



# The Strategic Planning Act and Funding

Greg Severinsen and Raewyn Peart

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## Introduction

This paper looks at some issues and questions that are likely to arise in development of the proposed Strategic Planning Act (SPA). This Act is one of three pieces of legislation proposed to be created as part of the government's overhaul of the resource management system in Aotearoa New Zealand. The other two are the Natural and Built Environments Act (NBA) and the Climate Change Adaptation Act.

A useful way of thinking about this suite of legislation is (1) that the NBA will essentially “replace” the existing Resource Management Act 1991 (RMA), in that it will occupy roughly the same space in the system (including control of land use and activities with environmental impacts), and (2) that the SPA and Climate Change Adaptation Act will be “additional” legislation with no real equivalents in the existing system. There may be ongoing questions as to whether the Climate Change Adaptation Act should be a separate statute at all, or whether at least some of its components could be better distributed across other frameworks (including the SPA, NBA and the existing Climate Change Response Act 2002 (CCRA)).

We understand that government intends to introduce a fully formed Strategic Planning Bill to the House early in 2022, alongside the full Natural and Built Environments Bill (an exposure draft of parts of the latter is, at the time of writing, being considered in select committee via a parliamentary inquiry process). Detailed policy development for the proposed Climate Change Adaptation Act is progressing along different, slower timeframes.

The focus of this paper is the SPA, and its intersection with “funding”. In short, this is about how money, investment and resourcing will support the implementation of regional spatial strategies produced under the SPA. This will require strong links with separate frameworks through which money is both raised and spent by various public institutions (including both central and local government).

The structure of the paper is as follows.

1. Core elements of the SPA
2. Establishing legal links between the SPA and funding frameworks
3. The influence of funding frameworks on spatial strategies
4. The influence of spatial strategies on funding frameworks
5. How strong is a direction to be “consistent with” a spatial strategy?
  - a. The ability to amend a spatial strategy softens the strength of the legal direction
  - b. The high-level nature of spatial strategies softens the strength of the legal direction
6. The legal status of implementation agreements
7. Central government influence over local government funding
8. The influence of spatial strategies and implementation agreements on central government funding mechanisms
9. Which legal frameworks should be influenced by spatial strategies?
10. Supporting measures
  - a. Funding settings relating to urban growth
  - b. Deeper funding reform: engaging with institutional incentives
  - c. Reducing pressure on infrastructure

d. Funding settings for climate change adaptation and environmental enhancement

11. The purpose of the SPA

12. Summary of recommendations

This paper looks primarily at the funding role of *public authorities* in funding spatial strategies. Public authorities have legal frameworks under which they raise and spend money, so these legal connections are an important part of designing the SPA. This is not to diminish the role of a broader set of institutions, including mana whenua, as decision-makers on both spatial strategies and other tools (eg through planning committees), which is a separate and equally important role from funding. In other words, those who must fund the implementation of a spatial strategy through subsequent legislative processes do not necessarily represent the wider range of institutions and people who are to be involved in developing, approving and implementing it.

It is also not to dismiss the importance of other people and groups – who do not operate under legislative funding frameworks – in funding a spatial strategy. Spatial strategies can serve to align investment from many sources including iwi, community groups, the private sector, philanthropists and so forth. This coordination is very important, to ensure that public and private investment are directed towards a common vision.

A further thing to note is that the process of developing, monitoring and reviewing a spatial strategy – not just the actions required to implement it – must be adequately resourced. This is beyond the scope of this paper but has been highlighted by the Randerson Panel. In particular, there needs to be appropriate resourcing for Māori to be involved in preparation and implementation of spatial planning under the SPA.

