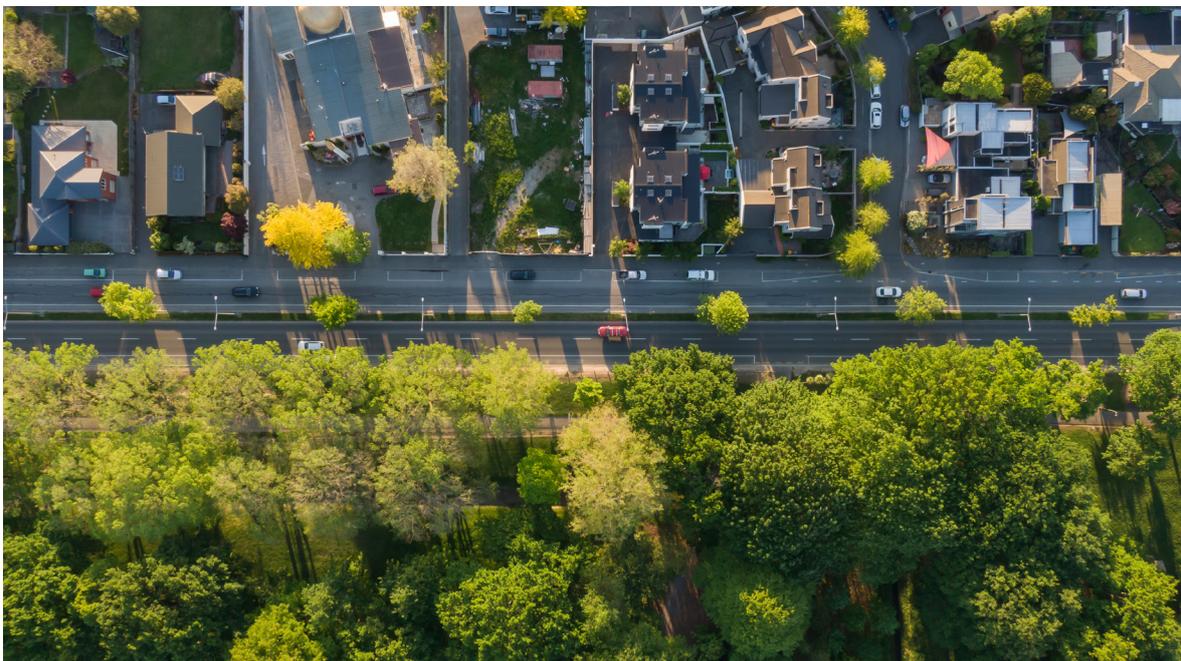


# RMA REFORM

## GETTING THE NEW SYSTEM RIGHT

APRIL 2026

**NICK CLARK**



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## Executive Summary

The Government's replacement of the Resource Management Act is the most important institutional reform New Zealand has undertaken in a generation. The direction is right. The reform principles established by Cabinet in 2024 - property rights as the guiding concept, a narrowed scope of regulation, nationally standardised zones, an externalities-based approach to effects management - are what the planning system needs. The Expert Advisory Group's Blueprint fleshed out those principles. Cabinet endorsed its approach.

But the Natural Environment Bill and Planning Bill, introduced to Parliament in December 2025, do not deliver what the reform programme promised. In the translation from Blueprint to legislative text, key disciplines have been weakened, removed or deferred to secondary instruments that will not exist for years. This research note identifies seven areas where the Bills fall short of the Government's stated intent:

**Complexity has returned.** The Bills replicate the procedural density that made the RMA unworkable for councils, applicants and the public.

**The balance between primary legislation and national direction is wrong, and key disciplines have been removed.** The Bills necessarily defer operative detail - zone templates, specific environmental limits, national standards - to secondary instruments. That is defensible, and the Government has signalled a programme of national direction to follow. But for the reform to deliver, the primary legislation must contain the directing clauses that guide and constrain the national direction that follows. As drafted, it does not. The Bills provide the frame of a system but omit the structural disciplines that determine whether the frame holds. The RMA's section 32 cost-benefit evaluation requirement has been dropped without replacement, removing a systematic check on regulatory quality in a system that concentrates unprecedented authority in Ministers. Statutory definitions, mandated mechanisms and evaluation requirements belong in primary legislation precisely because they exist to discipline how delegated powers are exercised. Without them, the frame can be filled to any specification by any future government.

**Regulatory relief is too weak and largely absent from the Natural Environment Bill.** The 'significant impact' threshold risks replicating the RMA's near-unusable section 85. Environmental limits that may dramatically reduce land values provide no avenue for relief whatsoever.

**Competing goals without hierarchy and property rights missing entirely.** Neither Bill includes property rights among its goals. Multiple competing objectives with no statutory hierarchy will generate the same litigation that plagued the RMA. Undefined subjective terms at the apex of the goals hierarchy will cascade into uncertainty at every level of implementation. The Government may believe that each application will be assessed against its relevant objective rather than all objectives simultaneously - but the Bills do not spell this out, and without explicit statutory direction, the predictable consequence is that courts will read the goals cumulatively and councils will select whichever goal best justifies blocking development.

**Standardisation displaces localism.** The Bills centralise planning authority at the national level, creating tension with the Government's stated commitment to localism and local decision-making.

**Environmental limits may not deliver better environmental outcomes and bypass property rights.** The RMA already contained environmental protections, and outcomes in the domains most directly

within the planning system's control satisfied few, with most indicators flat or declining despite three decades of regulatory accumulation. The Bills layer a new limits framework on the same institutional machinery, with significant ministerial discretion over how limits are set, no cost-benefit discipline, and a 'less stringent where justified' provision that creates uncertainty about how justification will be established. Environmental limits that may dramatically reduce land values sit outside the regulatory relief framework entirely, leaving affected landowners with no recourse.

**Transition risks.** The system will not be fully operational until 2029. Without cross-party support, legislation enacted in an election year could be repealed before it takes effect - continuing the regulatory limbo that has plagued the sector.

This note recommends targeted amendments achievable within the parliamentary timetable. These are not proposals to load operative detail into primary legislation. They are directing clauses - the kind of provision that must sit in the Act because its purpose is to constrain how delegated powers are exercised: a statutory presumption protecting property rights; a reinstated and strengthened cost-benefit evaluation requirement; a 'put option' modelled on the Public Works Act; defined terms replacing the subjective language in the goals hierarchy; mandates for competitive land market mechanisms whose operative content can be specified in national direction; and statutory parameters constraining how secondary instruments are made. The detail of zones, limits and standards belongs in national direction. The disciplines that ensure those instruments serve the reform's purposes do not.

These recommendations are not anti-environment. Many of the environmental problems the system was meant to address - degraded freshwater catchments, biodiversity loss on private land, cumulative effects from uncoordinated resource use - are at root property rights problems: tragedies of the commons and the anti-commons that arise when rights are poorly defined, unenforceable or subject to arbitrary regulatory revision. The RMA gave councils virtually unlimited regulatory discretion and no compensation obligations - and environmental outcomes deteriorated regardless. Property rights protections and cost-benefit disciplines strengthen environmental regulation by forcing it to be evidence-based, transparent and democratically accountable. A system that cannot make credible commitments to property rights cannot make credible commitments to environmental limits either. The two failures are connected.

The select committee process is the last realistic opportunity to get this right before the legislation is pushed through ahead of the 2026 election. New Zealand has waited too long for a functioning resource management system to accept another near miss.

## 1. Introduction

New Zealand has been trying to fix its resource management system for the better part of three decades. The Resource Management Act 1991, once hailed as world-leading environmental legislation, has become a byword for delay, cost, uncertainty and poor outcomes - for both development and the environment.

The RMA was enacted as the most ambitious environmental law reform New Zealand had ever undertaken.<sup>1</sup> It replaced 59 statutes and revoked 19 regulations, consolidating a sprawl of resource management legislation into a single framework.<sup>2</sup> The most notable statute it replaced was the Town and Country Planning Act 1977, which had earned a reputation for restrictiveness. That Act's prescriptive zoning regime and extensive consultation requirements had contributed to what researchers have described as a 'great down-zoning' of New Zealand's cities - in central Auckland, zoned capacity for new housing was cut in half.<sup>3</sup> Combined with metropolitan urban limits and stricter density controls, the planning regime in place by the late 1980s had suppressed housing supply and was increasingly blamed for rising prices.

The RMA was supposed to be different. Originally conceived by the reformist Fourth Labour Government, it was passed by its successor National Government. Its Environment Minister Simon Upton told Parliament the new framework would deliver "a more liberal regime for developers", focusing not on planning and controlling economic activity but on managing the adverse effects of resource use.<sup>4</sup>

Instead, the RMA arguably became more restrictive than what it replaced. Most councils carried over existing development controls into the new system and layered further restrictions on top, while the Act's expansive definition of 'effect' opened the door to contestation of virtually any development proposal.

New Zealand has spent three decades trying to make the RMA work. The Act has been amended virtually every year since its enactment. By 2016, as the Resource Legislation Amendment Bill was working through Parliament, it was set to become the 21st amendment Act to the RMA. As one legal commentator observed at the time of the Act's 25th anniversary, "given the tumultuous history of resource law in New Zealand, it is unlikely to be the last".<sup>5</sup> It was not. Several more amendment Acts have followed, including most recently the Resource Management (Freshwater and Other Matters) Amendment Act 2024 and the Resource Management (Consenting and Other System Changes) Amendment Act 2025.<sup>6</sup>

The RMA has also been the subject of major independent reviews, including the Ministry for the Environment's 2007 review, the Technical Advisory Group reviews in 2009 and 2013, and the Randerson Panel review in 2020 - each producing new reform proposals, none resolving the

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<sup>1</sup> Sir Geoffrey Palmer, *Ruminations on the Problems with the Resource Management Act*, keynote address to the Local Government Environmental Compliance Conference, 2–3 November 2015.

