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New Zealand Productivity Commission  
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Using land for housing  
Issues paper

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## NZCID Submission to the New Zealand Productivity Commission on the Using Land for Housing Issues Paper<sup>1</sup>

The New Zealand Council for Infrastructure Development (NZCID) welcomes the opportunity to provide feedback to the New Zealand Productivity Commission (the Commission) on the Using Land for Housing Issues Paper (the paper).

### Key points

The most significant impediment to the efficient provision of land for housing is a dysfunctional planning framework.

The Resource Management Act 1991 (RMA), the Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA) are 'disintegrated', philosophically in conflict and not working coherently.

Adequate land supply is but one of a series of issues resulting from a flawed planning system.

Further issues include misalignment of central and local government, unimplemented investment plans, a hesitant and risk-exposed private sector, poorly integrated land use and transport, poor construction productivity, increasing infrastructure and development costs and declining environmental performance, among others.

These problems are the result of flaws that lie at the heart of legislation and are embedded in the purpose, approach, intent and, by extension, oversight of and responsibility for the three key planning statutes.

Chief among these is the 'effects based' approach in the RMA which is not consistent with the strategic planning approach of the LGA or the narrow transport focus of the LTMA.

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<sup>1</sup> This submission represents the views of NZCID as a collective whole, and may not necessarily represent the views of individual member organisations.

Because of the importance of planning to local government responsibilities, including the issuance of resource consents and operation of infrastructure, issues in the planning framework are also “structural”.

In order to address the root cause of not only the land supply issue but others identified above, substantive reform of the key planning statutes including responsibility for their oversight and administration are required.

Specifically, the RMA, LGA and LTMA should be replaced with new legislation which aligns the approach to national, regional and local planning and governance.

NZCID is currently developing two major reports relating to New Zealand's planning framework and land development which will be complete early in 2015. We will make these reports available to the Commission when they are finalised

This submission provides an overview of issues with, and solutions to, the existing planning framework with a focus on land supply.

“Over the past few decades, the resource management system has evolved through new legislation, institutions, and multiple amendments to address new and emerging issues. However, when the system is viewed as a ‘whole’, this evolution has resulted in inconsistencies and misalignment between core legislative frameworks. The priority over the coming term should be to redirect piecemeal changes to the system towards a system-wide approach that results in better integration and alignment.

Ministry for the Environment, Briefing for Incoming Minister for the Environment and Minister for Climate Change Issues, November 2011, p. 5.

## Introduction

We note the subject of this inquiry is land supply for housing.

However, we consider the land supply issue to be an indicator of a much more substantive problem with the planning system, principally that its key components are not integrated in approach, philosophy or practice.

In order for land supply issues to be addressed, we consider that fundamental reform of the RMA, LGA and LTMA is required.

Reform of these key Acts is a nationally significant and justification for any undertaking of this size must be premised on issues more substantial than simply land supply.

The objective of this submission is therefore to discuss the wider context within which planning is performed in New Zealand with a view to demonstrating that land supply is but one of many deeply engrained problems impeding New Zealand's economic, social and environmental progress.

New Zealand's planning system (namely the RMA, LGA and LTMA) is disintegrated. There is little alignment between strategies, funding, regulation and decision-making to integrate land use and infrastructure development, set spending priorities and manage growth. There is both a duplication and fragmentation of powers and processes and a lack of alignment between the RMA and other legislation.

The three planning statutes are not working together as a complete planning system, although some connections are present. Each statute, its plans and decision-making are all subject to different legal processes and criteria, and operate over different time frames. There is insufficient alignment, connection and flexibility within and across planning functions, statutes and layers of governance and decision-making. This results in duplication, fragmentation and lack of clarity, and demands considerable time and resourcing from all parties involved.

Ministry for the Environment, Building competitive cities: Reform of the urban and infrastructure planning system (2010), pp. 9-15

## **Background to New Zealand's planning system**

New Zealand's planning system has evolved over a century not as a single cohesive whole, but in response to perceived issues with each iteration.