## Core elements of the Strategic Planning Act

The core of the SPA, as recommended by the government’s independent panel on resource management reform (the “Randerson Panel”),<sup>1</sup> is intended to be a framework for mandatory strategic spatial planning across New Zealand. It would see the development of “regional spatial strategies” (as well as supporting tools of a “national priorities statement” and “implementation agreements”). Below, we summarise the key features of the SPA as envisaged by the Panel.<sup>2</sup> In the absence of further information, we assume that this broad policy intent will underpin more detailed policy development by the government, although we recognise that changes to it may be made during this process. More detail about the proposed SPA can be found in Appendix 2 of the Panel’s report.

### Elements of the SPA recommended by the Randerson Panel

1. There should be a new Strategic Planning Act to promote the social, economic, environmental and cultural wellbeing of present and future generations through the long-term strategic integration of functions exercised under the Natural and Built Environments Act, LGA, LTMA and CCRA.

<sup>1</sup> Resource Management Review Panel *New directions for resource management in New Zealand* (Ministry for the Environment, June 2020).

<sup>2</sup> See *ibid* at 155.

2. The Strategic Planning Act should provide a framework for mandatory regional spatial planning for both land and the coastal marine area.
3. Regional spatial strategies should set long-term objectives for urban growth and land use change, responding to climate change, and identifying areas inappropriate to develop for reasons such as their natural values or their importance to Māori.
4. There should be flexibility for: (i) the responsible Minister to determine sequencing, timing and priorities for preparation of these strategies (ii) spatial strategies to cover two or more regions or to focus on sub-regions in response to particular issues.
5. Regional spatial strategies should set a strategic direction for at least the next 30 years, informed by longer-term data and evidence as appropriate, such as 100 year plus projections for climate change.
6. Regional spatial strategies should be strategic and high level with project and site level detail provided through separate implementation agreements and subsequent combined planning and funding processes.
7. Regional spatial strategies should be prepared and approved by a joint committee comprising representatives of central government, the regional council, all constituent territorial authorities in the region, mana whenua and an independent chair.
8. There should be significant stakeholder and community involvement in the preparation of these strategies, including through public submissions and a process similar to the special consultative procedure under the Local Government Act.
9. Joint committees should seek consensus, but dispute resolution procedures should be provided including a facilitated mediation process and power for the Minister to resolve any remaining disputes.
10. Regional spatial strategies should be consistent with national direction under the Natural and Built Environments Act.
11. Combined plans and regional and local funding plans should be consistent with spatial strategies.
12. Regional spatial strategies should be fully reviewed at least every nine years with flexibility for review within that period when required.

We will not traverse the case for creating a formal spatial planning framework of some kind – that has been done comprehensively by the Randerson Panel, the Productivity Commission, Infrastructure New Zealand and the Environmental Defence Society (EDS) in previous work.<sup>3</sup> The Panel has summed the necessity up by saying that the current informal framework through which spatial planning can be done lacks strategic direction, vertical integration (including legally binding effect) and horizontal integration (how different processes and statutes interact).

Depending on the future direction of detailed policy development, the SPA could still take a number of forms within the parameters outlined by the Randerson Panel. It could be a fairly short and high-level piece of legislation, giving a broad purpose (eg based on wellbeing), a process by which reasonably high-level regional spatial strategies are developed, and provisions outlining how those are to be implemented or given effect to in other frameworks (such as the NBA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA)).

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<sup>3</sup> See Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019); New Zealand Productivity Commission *Better urban planning* (2017); Resource Management Review Panel *New directions for resource management in New Zealand* (Ministry for the Environment, June 2020); G Severinsen and R Peart *Reform of the resource management system: The next generation* (EDS, 2019).

On the other hand, the SPA could be more detailed, for example by prescribing what spatial strategies must (or must not) contain, mandatory timeframes for deployment, and common structures, formats and definitions. For example, it would be possible for the legislation to contain quite detailed machinery like that associated with the production of Future Development Strategies (eg business and housing capacity assessments) currently contained in the National Policy Statement for Urban Development. A detailed approach to spatial strategies may be required in some cases (and change over time) but we see a case for the legislation itself being reasonably simple and enabling.