<sup>2</sup> Resource Management Act 1991, Schedule 6.

<sup>3</sup> Ryan West and Sam Garlick, *Upzoning New Zealand*, Works in Progress, April 2025.

<sup>4</sup> Hon Simon Upton, Third Reading Speech on the Resource Management Bill, New Zealand Parliamentary Debates (Hansard), 4 July 1991.

<sup>5</sup> Anderson Lloyd, *25 Years of the RMA and CMA*, 29 September 2016.

<sup>6</sup> Resource Management (Freshwater and Other Matters) Amendment Act 2024; Resource Management (Consenting and Other System Changes) Amendment Act 2025.

fundamental problems.<sup>7</sup> The cumulative effect has been an Act of over 400 sections and multiple schedules, patched and re-patched to the point where no further amendment can address its structural failings.<sup>8</sup>

The problems are well documented. Since the RMA's enactment, New Zealand has experienced faster growth in real house prices than any other OECD country, driven in significant part by planning restrictions that have constrained housing supply in the face of strong population growth.<sup>9</sup>

Infrastructure consenting alone costs \$1.29 billion a year, according to research by Sapere for the New Zealand Infrastructure Commission, with those costs having risen by 70 percent in seven years, fuelled by growth in consultant and legal fees. The time taken by authorities to make decisions on consent applications increased by 50 percent between 2014 and 2021 for all applications, and by as much as 150 percent for infrastructure projects.<sup>10</sup> As the Infrastructure Commission's chief executive observed at the time, the country has "a planning system that has little respect for time or money".<sup>11</sup>

Councils administer over 100 resource management policy statements and plans, with 1,175 locally devised land-use zones - compared to 13 in Japan's nationally standardised system.<sup>12 13</sup> Japan's system also includes overlay districts that interact with the standardised zones, adding combinatorial complexity. The comparison is nevertheless instructive: the base framework is nationally consistent, even where overlays introduce local variation.

Meanwhile, outcomes in the domains most directly within the planning system's control - freshwater quality, biodiversity, soil health - have continued to decline or stagnate.<sup>14</sup>

This matters far beyond the planning system itself. The 2024 Nobel Prize in Economics, awarded to Daron Acemoglu, Simon Johnson and James Robinson, recognised research demonstrating that the institutional foundations of prosperity are not geography or natural resources but the security of property rights and the rule of law.<sup>15</sup> New Zealand's replacement resource management legislation is, at its core, an institutional choice about property rights, state discretion and the rules governing how land and resources are used. Getting it right is a determinant of whether New Zealand arrests its relative economic decline or entrenches it.

The previous Labour Government attempted its own reform by commissioning the Randerson Panel review. It resulted in the replacement of the RMA with the Natural and Built Environment Act and the Spatial Planning Act, both passed in August 2023. Unfortunately, many submitters, including the

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<sup>7</sup> Ministry for the Environment review, 2007; Technical Advisory Group reviews, 2009 and 2013; Resource Management Review Panel (chaired by Hon Tony Randerson QC), *New Directions for Resource Management in New Zealand*, June 2020.

<sup>8</sup> Environment Guide, *History*.

<sup>9</sup> New Zealand Infrastructure Commission / Te Waihanga, *The Decline of Housing Supply in New Zealand*. See also NZ Productivity Commission, *Housing Affordability Inquiry*, March 2012.

<sup>10</sup> David Moore et al., *The Cost of Consenting Infrastructure Projects in New Zealand*, Sapere Research Group for Te Waihanga, July 2021.

<sup>11</sup> Ross Copland, Chief Executive of the New Zealand Infrastructure Commission, quoted in Stuff, 9 December 2021.

<sup>12</sup> Over 100 resource management plans. See Hon Chris Bishop, *New system to make planning easier for everyone*, 9 December 2025.

<sup>13</sup> 1,175 land-use zones versus 13 in Japan. See Hon Chris Bishop, *New planning system to end the culture of 'no'*, 24 March 2025.

<sup>14</sup> Ministry for the Environment, *Environment Aotearoa 2022*. On biodiversity, 74 percent of indigenous freshwater fish species are threatened or at risk.

<sup>15</sup> Nobel Prize in Economic Sciences 2024, *Press Release*, 14 October 2024.

Initiative, considered them to be worse than the RMA. The two Acts were repealed within weeks of the change of government.<sup>16</sup>

The current Government promised to do better. Its reform programme, launched in phases from late 2023, was grounded in principles that the Initiative has long advocated: property rights as a guiding concept, a narrowed scope of what can be regulated, standardised planning provisions, fewer consents, and an effects management framework based on the economic concept of externalities rather than the RMA's infinitely elastic definition of 'effect'.

In September 2024, an Expert Advisory Group was established to develop a blueprint for the replacement legislation. Its report, delivered in February 2025 and published alongside the Cabinet paper in March, provided 21 key recommendations that would, if faithfully implemented, represent a fundamental improvement on the status quo.<sup>17</sup> Cabinet broadly endorsed the EAG's approach and instructed officials to go ahead with drafting.<sup>18</sup>

In December 2025, the Government introduced the Natural Environment Bill and the Planning Bill to Parliament.<sup>19</sup> The Bills follow the EAG's recommendations in their broad architecture. But in the translation from principles to legislative text, something has gone wrong. Key elements have been weakened, complexity has crept back in, and an extraordinary amount of the system's substance has been deferred to secondary instruments that do not yet exist.

A note on the scope of this critique. The Government made a deliberate choice to keep the primary legislation lean and delegate operative detail to national direction. That choice is defensible. Nobody is arguing that zone templates, specific environmental limits or planning methodologies should be embedded in primary legislation. The question is what must be in the primary legislation to ensure those delegated powers are exercised consistently with the reform's stated purposes. The answer is directing clauses: statutory definitions that give content to undefined goals, presumptions that constrain how discretion is exercised, mandates for mechanisms that cannot be revoked by the same powers they are meant to discipline, and evaluation requirements that impose accountability at the top of the system. These are not operative detail. They are the structural safeguards without which operative detail can be shaped to any purpose. This research note argues that the Bills defer the detail - which is appropriate - but omit the safeguards - which is not.

This research note examines how the positive intent behind RMA reform has been diluted, and what must change to get it back on track.

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<sup>16</sup> Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.

<sup>17</sup> Expert Advisory Group on Resource Management Reform, *Blueprint for Resource Management Reform*, Ministry for the Environment, March 2025.

<sup>18</sup> Cabinet paper, *Replacing the RMA: Response to the Expert Advisory Group Blueprint*, Ministry for the Environment, March 2025.

<sup>19</sup> Natural Environment Bill and Planning Bill, introduced to Parliament 9 December 2025.

## 2. The Problem: Why the RMA Must Go

It is worth restating, briefly, why the RMA needs to be replaced rather than merely amended. The problems are not incidental or the result of poor implementation. They are structural.

### *Scope creep*

The RMA defines an ‘effect’ to include virtually anything - positive or adverse, temporary or permanent, past, present or future, cumulative, and of low probability but high potential impact.<sup>20</sup> This definition has allowed councils and submitters to contest almost any aspect of a development proposal. Trade competition effects, the impact on a neighbour’s view of the hills, the visual appearance of a building’s colour scheme - all have been litigated under the RMA. The EAG itself concluded that this broad definition had led to the system’s misuse.

### *Regulatory accumulation*

Over three decades, councils have layered increasingly detailed controls into district and regional plans. The planning documents themselves have grown to enormous length. New Zealand’s 1,175 locally devised land-use zones illustrate the scale of regulatory fragmentation. Each new national policy statement has added further requirements for councils to implement, frequently in conflict with existing provisions. The result is a system in which nobody - not planners, not lawyers, not applicants - can predict with confidence what the rules require.

### *Perverse incentives*

Under the RMA, councils bear the political and financial risks of consenting decisions but capture almost none of the economic benefits of development. Growth generates costs for councils - infrastructure, services, political friction from existing residents - while the increased tax revenue flows to central government. As the Initiative has documented in previous work, this creates a structural bias against growth and development in local planning decisions.<sup>21</sup>

### *Weak property rights*

The RMA contains almost no meaningful protection for property rights. Section 85 allows landowners to challenge plan provisions only if they render the land ‘incapable of reasonable use’ - a threshold so high that it has rarely been successfully invoked.<sup>22</sup> Legal scholarship has noted the provision “does not appear to have been used to its full potential” and that the judicial approach effectively enables “councils to promulgate restrictive zoning controls with impunity, as the landowner has no other remedy”.<sup>23</sup> Councils can impose restrictions that substantially reduce property values without

<sup>20</sup> Resource Management Act 1991, section 3 (definition of ‘effect’).

<sup>21</sup> Eric Crampton, *In the Zone: Creating a Toolbox for Regional Prosperity*, The New Zealand Initiative, October 2015; Jason Krupp, *The Local Formula*, December 2015.

<sup>22</sup> Resource Management Act 1991, section 85.