New Zealand's first national planning legislation came into force in 1926, with the first Town and Country Planning Act. Depression and war were at least partly responsible for its failure to gain traction within New Zealand provinces, though they may also have contributed to its longer lifespan than any of its successors. It was not replaced until 1953 with the second Town and Country Planning Act. It, in turn, was replaced 24 years later by the 1977 version, following a review committee finding that the many amendments to the Act had compromised its effectiveness.

The 1977 version lasted less than a decade before a major review of its provisions was launched by the Fourth Labour Government – the gestation for the enactment of the RMA by a National government in 1991.

The RMA itself was in its infancy when major issues began to be identified. As early as 1996, the Reserve Bank commissioned a report on unprecedented house price increases. That same year one of the Act's principal authors lamented that the Act had created the perception that the environment was a cost on, not an asset to, business and that it was by then viewed so negatively that turning perceptions around would be difficult. Continued revisions to the Act have followed almost annually since that time, yet there has to date been little enthusiasm outside the Ministry for the Environment for a complete overhaul.

Like the legislation itself, the bodies charged with overseeing planning and planning-related activities have also evolved reactively to perceived issues and not as part of a coherent planning system.

Local bodies were first empowered to levy rates for infrastructure in 1842, with legislative revisions in 1845, 1852 and 1876. An attempt at structural change failed in 1912 with the first Local Government Bill, so it was not until the 1974 Local Government Act that there was full harmonisation of local government nationwide. That Act remained in place until 2002, though a major restructure of councils took place in 1989.

The one opportunity in New Zealand's history to rethink in totality the resource management system – through the development of the RMA and 1989 local government reforms – encountered fierce opposition to centralised planning, consistent with free-market reforms of the time.

## **New Zealand's planning system is broken**

New Zealand has thus today been left with a highly fragmented legislative framework born out of piecemeal revisions to historic legislation.

The three planning Acts – the RMA, LGA and LTMA – were never designed to work together as a complete planning system.

Consequently, there is often poor alignment between strategies, funding, regulation and decision-making to integrate land use and infrastructure development, set spending priorities and manage growth.

Each Act is subject to different legal purposes, processes and criteria, and operate over different time frames. When combined with the numbers of councils involved, the legislative processes demand

considerable time and resourcing from all parties involved and result in duplication of effort, lack of clarity and complexity.

The RMA now comprises 828 pages, having grown considerably from its 1991 form. The LGA is 555 pages and the LTMA 165 pages – a total of 1,548 pages of planning law and regulation.

These rules, regulations, prescriptions and requirements are just the very tip of the iceberg. The RMA in particular empowers other documentation, delegating the majority of rules to district and regional plans and policy statements. As the Commission notes, Auckland's proposed Unitary Plan is a further 7000 pages of details on what is and what is not permitted under the RMA in Auckland alone.

All three statutes have undergone extensive amendment since their enactment.<sup>2</sup> The RMA (or its processes or implementation) has drawn significant criticism from both environmentalists, the development sector and the business community alike, albeit from opposite perspectives. Since its enactment in 1991 the RMA has been amended nineteen times and further highly controversial reform is currently underway.

Over the last half decade alone, the Government has progressed a series of initiatives to reform the institutions and legislation traversing local government, the planning framework and resource allocation. The changes come in response to a wide variety of observable issues which have been impacting New Zealand's economic performance, environment and communities.

While each of these reforms have been effected under the Key-led government, each has been led by separate agencies and organisations in a programme of incremental reform of what is, in essence, the same planning and governance system.

Of concern, there remains no evidence that the reforms are having a tangible effect on any of the key issues which have often been cited as reasons for reform:

- **Land supply**

The planning framework is not providing an adequate supply of land for housing, as described in both the Commission's paper and its 2012 Housing Affordability inquiry.