The Randerson Panel made a number of recommendations with respect to the design of the SPA. However, there are still several options for how it might look depending on detailed policy development.

The Randerson Panel envisaged spatial strategies being broader than just a means of managing urban growth, including through the identification of areas for protection and climate change adaptation (see its recommendation 3 above). We agree that spatial planning should be about much more fundamental things than, for example, ensuring that land use change and infrastructure delivery occur in a coordinated way. For example, there is a pressing need for a framework to coordinate agency and community actions and resources in the context of the country's biodiversity crisis.<sup>4</sup> As the Biodiversity Collaborative Group has said:<sup>5</sup>

Success in arresting biodiversity decline ... requires integrating and aligning wider government policy, institutional arrangements and regulations. Otherwise we run the risk of one initiative negating or impeding the other.

Overall, the scope of what the Act should do, and for what reasons, is a live question that needs deeper exploration. That is beyond the scope of this paper, but it remains relevant: a broad purpose/scope for spatial strategies – eg to actively support the deployment of renewable energy projects, to guide afforestation, or to create protected areas on land and at sea – will have significant implications for funding (for example, where funds for any compensation to landowners for the creation of extensive protected areas is to come from). In other words, the importance of funding for the implementation of regional spatial strategies is not necessarily *just* about how to pay for the infrastructure needed to service cities, even though that is a core part of it.

The final scope of the SPA (its purpose and what spatial strategies are intended to/must encompass) will have significant implications for what needs to be funded to implement those strategies, by whom it is funded, and in what respective measure. Funding requirements may go well beyond just the infrastructure (eg pipes and roads) required to service rapid urban growth – if such strategies have a wide scope.

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<sup>4</sup> See MA Brown and others *Vanishing nature: Facing New Zealand's biodiversity crisis* (EDS, 2015). There is fragmentation of biodiversity-related planning across the Department of Conservation, councils, landowners and community groups, and across multiple statutes relating to conservation as well as the RMA and non-statutory programmes.

<sup>5</sup> *Report of the Biodiversity Collaborative Group* (2018) at 86.

## Establishing legal links between the SPA and funding frameworks

Implementation of regional spatial strategies will require money. But no matter how detailed and wide ranging the SPA ends up being, the Act will not *itself* contain the required funding mechanisms. Instead, the SPA will need to link with other frameworks (whether existing or new ones)<sup>6</sup> through which money can be raised and spent by public authorities (as well as providing a plan around which private investment choices can be made).

In terms of public expenditure, the two most obvious frameworks here are the LGA, through which councils plan and fund infrastructure and community services (through long-term plans, associated infrastructure strategies, and annual plans) and the LTMA, through which central government and councils jointly plan and fund land transport infrastructure like roads, public transport and cycleways (through the government policy statement on land transport, regional land transport plans, and the national land transport programme).<sup>7</sup>

We do not describe these statutes in detail here, but note that they will be important for funding the transport, water and other infrastructure needed to enable strategic changes in land use (eg rezoning of rural land to residential, or increasing allowable density), envisaged in a 30 year spatial strategy, to actually happen. This is most obvious in the urban context where growth pressures are high, because infrastructure funding and land use planning must go hand in hand. If they do not, land use change (including to increase the supply of housing) may be slowed down.

Links to the LGA and LTMA will also be important when it comes to implementing other aspects of a spatial strategy. For example, both may be necessary to raise and spend funds to support climate change adaptation measures (eg moving roads or community facilities, paying for protection structures, potentially buying out existing use rights). General funds raised under the LGA may also be used to support the protection and enhancement of areas identified in a spatial strategy under private ownership (eg incentives for retiring land or for planting to improve ecological corridors).

Formal links between the SPA and other funding frameworks (eg the Public Finance Act, which guides central government budget making) may also be important.

A clear legal link between a regional spatial strategy and separate legal frameworks under which its measures are funded (such as the LGA and LTMA) will be important. If there is no link, the measures envisaged in a spatial strategy may not end up being funded, undermining the whole exercise.