<sup>23</sup> Rod Thomas, *Compensation Issues and the Meaning of Section 85 of the RMA*, (2002) 6 New Zealand Journal of Environmental Law 255. See also Greg Severinsen, *Replacing the Resource Management Act: Risks and Solutions*, Environmental Defence Society, 2025.

compensation or even acknowledgement. This asymmetry has allowed regulatory overreach to become normalised.

#### *No public interest test*

The RMA contained no requirement for councils or central government to demonstrate that proposed planning rules delivered net public benefits. Section 32 required an evaluation report for any proposed national policy statement, national environmental standard, or plan provision - assessing whether objectives were the most appropriate way to achieve the Act's purpose, whether provisions were the most appropriate way to achieve those objectives, and the efficiency and effectiveness of the proposed provisions.

But section 32 was largely a pro forma exercise. It required the analysis to be carried out but imposed no obligation to act on it, no independent review of its quality, and no consequence for conclusions that were poorly reasoned or unsupported by evidence. Councils could and did impose restrictions whose costs far exceeded their benefits, with no mechanism to surface that disproportion or require its justification.

The RMA's consenting regime thus operated without the basic institutional discipline that should accompany any restriction on private property: a credible demonstration that the public interest served justifies the private cost imposed.

#### *Environmental failure*

The RMA's effects-based framework, paradoxically, has not delivered good environmental outcomes in the domains most directly within its control. Freshwater quality remains poor across much of lowland New Zealand. Indigenous biodiversity continues to decline.<sup>24</sup> Air quality has improved and greenhouse gas emissions have fallen, but these gains are driven primarily by other instruments - bans on open fires for home heating, vehicle emission standards, the Emissions Trading Scheme - rather than the RMA's consenting regime. The RMA has been far more effective at blocking development than at protecting the environment, because the consenting process addresses individual proposals rather than the sources of actionable environmental problems.

None of these problems can be fixed by further amendments to the RMA. The legislation needs to be replaced with a system designed on different foundations. That is what the Government set out to do. The question is whether the Bills, as introduced, achieve it.

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<sup>24</sup> Ministry for the Environment and Statistics NZ, *Our Freshwater 2023*, April 2023. On biodiversity: Environment Guide, *New Zealand's Biodiversity*. Air quality: Statistics NZ, *Air pollutant trends decrease at most monitoring sites*. Greenhouse gas emissions: Climate Change Commission, *Monitoring emissions reduction*, 2024.

### 3. The Reform Journey: From Principles to Blueprint

#### *Phases 1 and 2: Clearing the ground (2023–2025)*

The Government's reform programme began with Phase 1 at the end of 2023: the repeal of the previous Labour Government's Natural and Built Environment Act (NBEA) and Spatial Planning Act (SPA) and the restoration of the RMA as the operative resource management statute.

This was a necessary first step. The NBEA and SPA had been widely criticised for their complexity, their imposition of unelected regional planning committees, and a scope so broad that it threatened more uncertainty rather than less. Repealing them and returning to the RMA provided a stable baseline from which to design the replacement system properly.

Phase 2, spanning 2024 and into 2025, pursued reform on multiple fronts while the replacement legislation was being designed. The Fast Track Approvals Act established a streamlined consenting pathway for projects of national or regional significance.<sup>25</sup> Amendment Bills addressed immediate pain points in the RMA - consenting delays, compliance and enforcement gaps. And a comprehensive review and rationalisation of national direction instruments was undertaken, intended both to improve the current system and to inform the design of the replacement legislation.<sup>26</sup>

These early phases served a useful purpose in demonstrating that the Government was serious about reform and in building the technical foundations for what would become Phase 3: the replacement Bills themselves. They also revealed the scale of the challenge. The sheer volume of national direction accumulated under the RMA, much of it contradictory or poorly drafted, underscored the need for a clean break rather than further incremental amendment.

#### *Cabinet's ten principles (September–October 2024)*

In September 2024, Cabinet took the foundational decision for Phase 3. A Cabinet paper, proactively released in October 2024, set the framework for the replacement legislation.<sup>27</sup>

Its framing was unambiguous: the starting point for the replacement system should be the enjoyment of property rights and respect for the rule of law. The paper diagnosed the RMA's failures - its scope had expanded to cover virtually any aspect of land use, its definition of 'effects' had allowed too many objectors to frustrate development, and its processes had become complex, slow, litigious and costly - and proposed ten principles to guide the design of the replacement system:

1. Narrow the scope of the resource management system and the effects it controls.
2. Establish two Acts with clear and distinct purposes - one to manage environmental effects arising from activities, and another to enable urban development and infrastructure.
3. Strengthen and clarify the role of environmental limits and how they are to be developed.

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<sup>25</sup> Fast-track Approvals Act 2024.

<sup>26</sup> Ministry for the Environment, *National Direction Review*, 2025.

<sup>27</sup> Cabinet paper, *Replacing the Resource Management Act 1991*, proactively released 22 October 2024.

4. Provide for greater use of national standards to reduce the need for resource consents and simplify council plans, such that standard-complying activity cannot be subjected to a consent requirement.
5. Shift the system focus from ex ante consenting to strengthened ex post compliance monitoring and enforcement.
6. Use spatial planning and a simplified designation process to lower the cost of future infrastructure.
7. Realise efficiencies by requiring one regulatory plan per region jointly prepared by regional and district councils.
8. Provide for rapid, low-cost resolution of disputes between neighbours and between property owners and councils, with a Planning Tribunal providing an accountability mechanism.
9. Uphold Treaty of Waitangi settlements and the Crown's obligations.
10. Provide faster, cheaper and less litigious processes within shorter, less complex and more accessible legislation.

Notably, property rights do not appear by name in any of the ten principles - an omission that would later surface in the Bills themselves. The Cabinet paper was nonetheless explicit that they underpinned the entire exercise: the replacement system's starting point "should be the enjoyment of property rights and respect for the rule of law", with regulation justified only by reference to material adverse effects on others.<sup>28</sup> Its absence from the list of principles, rather than being declared separately, created an unfortunate ambiguity.

That said, these principles set a high standard. They committed the Government to a system grounded in property rights and focused on material externalities - not the open-ended 'sustainable management' balancing exercise that had allowed the RMA to metastasise. The paper explicitly stated that the resource management system should not attempt to direct development outcomes better determined by landowners and developers themselves, and that councils should not be able to use the system to require balconies, dictate house colours, apply blanket 'special character' protections, regulate building interiors, or manage greenhouse gas emissions. It envisaged a significant reduction in the approximately 40,000 resource consents issued each year.<sup>29</sup>

The Cabinet paper's task for the Expert Advisory Group was clear: take these principles and develop a workable blueprint for their legislative implementation. How well that mandate was discharged - and how faithfully the resulting legislation reflected it - is the central question this research note addresses.

#### *The Expert Advisory Group (September 2024–February 2025)*

The EAG was established alongside the Cabinet paper to test and refine the workability of the ten principles. Chaired by Janette Campbell, an experienced resource management barrister, the group comprised practitioners with deep knowledge of resource management law, planning, and Te Ao

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

Māori. Their mandate was to transform Cabinet’s intent into a blueprint for legislation - not to revisit the fundamental policy direction, which had already been set.

The EAG’s report was published in March 2025. Its key recommendations included:

**Two separate Acts.** A Planning Act focused on regulating the use, development and enjoyment of land, and a Natural Environment Act focused on the use, protection and enhancement of the natural environment. This separation was designed to give each statute a clearer purpose than the RMA’s amorphous ‘sustainable management’.

**Narrowed scope.** The approach to effects management would be based on externalities - effects borne solely by the party undertaking the activity would not be controlled. This was a significant narrowing from the RMA’s catch-all definition.

**Standardised planning provisions.** Nationally standardised zones under the Planning Act, with an exceptions pathway for bespoke provisions where justified. This would replace the current patchwork of locally developed zones and rules with a consistent national framework.

**Fewer consents.** Greater use of permitted activities, removal of the controlled activity consent category, and a higher materiality threshold for when effects can trigger regulatory intervention. The Government estimated this could remove up to 46 percent of current consent applications.

**Environmental limits.** A hard-edged environmental limits framework under the Natural Environment Act, with limits set nationally or through a prescribed methodology for regional councils. This addressed the RMA’s failure to set clear ecological bottom lines.

**Property rights.** The enjoyment of property rights as a guiding principle, with regulatory justification reports required where councils depart from national standards and a regulatory relief mechanism where planning controls impose significant impacts on landowners.

**Spatial planning.** Regional spatial plans jointly prepared by all councils in a region, providing strategic direction on where development should and should not occur.

**One plan per region.** A combined regional plan comprising the spatial plan, natural environment plan and land-use plan, replacing the current multiplicity of regional policy statements, regional plans and district plans.

#### *The Melville minority report*

Not all members of the EAG agreed with the majority’s approach. Paul Melville, General Manager Policy and Advocacy for Federated Farmers, filed a minority report that accepted much of the EAG’s work but dissented on several critical framework questions.<sup>30</sup> His central argument deserves attention because it has proved prescient.

Melville’s diagnosis was blunt. The RMA was also characterised at its enactment as focused on managing externalities. Simon Upton said as much in Parliament in 1991.<sup>31</sup> Thirty-four years later, the system requires around 40,000 resource consents a year and controls matters down to the location

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<sup>30</sup> Paul Melville, *Blueprint for RM Reform - Minority Report*, 12 March 2025.

<sup>31</sup> Hon Simon Upton, Third Reading Speech on the Resource Management Bill, July 1991. Op cit.

of doors and balconies. Intentions are not enough. If scope is allowed for control of private property, it can be expected that it will, over time, be exploited.