- **Water**

The negative effects of land use activities permitted under the RMA have over the course of the Act led to a slow deterioration in the quality of monitored streams, rivers and lakes. While New Zealand's water quality is still good by international standards, the health of lowland streams, wetlands and several lakes is under pressure from declining water quality. For instance, 44 per cent of monitored freshwater bathing sites were recently reported as 'poor' or 'very poor'. Over the past 20 years environmental gains in terms of reduced 'point' pollution of waters has been overshadowed by increasing 'diffuse' pollution. Between 1989 and 2007, there have been strong increasing trends in phosphorus and nitrogen, particularly in catchments predominantly in pasture.<sup>3</sup>

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<sup>2</sup> The RMA has been subject to nineteen amendment acts since it was first enacted in 1991 (2013, two in 2011, 2009, 2008, 2007, 2005, five in 2004, 2003, 2002, 1997, 1996, 1994, 1993) The LTMA has been amended three times since enactment in 2003. The LGA has been amended seven times since enactment in 2004.

<sup>3</sup> Water quality trends at NRWQN sites for the period 1989-2007 NIWA Client Report: HAM2009-026 1st edition March 2009, 2nd edition, August 2010.

At the same time, irrigation projects which carry vast economic and social benefits for rural communities but also are characterised by immediate localised environmental impacts have been impeded. The result has been that in freshwater management economic, social and environmental outcomes have all failed to achieve societal standards. Despite the improvements resulting from the Land and Water Forum process significant challenges over the allocation and use of water remain and are likely to take decades to resolve.

- **Carbon emissions**

New Zealand's per capita carbon emissions are some of the highest in the world. Furthermore, they show no signs of abating, despite aspirational commitments to reducing them by 40 per cent by 2020.

- **Central and local misalignment**

Central and local government are progressing plans which do not carry the support of both parties. While some tension will always be present, disagreement over the prioritisation of major projects in Auckland and Christchurch, such as the City Rail Link, are redirecting resources away from more important activities and increasing uncertainty for the private sector.

- **Deficit between local government planning and resourcing capacity**

Local government plans for projects which it cannot afford. In Auckland currently, there remains a \$10-15 billion funding gap for transport over the next 30 years and disagreement between the Auckland Council and government over options to bridge it. Nationally, the Auditor General recently found that:

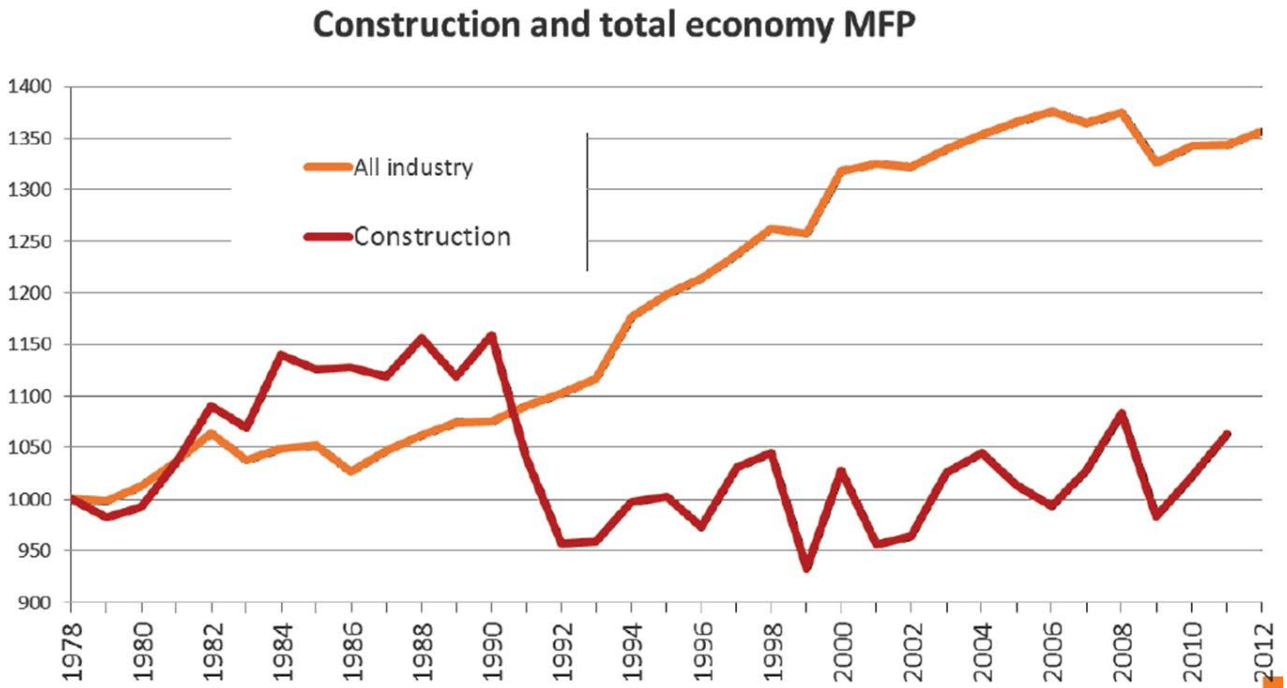
*During the period we reviewed (2007 to 2013), local authorities consistently spent less than they intended on capital works, including on asset renewals.... If actual spending trends continue to match those forecast, we estimate that, by 2022, the gap between asset renewals expenditure and depreciation for the local government sector could be between \$6 billion and \$7 billion.<sup>4</sup>*

- **Poor construction productivity**

The RMA era has witnessed a very large drop in construction productivity, followed by two decades of slow and uneven growth (see Figure 1)

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<sup>4</sup> Auditor General, Water and Roads Funding and Management Challenges, November 2014.

Figure 1: Construction multi factor productivity since 1978<sup>5</sup>

## Why the planning system is dysfunctional

An assessment of New Zealand's land use and transport infrastructure planning framework suggests several structural issues are present:<sup>6</sup>

- the RMA 'effects-based' regime lacks strategy
- the detailed and complex land use and transport planning framework
- failure to implement strategy and inability to fund the level of investment required
- the limited geographic scope and capacity of local authorities
- the absence of central government

### The RMA 'effects-based' regime lacks strategy

The land use and infrastructure planning framework established by the RMA was intended to be permissive. This reflects its design in the late 1980s when the prevailing practice opposed planning/regulation and promoted market based solutions. Thus section five "enables people and communities to provide for their social, economic, and cultural well-being... while avoiding, remedying, or mitigating any adverse effects of activities on the environment."

<sup>5</sup> Productivity Partnership.

<sup>6</sup> See National Infrastructure Unit, National Infrastructure Plan (2011); Ward, M., Dixon, J., Sadler, B., and Wilson, J. 2007. Integrating land use and transport planning. Land Transport New Zealand Research Report 333.

The Act sets out processes for development of national standards, regional policies and district plans. However the balance of the RMA is primarily concerned with the adverse impacts of development. Apart from the amendments currently being hotly contested, almost no recognition is given to the positive outcomes derived from good urban planning and timely development or investment in infrastructure. Objectives designed to balance social, economic, environmental and cultural consequences of infrastructure and land use development create significant conflicts for those developing plans.

The LGA and LTMA, conversely, remain oriented towards future action. Consequently, consenting and other regulatory issues may only arise through the implementation phase of activity planning, rather than through the development of plans. This increases uncertainty, adds significant cost and slows the delivery of essential services.

The RMA's focus on local effects frequently means a long-term perspective is under-emphasised, despite this being a feature of sustainable management. While the political climate has gradually changed, the 1980s legacy of market led planning continues, often contributing to poor land use and infrastructure planning outcomes.

