seventies, a large number of Municipal Corporations Acts and Counties Acts provided for urban and rural local government in New Zealand. These were consolidated by the Local Government Act 1974.

In the reforms of the late-eighties, local government was reduced from over 800 local authorities (often with specialist purposes and unique empowering legislation) down to 87 councils. At the same time, new accountability mechanisms were introduced into the legislation. This included annual planning and reporting cycles and consultative procedures. There was also encouragement of separating trading or commercial activities from core service delivery.

In 1996, there were further amendments which removed certain restrictions on local authority borrowing and strengthened financial accountability through prescribed financial management principles, procedures and accountability documents (for example, the long term financial strategy and funding policy). The general trend was to increase the empowerment of local authorities and encourage greater accountability to communities (for example, through mandatory planning documents).

The process that was followed for the development and enactment of the LGA covered a period of over two years. In late 2000, the Government released a statement of policy direction in respect of local government. The statement took the position that the Local Government Act 1974 imposed costs on local authorities and required constant amendment to meet changing circumstances. The Government intended to replace the 1974 Act with legislation that clearly established the position of local government in New Zealand's democratic system of government and set out local government's powers, accountabilities, roles, and responsibilities.

During 2001 a consultation document was released and submissions received. The Local Government Bill was introduced to Parliament in December 2001, and reported back from the Local Government and Environment Select Committee in December 2002 (which recommended significant amendments to the Bill). It received Royal assent in December 2002 and generally came into effect from 1 July 2003.

#### Resource Management Act 1991

In July 1988 the Government began a review of a number of statutes dealing with town and country planning, air pollution, water rights and regulation, mining licences, noise control and geothermal energy. The Ministry for the Environment prepared a report on the implications for New Zealand of the United Nations World Commission on Environment and Development

Report called *Our Common Future* (commonly known as the Brundtland Report). The report provided various policy recommendations, including around the use of renewable resources such as fisheries, forestry, soil and water.

There was significant and extensive public consultation with public bodies, interest groups and individuals across New Zealand, and a number of working papers were prepared, before the Government issued a report in December 1988 on its proposals for resource management law reform. The ultimate outcome of the proposals was a single statute that would replace the various separate rules and processes across several existing Acts.

The Explanatory Note to the Resource Management Bill noted that a large number of existing laws deal with managing and regulating effects on the environment and that these had reached the point where they often conflicted, overlapped with each other and were confusing.

The intention was that the new Resource Management Act would resolve the problems with the old regime in that it would provide a coherent and consistent framework for managing natural and physical resources in a sustainable way.

Similar to the process for the enactment of the LGA, the enactment of the RMA in 1991 represented a coherent response to the position in which New Zealand's environmental legislative framework found itself. It was the culmination of 3 years of work.

#### Land Transport Management Act 2003

Prior to the LTMA, the Transit New Zealand Act 1989 provided for a central land transport authority (called Transit New Zealand).

Transit New Zealand provided a framework for planning, funding and development of New Zealand's land transport system (including state highways). The Transit New Zealand Act 1989 also provided for regional councils and territorial authorities (recently established as part of the local government reforms of the late eighties) to establish regional land transport committees and programmes.

Over the course of the nineties, various amendments were made to the Transit New Zealand Act 1989 including a requirement for regional councils to consult on and prepare 5-year regional land transport strategies.

When it was enacted, the LTMA reflected a shift in purpose away from a previous perceived focus on 'roads' to a broader 'land transport system'. The Act altered the way transport funding was prioritised and allocated by establishing a more comprehensive framework to guide decision making.



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**BARRISTERS AND SOLICITORS**

**AUCKLAND:** Level 27, Lumley Centre, 88 Shortland Street, Private Bag 92518, Auckland 1141, New Zealand. T +64 9 358 2222

**WELLINGTON:** Level 24, HSBC Tower, 195 Lambton Quay, PO Box 2402, Wellington 6140, New Zealand. T +64 4 499 4599

**CHRISTCHURCH:** Level 1, 151 Cambridge Terrace, West End, PO Box 874, Christchurch 8013, New Zealand. T +64 3 365 9914

[www.simpsongrierson.com](http://www.simpsongrierson.com)

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