From this diagnosis, Melville proposed a series of structural safeguards that differed materially from the majority report. Where the EAG recommended broad descriptive purpose statements, Melville wanted purpose sections that explicitly defined and limited each Act's scope to specified externalities - listing the specific environmental effects the Natural Environment Act would cover and confining them to physical environmental effects only. This would have given the legislation a hard boundary against regulatory expansion.

On materiality, the EAG proposed raising the threshold for regulable effects to 'more than minor' - language carried over from the RMA. Melville argued this was insufficiently precise and would continue to generate litigation. He proposed instead that materiality thresholds be quantified in regulation: specific volumes of water abstraction, defined areas of vegetation clearance, measurable stocking rates for agricultural discharges. His model drew on overseas practice, particularly the UK's Water Resources Act, which sets numerical thresholds below which abstraction is unregulated.

Melville also challenged the inclusion of several matters within the new system's scope. He argued that regulating highly productive land lacked a sound evidence base - housing prices had risen far faster than vegetable prices since 1999, suggesting a greater shortage of developable land than of productive farmland. He contended that managing landscapes and cultural relationships within the Natural Environment Act would broaden its scope beyond physical environmental effects and into intangible values, creating exactly the kind of open-ended regulatory authority that had plagued the RMA.

On environmental limits, Melville proposed a fundamentally different approach. Where the EAG recommended limits set to protect the 'life-supporting capacity' of the natural environment, Melville argued that regional councils should be empowered to set limits by balancing economic, social and environmental considerations. His concern was practical: a rigid ecological standard would be used to override community preferences in modified environments.

On the Treaty of Waitangi, Melville departed from the majority's recommendation to carry forward the RMA's operative Treaty principles clause. He proposed a descriptive clause outlining how existing Treaty settlements were to be provided for, with decisions made by councils serving all community stakeholders.

On democratic accountability, Melville argued for a clearer separation between political and technical decisions. Plans would be appealable only on points of law rather than on their merits. Environmental limits would be set by elected councillors rather than by technocratic processes subject to court review.

Melville also warned against the use of principle-based legislation - a point that has proved particularly relevant. Both Bills are laden with principles: goals, procedural principles, substantive principles, interpretive principles. Principles are inherently contestable. Reasonable people will disagree about what 'proportionate' means, what counts as 'inappropriate development', or how to balance 'participation' against efficiency. Every unresolved contest of principle becomes a question for the courts.

The minority report received little public attention, which is itself instructive. The structural diagnosis - that broad purposes, vague goals and qualitative thresholds would allow scope creep to return - was

largely ignored in favour of debate over the politically salient questions of Treaty provisions and highly productive land. As we shall see, the structural warnings deserved more weight than they received.

### *The Cabinet decision (March 2025)*

Cabinet broadly endorsed the EAG's recommendations, with some modifications and deferrals of detail to the legislative drafting process.<sup>32</sup> The comparison table released alongside the Cabinet paper showed substantial alignment between the EAG's blueprint and the Government's intended direction. An independent economic analysis by Castalia estimated the reforms could deliver benefits worth \$14.8 billion in present value, comprising \$11.3 billion in compliance cost reductions and \$3.5 billion in reduced administrative costs - though the consultancy cautioned that the estimates were highly uncertain.<sup>33</sup>

Cabinet adopted several of Melville's positions where they aligned with the coalition's political commitments. The most prominent was the Treaty of Waitangi. The EAG majority had recommended retaining the RMA's operative Treaty principles clause and supplementing it with more prescriptive guidance. Cabinet rejected this and sided with Melville's descriptive approach, consistent with the coalition agreement between National and New Zealand First. Minister for RMA Reform Chris Bishop confirmed the Government had "a different view" from the EAG majority.<sup>34</sup>

Cabinet also retained the highly productive land framework within the system's scope and retained the CMA extent at 12 nautical miles, departing from the EAG's recommendation to reduce it.

But on the critical framework questions - the structural safeguards that Melville had argued were necessary to prevent scope creep - Cabinet largely followed the EAG majority. The purpose statements remained broad and descriptive rather than tightly scoped to specified externalities. Materiality thresholds remained qualitative rather than quantified. The environmental limits framework retained its 'life-supporting capacity' orientation. And the goals for both Acts remained multiple and competing rather than tightly defined and hierarchically ordered.

These were not minor drafting choices. They were the framework decisions that would determine whether the new system could resist the gravitational pull towards regulatory expansion that has characterised every previous iteration of resource management law in New Zealand. By adopting Melville's politically convenient recommendations while declining his structural safeguards, Cabinet set the reform on a trajectory where the architecture was sound but the defences against scope creep were weak.

At this point, however, the reform was still on a broadly positive trajectory. The principles were right. The architecture was sensible. The political commitment appeared genuine.

What happened next was the legislative drafting process.

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<sup>32</sup> Cabinet paper, *Replacing the Resource Management Act 1991 - Approach to development of new legislation*, proactively released 28 March 2025.

<sup>33</sup> Castalia, *Economic Analysis of Resource Management Reform*, prepared for the Ministry for the Environment, March 2025.

<sup>34</sup> Hon Chris Bishop, comments on the Treaty of Waitangi provisions, March 2025. See Thomas Coughlan, *RMA reform: Government promises overhaul of zoning rules*, New Zealand Herald, 25 March 2025.

## 4. Where the Bills Fall Short

The Natural Environment Bill and the Planning Bill, as introduced on 9 December 2025, follow the EAG's blueprint in their broad structure. The two-Act architecture is there. Standardised zones, environmental limits, spatial planning, combined regional plans - the headline features all appear. The Initiative's initial reaction was positive, and rightly so. Many of the changes the Initiative has advocated for over a decade are reflected in the Bills.

But legislation lives in its detail. And in the detail, the Bills reveal a gap between aspiration and implementation that threatens to undermine the reform's core objectives. Many of the risks Melville identified in his minority report - scope creep through broad purposes, vague materiality thresholds, competing goals without hierarchy, and the litigious consequences of principle-based legislation - are visible in the legislation as introduced. The Initiative's subsequent submission to the select committee identified this gap as the Bills' central problem: what the Bills promise in their goals, they withhold in their provisions.<sup>35</sup>

The Government made a deliberate architectural choice to keep the primary legislation lean and delegate operative substance to national direction and secondary instruments. The reasoning is sound up to a point. Nobody wants zone templates or specific environmental limits in the Act. The RMA was too detailed, and secondary instruments allow correction over time without reopening primary legislation.

But the choice to keep the Act lean has a corollary that the Bills do not address. A lean Act is defensible only if it contains what might be called directing clauses - provisions whose purpose is to guide and constrain how delegated powers are exercised. These include statutory definitions that give content to undefined goals, presumptions that set the default position for decision-makers, mandated mechanisms that the Act requires national direction to establish, and evaluation requirements that impose accountability before restrictions are imposed. The Initiative's Competitive Urban Land Markets research note illustrates the distinction: it proposes a statutory definition clarifying what 'competitive urban land markets' means, mandates mechanisms (price-signal tests, independent assessment, mandatory responses) and specifies enough detail to make those mechanisms enforceable - but it does not prescribe the economic model needed to derive price differentials. That operative content sits in national direction. The Act provides the mandate and parameters; national direction provides the method.<sup>36</sup>

The Bills get this balance wrong. They defer the operative detail - which is appropriate - but omit the directing clauses - which is not. Without those clauses, the very leanness that is meant to provide stability instead provides maximum legislative freedom to future Ministers. The Bills need constraints in the primary legislation that work regardless of who holds power.

### *Complexity has returned*

The Planning Bill and Natural Environment Bill together run to more than 740 pages of dense legislative text, with each having hundreds of clauses and a dozen schedules. This is not inherently a problem - replacing a 30-year-old statute is necessarily complex. But the Bills contain a level of procedural prescription and cross-referencing that will challenge even experienced practitioners.

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<sup>35</sup> The New Zealand Initiative, *Submission on the Planning Bill and Natural Environment Bill*, 13 February 2026.

<sup>36</sup> The New Zealand Initiative, *Competitive Urban Land Markets and the Planning Bill 2025*, 13 February 2026.

The RMA's critics have consistently argued that the system is too complex to understand, too expensive to navigate, and too slow to deliver decisions. A replacement that replicates this complexity in a new statutory framework - even one with better substantive foundations - risks reproducing the same problems. The Resource Management Law Association has already raised concerns about internal consistency and workability. If the specialist lawyers struggle to follow the legislation, councils, applicants and the public have no chance.

The Government should use the select committee process to simplify the Bills wherever possible, with a particular focus on reducing unnecessary procedural prescription and ensuring internal consistency.

*The balance between primary legislation and national direction is wrong - and key disciplines have been removed*

The Bills defer their operative detail to secondary legislation - standardised zones, environmental limits, national standards, planning methodologies. Much of this deferral is appropriate. These are matters where the operative content belongs in national direction, where it can be developed with proper consultation, adjusted as circumstances change, and specified with a level of technical detail that primary legislation cannot accommodate. The concern is not that national direction will carry operative content. It is that the primary legislation lacks the directing clauses - definitions, mandates, evaluation requirements, constraints on scope - that should guide and discipline how that operative content is developed. Parliament is being asked to pass enabling legislation that delegates broad powers without the statutory hooks needed to ensure those powers are exercised consistently with the reform's purposes.