## A complex land use and transport planning framework

The existing planning framework requires separate plans without strong linkages between them. Where linkages do exist, these have different weightings and are often inconsistent between the statutes.

For example, a Regional Land Transport Plan (RLTP) is required to be 'consistent with' the Government Policy Statement on Land Transport (GPS), but only has to have 'taken account' any relevant national policy statements and any relevant regional policy statements or plans under the RMA.

A nationally significant project may be a priority in the Auckland Spatial Plan but have no recognition under the RMA or the GPS on land transport. Similarly, a regionally significant project may have priority in a RLTP but not be funded in the local councils Long Term Plan (LTP).

There is a lack of common purposes and goals across the planning framework and the hierarchy between the RMA, LTMA and LGA plans is unclear.

Key issues highlighted are the inconsistent hierarchy of weightings across the three Acts which make them difficult to navigate. Because of the multiple plans required, complexity, fragmentation and confusion are the result.<sup>7</sup>

Also hampering coordination efforts is a lack of consistency of timeframes required by the various plans and the time-phases in which the plans must be developed.

## Ineffective and duplicative consultation processes

Adding to complexity are rigid, overlapping and time consuming consultative requirements. While the public have a critical role to play in defining the future of land use and infrastructure provision, typically

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<sup>7</sup> Ministry for the Environment, *Building competitive cities: Reform of the urban and infrastructure planning system* (2010), pp. 9-15. See also RMA Principles Technical Advisory Group, *Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group* (February 2012).



engagement models are based on the rigid statutorily defined special consultative procedure, which engenders antagonism and division rather than conciliation.

Despite exhaustive, yet limited, proactive engagement processes, formal public consultation under the RMA is intimidating for respondents, replicated across multiple plans, strategies and discussion documents and frequently not implemented. Consequently, consultation rarely succeeds in capturing the interest and input of residents, until the implementation phase when affected communities begin to understand the impacts. Added to this are the typically quite different views held about how to achieve these goals and the multiple stake-holders involved (including central and local government, developers, the public and the courts).

Experience tells us that quality land use supply and development requires effective decision-making across local and central government agencies, infrastructure providers and the private sector. It also requires effective interaction and engagement with key participants affected by development, including iwi/Maori, communities and non-government organisations. The length of time projects take to go through the planning and consenting processes, the complexity of the processes, the range of legislative criteria involved, and the costs of consequent delays is therefore a major concern.

No effective single mechanism exists to facilitate engagement, provide the full range of relevant information needed to inform robust decision-making, promote innovation or secure agreement between participants and create certainty for investment.

### Failure to implement strategy

Many local authorities have recognised the need to strategically manage their land use and infrastructure planning. While several informal LGA strategic or spatial planning documents exist, such as the Auckland Plan, the Tauranga Smart Growth Strategy or the former Canterbury Regional Growth Strategy, these strategies are not statutory documents under the RMA and have limited authority. Because of their limited legal status, and lack of funding support through LGA and LTMA processes, non-statutory strategic plans face significant challenges in their implementation.

Planning is often held hostage to funding availability – limited mechanisms to fund services results in policy designed to deploy available resources to best effect, rather than identify the best value for money and resource it accordingly.

Alternative funding sources beyond taxes and rates remain elusive. Because there is no direct link between planning and funding, the complex planning system fails to provide a clear linkage between policy-making, funding and development.

### Limited geographic scope and capacity of local authorities

Land use and infrastructure decisions are typically taken by district or city councils – the lowest level of local government. On the other hand transport planning is a regional function and most transport funding is allocated nationally.

In many cases agencies charged with planning responsibilities are too fragmented or too reliant upon central funding to deliver plans. Dependency on outside resources and cooperation, limits the efficacy of planning agencies and causes delays to implementation.

Regionally, planning can be undermined by fragmented local authority structures as well as political and professional frictions, giving rise to compromise or indecision.