The Ministry for the Environment has indicated that the first suite of national instruments will not be delivered until the end of 2026, with a second suite in mid-2027 and the system fully operational by 2029. Parliament is being asked to pass enabling legislation without knowing what the system will require of councils, applicants, landowners and communities.

This matters for three reasons.

First, secondary legislation does not receive the same level of parliamentary scrutiny as primary legislation. The regulations that will determine the system's real-world impact will be made by Ministers and officials, not debated in Parliament. The RMA's experience with national direction illustrates the risk from both ends: for most of the Act's life, central government simply failed to produce it - Sir Geoffrey Palmer described "years of central government being asleep at the wheel".<sup>37</sup> And when national direction finally arrived in earnest, instruments like the National Policy Statement for Freshwater Management 2020 and the National Policy Statement for Indigenous Biodiversity 2023 generated significant implementation difficulties and litigation.<sup>38</sup> The National Policy Statement for Highly Productive Land is a further case in point. Its mapping of elite soils around Hamilton created what amounted to a development prohibition ring around the city - a restriction the Government pushed through despite Treasury concerns about its economic effects.<sup>39</sup> A system that defers its substance to secondary instruments is vulnerable to both neglect and poor drafting.

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<sup>37</sup> Sir Geoffrey Palmer, *Ruminations on the Problems with the Resource Management Act*, 2015. Op cit.

<sup>38</sup> See *New freshwater protection rules being heckled from all sides*, RNZ, 7 October 2020; Simpson Grierson, *Resource Management reform - a one-stop shop update and next steps*, December 2024.

<sup>39</sup> See Treasury, OIA-20190547, which includes maps showing the effect of the NPS-HPL around Hamilton.

Second, the deferral creates a period of prolonged uncertainty. The RMA will continue to apply until the new system is 'switched on' - estimated at 3.5 to 6 years after enactment. During this extended transition, developers, councils and communities will be operating in a regulatory environment where neither the old rules nor the new rules provide reliable guidance. For a reform whose central promise is greater certainty, this is a serious problem.

Third, and most troubling, the Bills remove a key discipline that existed under the RMA without substituting any equivalent. Section 32 of the RMA required an evaluation report for any proposed national policy statement, national environmental standard, or plan provision - assessing whether objectives were the most appropriate way to achieve the Act's purpose, whether provisions were the most appropriate way to achieve those objectives, and the efficiency and effectiveness of the proposed provisions. Section 32 was far from perfect; its analyses were often pro forma exercises that did little to constrain regulatory ambition. But the appropriate response to an ineffective discipline is to replace it with a more effective one, not to remove it entirely.

Some degree of deferral is inevitable in a system of this complexity. The question is not whether secondary instruments carry operative detail - they must - but whether primary legislation contains the disciplines that prevent delegated powers from being exercised without accountability. The Bills defer the substance but remove the safeguards. That combination is the problem.

The Bills' procedural principles require decisions to be 'proportionate' and 'evidence-based', but these terms are undefined and unenforceable. There is no requirement to identify the problem that justifies regulatory intervention, consider alternative approaches, quantify costs and benefits, assess impacts on property values, or publish the analysis underlying the decision. In a system that concentrates authority in ministerial hands through the funnel architecture, this is not 'lean' legislation. It is unfinished legislation.

The durability argument cuts both ways. If primary legislation is easy to amend, national direction is easier still. A future government could rewrite every national instrument without changing a single clause of the Act, reshaping the entire planning system through secondary instruments unconstrained by meaningful statutory criteria. The very leanness of the primary legislation that is meant to provide stability instead provides maximum legislative freedom to future Ministers.

The Bills should include more of the system's substance on the face of the legislation, reinstate and strengthen a cost-benefit evaluation requirement, and establish clear statutory parameters that constrain the scope of secondary instruments - so that the system's integrity does not depend on the good intentions of any government.

#### *Regulatory relief is too weak - and largely absent from the Natural Environment Bill*

The regulatory relief provisions were one of the most promising aspects of the reform. The principle is sound: councils should not be able to impose planning restrictions that significantly diminish property values without confronting the cost of doing so. This would force more disciplined, targeted regulation and ensure that the costs of environmental and heritage protection are shared across the community rather than loaded onto individual landowners.

But the Bills set a high bar for relief. Under the Planning Bill, it is available only where a planning control has a 'significant impact' on the landowner. 'Significant' is not precisely defined, and the forms of relief available - rates relief, bonus development rights, no-fees consents, land swaps, access to grants or expert advice, and compensation - are left to council discretion.

This is weaker than what the Cabinet decisions implied. The Initiative has argued that relief should be available for any material reduction in land value caused by a new restriction imposed largely for the benefit of others or the community. The 'significant impact' threshold risks replicating the same problem as the RMA's 'incapable of reasonable use' standard - setting the bar so high that relief is rarely triggered in practice. A lower threshold, framed as 'material impact on the value or reasonable use of land', would better achieve the stated objective. The select committee should also consider whether the threshold should be expressed quantitatively - a specified percentage diminution in assessed land value, determined by a registered valuer - to provide the certainty that no adjectival test can match.

The problem is worse under the Natural Environment Bill, where access to regulatory relief is far more limited. Relief is available only for rules relating to three categories: land-based indigenous biodiversity, significant natural areas and sites of significance to Māori. Freshwater limits, air quality limits, coastal water limits, and discharge restrictions - all of which may dramatically affect land value and productive use - provide no avenue for regulatory relief whatsoever, regardless of impact severity. This is a substantial gap that could leave affected landowners without recourse as environmental limits are progressively tightened.

The Initiative's submission on the Bills proposes a more powerful mechanism: a 'put option' enabling affected landowners to require purchase of their property at unimpaired market value where regulation effectively removes existing or reasonably expected uses. This would be consistent with the approach taken under the Public Works Act for physical takings and would create a discipline on regulatory decision-making that no evaluation report can match. When decision-makers know that poorly calibrated limits will trigger purchase obligations, they have strong fiscal incentives to ensure that the benefits of intervention genuinely exceed the costs. The prospect of having to compensate affected landowners concentrates minds in ways that paperwork obligations do not.

The select committee should lower the threshold for regulatory relief, extend it to all environmental limits with land-use impacts under the Natural Environment Bill, and provide for a put option where regulation imposes severe impacts on landowners.

#### *Competing goals without hierarchy and property rights missing entirely*

Both Bills contain multiple goals that pull in different directions. The Natural Environment Bill aims to safeguard the life-supporting capacity of the natural environment, maintain and enhance biodiversity, and protect areas of high natural character - while also enabling the use and development of natural resources and supporting economic growth. The Planning Bill lists nine broad categories of contending goals, from enabling development and competitive land markets to protecting natural character and providing for Māori interests.

There is no clear hierarchy among these goals. The Bills' own explanatory notes confirm there is "no inherent hierarchy within the goals", meaning decision-makers must balance competing objectives without statutory guidance on how to resolve conflicts. The Government may believe that hierarchy is unnecessary because each application will be assessed against its relevant objective rather than all objectives simultaneously. But the Bills do not spell this out. Without explicit statutory direction to that effect, the predictable consequence is that courts will read the goals cumulatively - requiring all to be achieved - and councils will select whichever goal best justifies the outcome they prefer. This is not a theoretical risk. It is the pattern that repeated itself throughout the RMA's life.

More fundamentally, neither Bill includes property rights among its goals. This is a striking omission. The 2024 Cabinet paper stated that the replacement system's starting point "should be the enjoyment of property rights and respect for the rule of law".<sup>40</sup> That was not one consideration among many; it was the default position from which departures must be justified. The Bills do not give this commitment operative force. Property rights appear as a background consideration, reflected in scope exclusions and the regulatory relief provisions, but nowhere does the statute establish a presumption that land use is permitted unless restricted for specified reasons. Without such a presumption, courts and decision-makers will balance property rights against competing goals - and experience under the RMA shows how that balance tends to resolve.

The problem is compounded by the Bills' reliance on undefined subjective terms at the apex of the statutory hierarchy. The Planning Bill's goals include 'not unreasonably affect others', 'inappropriate development', and 'participation' in the development of plans - none of which is defined in the legislation. Because scope derives directly from goals in the Bills' funnelled architecture, these undefined terms at the top will cascade into litigation and uncertainty at every level of implementation. The term 'inappropriate development', for instance, generated decades of case law under the RMA's section 6. There is no reason to expect a different outcome here.

The problem extends to the goals themselves. 'Competitive urban land markets' is an explicit goal of the Planning Bill, yet the term is nowhere defined in the legislation. Without a statutory definition specifying what competition in urban land markets means - legal availability, economic substitutability, simultaneity of options, credible threat of entry - the goal is aspirational rather than operative. The Initiative's companion research note provides drafting language showing how this definition could be embedded in the interpretation provisions of the Bill.<sup>41</sup>

Some will argue that terms like 'inappropriate development' are already defined by RMA case law and that those meanings will carry over. This is misguided. Meaning in law is framework dependent. The Bills create a fundamentally different statutory architecture from the RMA: goals sit at the apex of a hierarchical system, national direction must 'particularise' those goals, and the Minister must be 'satisfied' that national policy direction does not unreasonably restrict the achievement of other goals. Courts will interpret these terms within the new framework, not by mechanical reference to the RMA's different purposes and structure. Where Parliament leaves such terms undefined, it delegates their outer boundaries to the courts through litigation rather than specifying them in primary legislation.