This is particularly problematic for network infrastructure providers such as telecommunications, power and transport who have to navigate a complex maze of district and regional planning processes.

### The absence of central government

Central government remains indisputably New Zealand's preeminent governing institution, with local government playing a much more minor role in domestic affairs. In addition to legislative and executive power, health, education, housing, welfare, and justice, as well as universally centralised activities including defence and economic management, are all overseen by central agencies.

Despite these responsibilities, central government plays almost no role in land use planning resource allocation.

When compared to other countries, New Zealand's transport infrastructure spending decisions are highly centralised, whereas land use decision-making is highly decentralised. Central government has generally not been explicit about what it wants to achieve in terms of land use management or how it wants to 'shape' places. This has led to a separation of planning from implementation and ad hoc and inconsistent decision making.

Although they are now beginning to evolve, the absence of critical national policies under the RMA and LTMA has given rise to inconsistency and differing approaches between regional and local plans.

*"Given its significant role as a funder of transport investment central government needs to either be more involved in place-shaping decisions – or devolve transport infrastructure investment decision-making to those agencies who make place-shaping decisions (i.e. local government)".<sup>8</sup>*

Cross-sectoral issues such as growth are addressed compartmentally – there is no "bigger picture" approach to meeting multi-faceted challenges so that an underlying issue impacting transport, land use and safety, for example, is likely to be managed separately. Three or more agencies may subsequently respond with either misaligned or misdiagnosed policy, leaving the root problem intact.

*"... the problem [of the lack of alignment between central and local government] manifests itself in the provision of uncoordinated infrastructures. Tinkering with the RMA alone will not solve this problem. Instead, you need to investigate the wider systems, structures, funding arrangements and responsibilities of both parties. You need to ask where the lines of communication are breaking down and why they are leading to the delivery of less effective services."<sup>9</sup>*

However, central government capacity to undertake major policy reform is limited. When reform is proposed, it tends to be led by government departments in silos focused on individual statutes rather than addressing the underlying or integrating problems between the statutes. Auckland reforms have evolved in response to unique growth challenges in New Zealand's largest city; local government reforms have been

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<sup>8</sup> Local Government New Zealand, Submission to the Ministry for the Environment on the Building Competitive Cities Reform of the Urban and Infrastructure Planning System Discussion Document (December 2010), p. 4

<sup>9</sup> Ministry for the Environment, Building competitive cities: Reform of the urban and infrastructure planning system (2010), p. 13.

driven by rapid rates increases; RMA reforms have resulted from specific concerns regarding consenting; and the Land and Water Forum is a response to freshwater management issues.

Yet, each of these initiatives are related. The underlying cause of issues across all these apparently disparate sectors is a fundamentally flawed domestic governance system and disjointed planning framework.

Without addressing the structures, responsibilities, tools and incentives supporting domestic governance and resource management, piecemeal changes over the past five years will help to improve processes within a disjointed governance and planning framework but are unlikely to materialise as a substantive improvement in economic, social and environmental well-being of New Zealanders.

The larger question about how best to provide a planning framework for overall resource allocation, land use, transport and infrastructure planning is not being addressed.

## **Need for Local Government and Planning Law Reform**

Fundamentally, the problem with reforms to date is that they have avoided the difficult, publicly contentious structural issues at the heart of domestic governance and resource management. With the exception of the reform of Auckland governance, none of these, nor any other, responses address underlying structural anomalies in the overall domestic governance and planning system.

From closer analysis of these structures NZCID concludes that much more fundamental change is required to overcome existing issues and modernise governance activities to progress future outcomes.

As observed through the development of local government institutions and responsibilities, there has never been a coordinated, first principles review of the purpose of local government within the overall administration of New Zealand; its role in this process; and the legal framework supporting these activities. Ad hoc revisions of 19th century British legislation have led to piecemeal reforms and an incoherent framework for domestic decision making and policy implementation.

Until the structures supporting this framework receive a fresh appraisal in light of the wider New Zealand governance situation in the 21st century, band aid policy responses will only achieve short term deferral of superficial problems.

The priority over the coming term should be to shift from piecemeal incremental improvement to a system-wide approach that provides:

1. A fully integrated and aligned resource management and planning framework
2. Rational allocation of planning functions between national, regional and local institutions
3. Enhancing regional capability to plan deliver and fund sustainable regional social and economic development whilst fostering community and engagement and participation
4. Agreement of common goals, policies, plans and linkages nationally, regionally and locally to guide infrastructure and land use planning outcomes
5. Coordination of processes for planning, consulting and decision-making
6. Funding and assessment processes that support land use and infrastructure integration

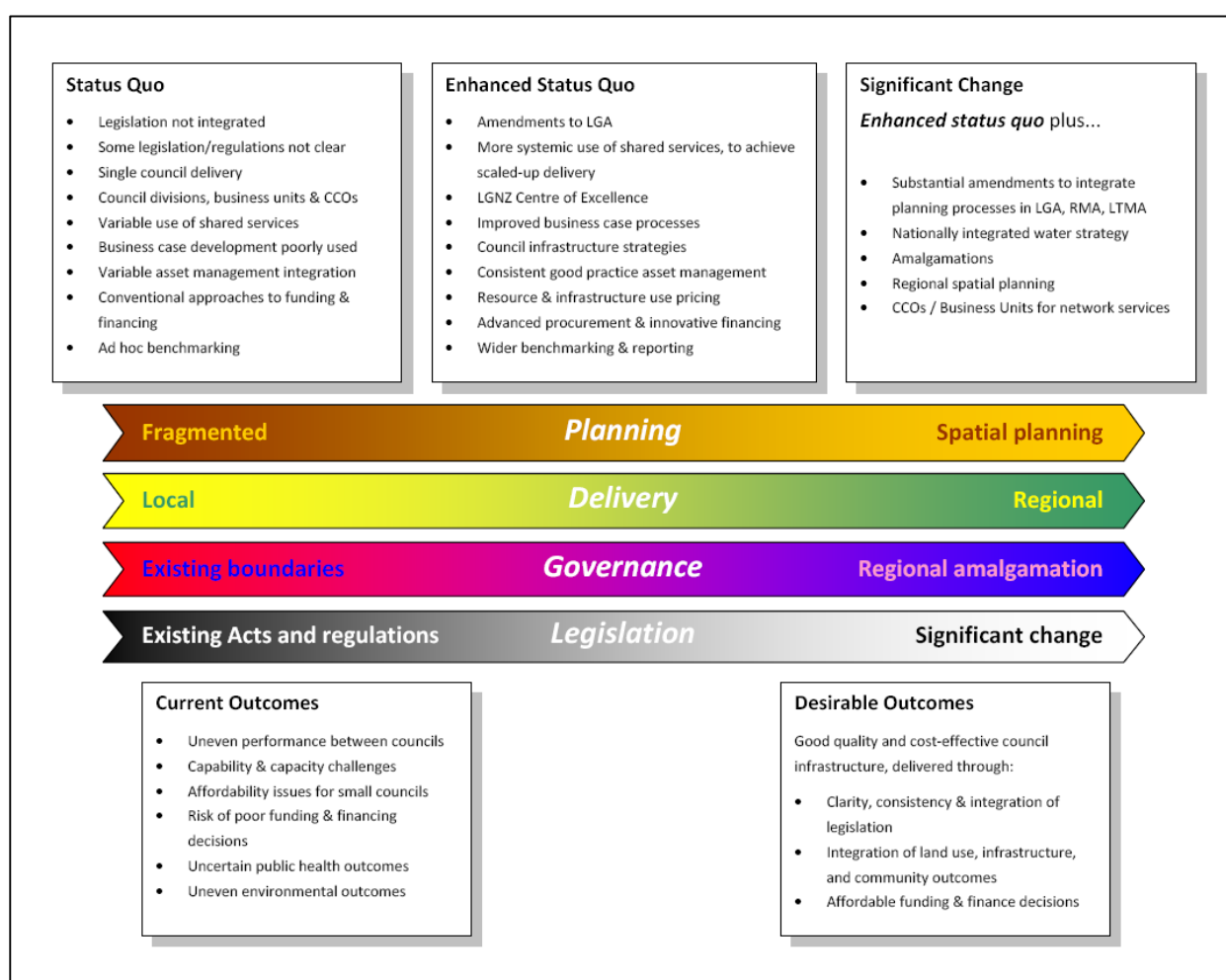
The following section sets out a possible pathway forward that is designed to achieve these outcomes.