The deeper problem is one of legislative philosophy. Both Bills adopt a principle-based legislative style, layering goals, procedural principles, substantive principles and interpretive principles throughout their provisions. As Melville warned in his minority report, principle-based legislation is inherently litigious. Principles are contestable by nature. Every unresolved contest of principle becomes a question for the courts. Cabinet's stated objective of faster, cheaper and less litigious processes is fundamentally incompatible with a legislative style that embeds contested principles at every level of the statutory hierarchy. Where the Government wants predictable outcomes, it needs rules with defined boundaries - not principles that invite argument about their application.

The Bills should establish a clear statutory presumption in favour of property rights, include a hierarchy among goals or statutory direction on how conflicts are to be resolved, and either define the subjective terms in their interpretation provisions or require national instruments to specify the standards and thresholds that give them content.

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<sup>40</sup> Cabinet paper, *Replacing the Resource Management Act 1991*, October 2024. Op cit.

<sup>41</sup> The New Zealand Initiative, *Competitive Urban Land Markets and the Planning Bill 2025*, Op cit. Annex D.

### *Centralisation at the expense of localism*

The new system is designed to operate from the top down. National policy direction and standards set clear expectations, spatial plans translate these into regional strategies, and land-use and natural environment plans implement them at the local level. At each stage, the scope of what can be regulated narrows. Councils that depart from national standards must produce justification reports, and their bespoke provisions are subject to submissions and appeals.

This 'funnel' architecture has clear benefits. It should reduce inconsistency, lower transaction costs, and prevent councils from relitigating decisions that have been settled at a higher level. But it comes at a significant cost to localism.

The New Zealand Initiative has long argued that decisions should be made at the most local level consistent with effectiveness.<sup>42</sup> The new system pushes decision-making authority firmly upward, concentrating power in Ministers and officials who will set the national instruments that determine what councils can and cannot do. Regional councils will have a 'significantly reduced role'.<sup>43</sup> Local variation will require justification and be subject to challenge.

For a government that has repeatedly spoken of its commitment to localism, this is a striking contradiction. The reform should ensure that national standardisation serves as a floor - establishing minimum consistency and baseline expectations - rather than a ceiling that prevents councils from responding to genuinely local circumstances.

### *Environmental limits may not deliver better environmental outcomes*

Hard environmental limits are presented as the centrepiece of environmental protection in the new system. But the RMA already contained environmental protections, and outcomes in the domains most directly within the planning system's control satisfied few. The system generated outcomes without any mechanism to determine whether those outcomes were the right ones - and layering a new limits framework on the same institutional machinery does not address that problem.

Rigid limits can also create perverse incentives: landowners pre-emptively intensifying use before limits take effect, or councils setting limits at politically convenient levels. A 'less stringent where justified' provision introduces further uncertainty about how justification will be established and who determines when the threshold is met. Most critically, environmental limits that may dramatically reduce land values sit outside the regulatory relief framework entirely, leaving affected landowners with no avenue for recourse.

Hard quantity limits are optimal in limited circumstances. The clearest cases are where quantity thresholds are critical to achieving a highly valued objective and where the cost imposed on resource users can be treated as acceptable by assumption: fishing quota and the Emissions Trading Scheme are the best known New Zealand examples, as is the regulation of toxic discharges where exceeding a threshold causes irreversible harm regardless of economic value. In these cases, fixing the quantity and allowing the market to discover the price is the right design.

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<sup>42</sup> Various work from New Zealand Initiative on localism, including *In the Zone*, 2015; *The Local Formula*, *The Local Benchmark*, and *The Local Manifesto*, 2015–2016; *City and Regional Deals*, 2024; *Revenue Share for Housing*, 2024.

<sup>43</sup> Resource Management Act replacements unveiled, Bell Gully, December 2025.

But these are exceptions rather than the rule. For most environmental problems, the right level of an activity - how much water a farmer can take, how much a discharge can contain - is not a fixed number waiting to be discovered. It depends on costs and benefits that change over time as technology, land use and community preferences evolve. A rigid quantity limit set today substitutes the judgment of whoever sets it for the information that prices and markets would otherwise reveal. Limits set without any obligation to demonstrate that the benefit of the restriction justifies its cost will be set too tight in some places and too loose in others - not because the limit-setters are acting in bad faith, but because they are being asked to answer a question that only the interplay of costs and benefits can answer. The Bills vest significant ministerial discretion over how limits are set, with no such discipline attached. That is not precautionary environmental management. It is the institutionalisation of guesswork.

### *Transition risks*

The transition from the RMA to the new system is projected to take several years. During this period, the RMA continues to apply, existing consents are extended, and councils must prepare entirely new planning instruments. The Government has introduced a separate Resource Management (Duration of Consents) Amendment Bill to extend existing consent durations, providing some certainty for consent holders. But the transition itself is a major source of risk.

The previous Government's reform attempt serves as a cautionary tale. The NBEA was passed in August 2023 and repealed by Christmas following the change of government. Several legal commentators have noted the risk of history repeating itself: if the current Bills are enacted in an election year without bipartisan support, a change of government could see them scrapped before they become operative, continuing the regulatory limbo that has plagued the sector for years.

The Government should prioritise building cross-party consensus for the reform's core elements. A resource management system that changes with every election is worse than no reform at all.

## 5. Getting Reform Back on Track: Recommended Amendments

The Natural Environment Bill and the Planning Bill are not beyond repair. The intents are worthy, the architecture broadly sound, and many of their specific provisions represent genuine improvements on the RMA. But the select committee process must address the dilutions identified above if the reform is to deliver on its promise.

The Initiative's submission on the Bills distinguishes between two categories of change.<sup>44</sup> The first comprises fail-safe mechanisms that must be in primary legislation because they exist to constrain how delegated powers are exercised. Placing them in national direction would defeat their purpose, since the powers they are meant to discipline are the very powers used to make national direction. A future government could simply revoke them without asking Parliament. The second comprises matters where the balance between primary legislation and national direction should be adjusted. The following amendments draw on both categories.

### *Establish a statutory property rights presumption*

The 2024 Cabinet paper said the replacement system's starting point should be the enjoyment of property rights.<sup>45</sup> The Bills should give this commitment operative force through an overarching statutory presumption that landowners may use their land as they see fit, subject only to restrictions necessary to manage material adverse effects on others, to comply with justified environmental limits, and to give effect to national standards and plan rules made under the Acts. This presumption should be supported by a rule of construction requiring courts to resolve ambiguity in favour of the landowner. Without it, courts will balance property rights against competing goals - and experience under the RMA shows that property rights invariably lose. This cannot be delegated to national direction, because its purpose is to constrain how national direction is made.

### *Reinstate and strengthen net benefit analysis*

The removal of section 32 without any equivalent is a step backward from the RMA. Both Bills should require that before making national instruments, setting environmental limits, or adopting regional spatial plans, the responsible decision-maker must prepare and publish an evaluation assessing the efficiency and effectiveness of the proposed provisions, including their impacts on property values, housing supply and economic activity. This evaluation should be subject to independent review. The analysis should require identification of the problem with private arrangements that justifies regulatory intervention, consideration of alternative approaches, and explicit assessment of distributional effects - who bears the costs and who receives the benefits. Without such disciplines at the top of the funnel, errors cascade through the entire system.

The Act need not prescribe a specific methodology for this evaluation. It should mandate that the evaluation occur, specify the minimum questions it must address, require its publication, and provide for independent review of its quality. The methodological detail can sit in guidance issued under the Act. What cannot sit in guidance is the requirement itself - because guidance can be withdrawn by the same Ministers whose decisions it is meant to discipline.

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<sup>44</sup> The New Zealand Initiative, *Submission on Planning Bill and Natural Environment Bill*, Op cit.

<sup>45</sup> Cabinet paper, *Replacing the Resource Management Act 1991*, October 2024. Op cit.

One way to achieve this objective and that of protecting property rights would be amend each Bill's purpose statement.

The Planning Bill's current purpose statement (clause 4) is "The purpose of this Act is to establish a framework for planning and regulating for the use and development of land." It could be amended to add "through directives and measures that respect property rights and demonstrably provide net benefits for New Zealand."

Similarly, the Natural Environment Bill's current purpose statement (clause 4) is "The purpose of this Act is to establish a framework for the use, protection and enhancement of the natural environment." It could be amended to add "through directives and measures that respect property rights and demonstrably provide net benefits for New Zealand."

Alternatively, these could also be included as specific goals in each Bill's clause 11.

#### *Define goals and constrain undefined terms*

The Planning Bill's goals remain broad and undefined across the board. Important qualifying terms, such as 'not unreasonably affect others', 'inappropriate development' and 'participation', should either be defined in the interpretation provisions by reference to objective criteria, or national instruments should be required to specify the standards and thresholds that give content to these terms, or the subjective terms should be replaced with closed lists of the types of effects or development the goals address. Leaving them undefined guarantees inconsistency and invites the courts to fill the gap - exactly the pattern that made the RMA unworkable. The term 'participation' should be clarified as procedural rather than substantive: requiring decision-makers to genuinely consider views but not conferring veto rights or requiring agreement.

The same problem applies to the goals themselves. 'Competitive urban land markets' is a statutory goal without a statutory definition. The Initiative's companion research note, *Competitive Urban Land Markets and the Planning Bill 2025*, provides drafting language and a statutory definition for the interpretation section of the Planning Bill, demonstrating how this could be done.<sup>46</sup> The approach builds on lessons learned from defining new concepts for the planning system in national direction, particularly the National Policy Statement for Urban Development.