## Delivering strategic capacity and capability whilst strengthening local democracy

Extensive analysis has been undertaken in recent years on opportunities to improve service delivery by councils and to enhance planning laws in New Zealand<sup>10</sup>. This analysis has informed the Government's Better Local Government reform programme. In the interests of brevity detailed analysis is not repeated here since the information is readily available.<sup>11</sup>

All of the reports have identified deficiencies in the strategic planning, asset management planning, planning funding and delivery of infrastructure, the interface between central, regional local government, the structure scale and scope of local government and disintegration between the key planning laws.

Figure 2: Summary of Infrastructure Expert Advisory Group Recommendations



<sup>10</sup> See for example: Report of the Local Government Efficiency Taskforce, November 2012; Report of the Local Government Infrastructure Efficiency Expert Advisory Group, March 2013; Towards better local regulation, Productivity Commission, May 2013; Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group, July 2012; Urban Planning Technical Advisory Group report; July 2010; Infrastructure Technical Advisory Group report, August 2010.

<sup>11</sup> See MfE website: <http://www.mfe.govt.nz/rma/reform/phase-two/background-documents.html> and Department of Internal Affairs: <http://www.dia.govt.nz/better-local-government>.

The Local Government Infrastructure Efficiency Expert Advisory Group (IEAG) report, was most specific in its recommendations. In addition to a whole series of best practice recommendations on effective strategy, asset management procurement and delivery, the IEAG set out a strong case for significant change out including:

- substantial legislative reform to integrate planning processes in the LGA, RMA and LTMA;
- nationally integrated water strategy;
- council amalgamations into regions of at least 100,000 population;
- regional spatial planning and
- CCOs or business units for network services including water and transport.

## Conclusion

New Zealand's key planning statutes – the RMA, LGA and LTMA – are 'disintegrated'.

Governance and responsibility for resource management planning, strategic planning and implementation is misaligned, leading to conflict between public bodies and poor delivery of public objectives.

Inconsistency within the public sector reduces certainty for the private sector which reduces the efficiency with which the ultimate implementers of policy can support Government direction.

One outcome is an inadequate supply of land for housing.

If the Government wishes to address the land supply issue alone, it is possible that comparatively minor 'band-aid' changes to the RMA, further identification of Special Housing Areas, a National Policy Statement on land supply or some other limited measure may address the immediate issue.

However, any such response will not address the root cause of not only the land supply issue, but many other problems born out of a fundamentally flawed planning and governance system.

The RMA, LGA and LTMA must be subject to a first principles review with a view to achieving better integration of planning in New Zealand.

The relationship between planning and governance is such that with the change in responsibilities under any substantive revision of the RMA, LGA and LTMA there must be also be revision of governance structures to ensure they are fit for purpose.

A review of key planning statutes must therefore include a review of local and central government responsibilities with respect to planning and consider appropriate governing structures for the development and implementation of best practice plans.

NZCID is completing work on this subject which will be published in the new year. We will make the findings of this work available to the Productivity Commission.

We thank the Commission for this opportunity to submit.