#### *Provide a put option for affected landowners*

Where the system imposes regulations that effectively remove existing or reasonably expected uses of land, affected landowners should be able to require purchase of their property at unimpaired market value, consistent with the approach taken under the Public Works Act for physical takings. The baseline for assessing diminution should be the land's value under the planning controls in force immediately before the new restriction is imposed - not a hypothetical unregulated baseline.

This approach is consistent with existing valuation practice under the Public Works Act and avoids the conceptual difficulties of specifying a counterfactual regulatory environment. For site-specific overlays such as heritage listings or significant natural area classifications, compensation should be negotiated with the affected landowner before the overlay takes effect. This reverses the current approach, under

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<sup>46</sup> The New Zealand Initiative, *Competitive Urban Land Markets and the Planning Bill 2025*, Op cit., Annex D.

which the restriction is imposed first and the landowner must then seek relief. Pre-negotiation forces the council to confront the cost of the overlay before deciding to impose it. If the council is unwilling to fund the overlay at the level required, that reveals the restriction's benefits do not justify its costs.

The proposal could result in fiscal costs to councils in the same way that exercise of the Public Works Act requires councils to pay for land that they take for broader beneficial purposes. But councils could also fund those costs, in cases where a regulatory imposition provides benefits to an identifiable set of properties, by setting a targeted levy on the benefitting properties. The benefitting properties could be asked whether they prefer that the regulation be waived, or whether they prefer to shoulder the levy that covers the cost of providing the desired benefits. Congruence between those benefitting from a regulatory provision, and those asked to pay for it, would be re-established.

### *Strengthen and extend regulatory relief*

The threshold for regulatory relief should be lowered from 'significant impact' to 'material impact on the value or reasonable use of land'. The select committee should consider specifying a quantitative threshold - a percentage diminution in assessed land value, determined by a registered valuer - to provide certainty that no adjectival test can match. Critically, the regulatory relief framework must be extended to all environmental limits with land-use impacts under the Natural Environment Bill, not just biodiversity, significant natural areas and Māori sites. The current limitation leaves landowners affected by freshwater, air quality and coastal limits without any relief mechanism, regardless of impact severity.

### *Embed competitive land markets architecture in primary legislation*

The Planning Bill includes a goal to enable competitive urban land markets, but it articulates the goal without embedding the mechanisms necessary to achieve it. There is no statutory trigger for releasing new land, no price-signal test for diagnosing scarcity, no automatic expansion rule, and no enforceable obligation to provide additional development options when market conditions warrant. The result is what the Initiative's submission calls "compliance without competition": a council can satisfy every formal obligation while still presiding over a housing market characterised by rising prices and the systematic extraction of scarcity rents.<sup>47</sup> The statutory concept of 'sufficient development capacity' should be replaced with 'competitive urban land supply', defined by reference to legal availability, economic substitutability, simultaneity of options, and credible threat of entry. An independent expert panel should assess whether urban land markets are competitive, with findings that trigger mandatory responses.

The Act does not need to prescribe the economic models or methodologies that underpin these mechanisms. It needs to mandate their existence, define the concepts they operationalise, and specify the consequences of non-compliance. The operative content - how price differentials are measured, what constitutes a competitive market in a given urban area, how independent assessment panels are constituted - belongs in national direction. But the requirement that such mechanisms exist, and the statutory definition of what they are meant to achieve, must be in the Act. Without that mandate, a future government can satisfy the goal of "competitive urban land markets" by asserting that markets are competitive, with no test, no trigger and no consequence.

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<sup>47</sup> The New Zealand Initiative, *Submission on the Planning Bill and Natural Environment Bill*, section on competitive land markets. Op cit.

The framework should also enable bottom-up adjustment. Where a zoning boundary imposes a substantial price discontinuity - indicating that the restriction is binding and costly - councils should be required to authorise private plan changes extending the upzoned area, provided the developer funds the associated infrastructure. This complements the top-down assessment mechanism by creating a continuous, market-driven pressure valve against artificial scarcity.

### *Simplify the Bills*

The select committee should review both Bills with a mandate to reduce unnecessary procedural prescription, eliminate internal inconsistencies, and ensure the legislation is comprehensible to the practitioners who must apply it.

### *Protect localism within the framework*

National standardisation should serve as a default, not a straitjacket. Councils should have genuine scope to adopt provisions that respond to local circumstances. But departures from national settings must be assessed not only against their immediate local effects but against their cumulative impact on wider prosperity - particularly housing affordability and urban productivity. Where restricting development imposes costs that extend beyond the jurisdiction making the decision, the case for local discretion weakens.

The framework should facilitate voluntary transactions between communities and would-be developers, consistent with Fischel's finding that central government mandates to accommodate development are less effective than institutional arrangements that align local incentives with regional outcomes.<sup>48</sup>

The Initiative's companion research note on competitive land markets provides a hierarchical framework for balancing the enjoyment of land against wider prosperity, with operative provisions for identifying when trade-offs must be made and how to weight each dimension under different conditions.<sup>49</sup>

### *Encourage economic instruments within environmental limits*

The legislation should explicitly enable and encourage the use of economic instruments - particularly cap-and-trade systems - to manage resource use within environmental limits. The definition of 'market-based allocation process' in the Natural Environment Bill is too narrow, effectively excluding systems where existing rights are converted into tradable entitlements. Transfer provisions should enable trading without case-by-case regulatory approval, subject to appropriate safeguards.

In catchments where cap-and-trade systems operate, the shadow prices of binding constraints should serve as inputs into scheduled limit reviews. Where the opportunity cost of tight limits is demonstrably high, limits should be loosened. Where the cost of buying back entitlements to deliver environmental gains is low, a dedicated fund should enable acquisition. This approach treats environmental limits not

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<sup>48</sup> William Fischel, *Zoning Rules! The Economics of Land Use Regulation* (Lincoln Institute of Land Policy, Cambridge, Massachusetts, 2015), p. 10.

<sup>49</sup> The New Zealand Initiative, *Competitive Urban Land Markets and the Planning Bill 2025*, Op cit., Annex A.

as permanent political edicts but as parameters that respond to evolving knowledge, technology and community preferences.

Pairing firm environmental limits with flexible market-based allocation is the most promising path to achieving both environmental protection and economic efficiency.

#### *Prevent regional councils from regulating greenhouse gas emissions*

The Bills' silence on greenhouse gas emissions creates ambiguity. Courts may interpret the broad goal language as permitting or requiring consideration of greenhouse gas effects, replicating the problems of the post-2020 RMA position. The Bills should explicitly prevent regional councils from managing the effects of greenhouse gas emissions on climate change, consistent with the pre-2020 RMA position. Climate policy should be set nationally through the Emissions Trading Scheme and Climate Change Response Act, not fragmented across regional planning instruments.

#### *Build bipartisan support*

The Government should engage constructively with opposition parties to identify areas of common ground. The core elements of the reform - standardised provisions, environmental limits, spatial planning, fewer consents - are not inherently partisan. A resource management system that survives changes of government is immeasurably more valuable than one that perfectly reflects a single government's preferences but is repealed within a term.

## 6. Is This Approach Anti-Environment?

Some submitters on the Bills have argued that the reforms proposed in this note - regulatory relief for affected landowners, cost-benefit analysis of environmental limits, a statutory presumption in favour of property rights - would weaken environmental protection and produce a race to the bottom.<sup>50</sup> The most technically accomplished version of this argument holds that environmental limits must be set on biophysical criteria alone, that requiring councils to consider costs or compensate affected landowners will chill regulation, and that any constraint on regulatory discretion is a constraint on environmental protection. This objection deserves a serious response.

### *The record of unconstrained discretion*

The argument against property rights protections assumes that the more regulatory power councils possess, the better the environmental outcomes they will deliver. The RMA's thirty years serve as a natural experiment. Under the RMA, councils could regulate virtually any aspect of land use, impose restrictions without compensation, and set rules without any obligation to demonstrate that the benefits exceeded the costs. If unconstrained discretion were the key to environmental protection, New Zealand's environmental outcomes should be exemplary.

They are not - at least not in the domains most directly within the planning system's control. Freshwater quality remains poor across much of lowland New Zealand, while indigenous biodiversity continues to decline. Air quality has improved and greenhouse gas emissions have fallen, but these gains are driven primarily by other instruments, not by the RMA's consenting regime.

The RMA did not fail the environment because councils lacked regulatory power. It failed because the system provided no incentives for effective regulation and no accountability for poor regulation. Councils that imposed arbitrary, poorly targeted restrictions on individual development proposals faced no consequences. Councils that failed to set enforceable limits on cumulative resource use also faced no consequences. The result was a system that was simultaneously over-regulated in its treatment of individual consent applications and under-regulated in its management of aggregate environmental outcomes.

More discretion is not the remedy for a system that has already demonstrated what unlimited discretion produces. The remedy is better-designed institutions with clear rules, enforceable limits and accountability for decisions.

### *The case for regulatory relief is institutional, not ideological*

The argument for predictable property rights protections does not rest on libertarian absolutism - the claim that people should be able to do whatever they want with their land. It rests on a recognition that a regulatory state which can impose restrictions without limit or accountability will impose too many, and that the costs of this discretion fall disproportionately on private individuals with no recourse. Councils have used the absence of compensation obligations to impose overlays - significant natural areas, outstanding natural landscape designations, coastal character controls - inconsistently, sometimes without adequate evidence, and often with devastating effects on individual landowners.

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<sup>50</sup> Environmental Defence Society, *Submission on the Planning Bill and Natural Environment Bill*, February 2026.

Abolishing relief would not produce better environmental outcomes. It would entrench the conditions that produced arbitrary, poorly evidenced and poorly targeted regulation.

The claim that compensation obligations will chill environmental regulation - because cash-strapped councils will simply stop imposing rules - should be taken seriously. But the same argument applies in reverse. A system without compensation produces a chilling effect on productive land use, rural investment and environmental stewardship, because landowners cannot be confident that their investments will not be regulated away without recourse.

There is a positive incentive argument for regulatory relief that critics ignore entirely. When a council must compensate a landowner for an environmental restriction, and ratepayers decline to fund that compensation, this reveals something real: the community does not value the environmental outcome highly enough to cover the cost it imposes on the person whose land is restricted. That is not a failure of the compensation framework. It is the framework working as intended - testing environmental claims against actual community preferences rather than the abstract biophysical imperatives of those who bear none of the cost. Regulatory relief does not prevent good environmental regulation. It prevents the externalisation of regulatory costs onto individuals who have no say in how those costs are set.

#### *Net benefit analysis is a discipline, not a dilution*

Critics argue that requiring decision-makers to consider the economic implications of proposed environmental limits converts limits into trade-offs rather than bottom lines. The Initiative's concern runs in the opposite direction. Limits set without any obligation to assess costs and alternatives will be set arbitrarily - too tight in some places, too loose in others, calibrated to political pressure or precautionary instinct rather than actual environmental need.

Every environmental limit in the Bills will be set through a political and administrative process that involves real choices about which activities are constrained, by how much and at what cost to affected communities. Pretending this process can be insulated from economic analysis does not make it more rigorous. It makes it less accountable. A requirement to consider economic implications forces the limit-setting process to be transparent and evidence-based. It requires councils to demonstrate that a proposed limit is set at a level necessary to achieve its stated purpose, and that the means chosen are proportionate to the environmental problem identified. Removing that discipline does not produce stronger limits. It produces less accountable ones.

New Zealand's freshwater system is instructive. Freshwater quality did not decline because farmers had too many property rights. It declined because for decades there was no enforceable cap on total resource use, no tradeable entitlements to drive efficient allocation, and no requirement for councils to set clear rules in advance. The reforms proposed in this note are consistent with that approach: firm environmental limits, rigorously set, backed by economic instruments that achieve environmental goals at lowest cost, with regulatory relief ensuring that the costs of protection are shared across the benefitted community rather than loaded onto the individuals who happen to own the affected land.

#### *Biodiversity on private land: the record of regulation without incentives*

Nowhere is the case against unconstrained regulatory discretion stronger than on biodiversity protection on private land.

The regulatory record is unambiguous. The Significant Natural Areas process attracted determined resistance from landowners who saw the ability to use their land restricted - and their property values diminished - without compensation. It has now been suspended.<sup>51</sup> The Parliamentary Commissioner for the Environment has acknowledged publicly that the Crown cannot adequately manage the biodiversity values on its own vast estate.<sup>52</sup> These are not signs of a regulatory system that has tried and fallen slightly short. They are the predictable result of a system that imposed obligations without incentives and costs without consent.

Yet despite these failings, the Natural Environment Bill contains a vague goal of 'no net loss in indigenous biodiversity', which not only undermines clarity and accessibility of the rule of law but could enable heavy-handed regulation that significantly impairs property rights.

The dominant mechanism of biodiversity loss on private land is not active clearance but passive decline through rational under-investment. A landowner who receives no return from maintaining native remnants has no financial incentive to fence them, control weeds, trap predators or manage regeneration. Over time, without that active management, ecologically valuable remnants lose health and function. This is not malice. It is rational behaviour in the face of a system that treats indigenous biodiversity as a community resource while loading the cost of its protection exclusively onto the person whose land it occupies.

The property rights approach addresses this directly. When landowners hold clear, secure rights and can transact based on those rights, the voluntary conservation instruments that deliver durable outcomes become viable: QEII covenants, payments for ecosystem services, biodiversity credit schemes. The most protected ecosystems on private land in New Zealand are protected because someone chose to protect them - not because a council imposed a rule. Extending those instruments, compensating for the opportunity cost they impose, and creating genuine economic returns from conservation stewardship would do more for biodiversity on private land than any new regulatory obligation the system lacks the resources to enforce.

We should be honest about one consequence of this approach: some biodiversity, on some properties, will decline where the conservation value does not justify the cost of active management. But the alternative is not a world in which all indigenous biodiversity is protected. It is a world in which everything is nominally protected, poorly enforced, with landowners hostile to conservation agencies and resources spread so thin that nothing is managed well. New Zealand has had that world for decades.

Our approach should redirect scarce resources toward the biodiversity that matters most, based on transparent cost-benefit assessment and genuine community willingness to pay. That is better environmental governance, not weaker.

#### *Property rights and environmental protection are complements*

The framing of this debate as environment versus property rights is false. The connection between the two is not one of logical necessity - one can imagine a system that rigidly protects the environment while offering zero respect for property rights. But such a system exists only in theory. In practice, the institutional features that enable governments to restrict land use without accountability are the same

<sup>51</sup> Hon Andrew Hoggard, Associate Minister for the Environment, *Suspension of new SNAs passes its third reading*, 24 October 2024.

<sup>52</sup> Hon Simon Upton, Parliamentary Commissioner for the Environment, *Address to the 2025 QEII National Trust Conference*, 23 September 2025.

features that enable them to relax environmental protections without accountability. Discretion is not selective. A system that gives Ministers unconstrained power to tighten restrictions will, under a different Minister, provide unconstrained power to loosen them. The institutional safeguards that protect property rights - statutory criteria, transparent decision-making, evidence-based justification - are the same safeguards that make environmental commitments durable.

The strongest environmental regimes in the world are not those with the most unconstrained regulatory discretion. They are those with clear rules, firm limits, transparent processes, economic instruments that harness market incentives, and institutional accountability for outcomes. That is what this research note advocates. The argument that it is anti-environment confuses the volume of regulation with its quality - a confusion that has already cost New Zealand three decades of poor outcomes in the domains that matter most.

## 7. Conclusion

New Zealand's resource management system has been broken for decades. The current Government deserves credit for undertaking the most ambitious attempt at reform since the RMA's enactment. The principles it established - property rights as a guiding concept, a narrowed scope of regulation, standardised provisions, environmental limits - are the right ones. The Expert Advisory Group delivered a Blueprint. Paul Melville's minority report identified the structural vulnerabilities. Cabinet endorsed a sensible direction but declined those structural safeguards.

Somewhere between the Blueprint and the Bills, the reform lost its edge. Key disciplines were weakened or removed. Property rights were acknowledged but not protected. Undefined terms were placed at the apex of a hierarchical system where they will cascade into litigation at every level. A principle-based legislative style was adopted that is fundamentally incompatible with the Government's stated objective of faster, cheaper and less litigious processes. The system's substance was deferred to secondary instruments that will not exist for years. And the cost-benefit evaluation requirement that existed under the RMA was dropped without replacement - in a system that concentrates more authority at the top than the RMA ever did.

The result is legislation that articulates the right aspirations but withholds the operative provisions - the directing clauses, mandated mechanisms and statutory definitions - necessary to achieve them. It is not lean legislation. It is incomplete legislation. The distinction matters. The Initiative is not arguing that zone templates or environmental limits should sit in the Act. It is arguing that the definitions, presumptions, evaluation requirements and mechanism mandates that constrain how those instruments are made must sit in the Act - because placing them in national direction would defeat their purpose.

The international evidence on institutional foundations of prosperity, recognised by the 2024 Nobel Prize in Economics, is unambiguous: secure property rights and constrained state discretion are preconditions for sustained economic growth. New Zealand cannot afford a planning system that suppresses investment, inflates housing costs and rewards rent seeking over productive activity. These Bills are an opportunity to embed the institutional foundations that the evidence says matter most. Whether that opportunity is seized or squandered depends on what happens in the select committee.

This need not come at the expense of the environment. The RMA demonstrated conclusively that unconstrained regulatory discretion does not deliver environmental protection - it delivers arbitrary regulation, poor targeting and declining outcomes. The reforms advocated in this note would produce stronger environmental governance, not weaker: firm limits backed by evidence, economic instruments that achieve environmental goals efficiently, cost-benefit disciplines that force regulators to justify their choices, and compensation frameworks that ensure the costs of protection are shared transparently rather than loaded silently onto those least able to resist.

It is possible that this framework could, on some environmental margins, produce outcomes that are less stringent than those a purely biophysical approach would mandate. If so, that would not be a failure - it would be the framework working as intended: revealing cases where the cost of environmental protection exceeds the benefits as assessed by the communities bearing those costs and redirecting resources towards interventions with higher returns. Good environmental regulation and secure property rights are not in tension. They are built on the same institutional foundations.

The amendments outlined in this note - and developed in full in the Initiative's submission to the Environment Select Committee - are achievable within the parliamentary timetable. They do not require rethinking the reform's architecture. They require insisting that the legislation contains the

mechanisms necessary to make that architecture work: a statutory presumption protecting property rights, a put option disciplining regulatory decision-making, competitive land markets architecture that cannot be hollowed out by future Ministers, and cost-benefit disciplines at the top of the funnel that prevent errors from cascading through the entire system.

New Zealand has waited too long for a functioning resource management system to accept another near miss. The Planning Bill and Natural Environment Bill are worth passing - but only if they are worth the name of reform.

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