## The influence of funding frameworks on spatial strategies

A fundamental question is whether spatial strategies made under the SPA should themselves be bound or influenced by decisions taken under funding frameworks like the LGA and LTMA – or the other way round. Should communities have to find the money to implement a strategy, or should that strategy itself be developed based on the funding that government, councils and ultimately communities are willing to stump up?

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<sup>6</sup> For example, new green taxes, resource rentals, or a climate change adaptation fund.

<sup>7</sup> Which describes approved projects to be funded from the National Land Transport Fund.

To some degree, in our view the answer must be *both*. On the one hand, spatial strategies should not be seen as the creation of something fundamentally new or something inordinately powerful that simply directs other legislative processes. They are not created in a vacuum to “get around” or “override” decisions made elsewhere. Instead, their main point should be coordination: ensuring that existing (but fragmented) approaches to planning and funding across multiple agencies, levels of government and legislative frameworks have a place where they can come together at the same time, to ensure efforts are being aligned to achieving the same broad outcomes across compatible timeframes.

A first generation of spatial strategies should therefore be the *product* of many other processes/instruments that occur together in a coordinated way to produce the strategy. The process for creating a spatial plan, the institutions involved, and its timing in relation to these other processes, is therefore important.

More specifically, long-term plan (and infrastructure strategy) processes could usefully occur as part of the initial development of a spatial strategy, alongside comparable long-term strategic planning processes from central government agencies, council-controlled organisations, state owned enterprises, and any other entity expected to deliver or fund aspects of a strategy. Of course, that presents a logistical challenge, as these processes are not necessarily aligned in terms of when they occur, how long they take and who is involved. However, it would not seem to be an impossible challenge to resolve.

A first generation of spatial strategies should be informed by, or occur alongside, funding processes under other legislation (including the LGA and LTMA).

## The influence of spatial strategies on funding frameworks

The more significant question is what happens once a spatial strategy has been created. What influence does it *then* have on subsequent funding decisions? To what extent should it be able to prevent other processes (including for central and local government funding) from diverging or heading in different directions later on?<sup>8</sup>

Several important questions of public law arise when considering the legal influence of spatial strategies on subsequent funding decisions:

- The extent to which one government can bind/influence a later government with respect to revenue raising and expenditure choices;
- The extent to which one council can bind/influence a later council with respect to revenue raising and expenditure choices;
- The extent to which central government can bind local government with respect to its revenue raising and expenditure choices;
- The extent to which a plan made under one piece of legislation can bind/influence funding decisions made under other legislation with potentially quite different purposes.

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<sup>8</sup> The question of the relative legal force of regional spatial strategies and implementation agreements is looked at further below.

We start with a general comment applicable to all of the above issues. The process envisaged by the Randerson Panel for creating spatial strategies is one that is intentionally flexible (essentially, some variant of the special consultative process under the LGA)<sup>9</sup> and the purpose of the legislation (which the Panel has provided indicative drafting for) is also intentionally broad (based on different forms of wellbeing, similar to the LGA).<sup>10</sup> Multiple agencies (a fairly open-ended list) and mana whenua are envisaged to work together to collaboratively develop a strategy, and reach a consensus decision (with a ministerial “dispute resolution” power).<sup>11</sup> In short, spatial strategies are intended to be fairly high-level in their content, and the flexibility of process and purpose in creating them is designed to reflect that.

In contrast, existing funding frameworks like the LGA, LTMA and Public Finance Act (and others) have their own, more targeted, purposes, processes and timeframes (generally oriented in a way that reflects the importance of democratic processes). Carefully crafted safeguards are in place for the raising and expenditure of public money, including timeframes based on political cycles that reflect the fact that newly elected officials may wish to spend money differently based on the issues they campaigned on, and that community wishes and priorities can change year on year. As the Panel has pointed out, “electoral accountability is both important and sufficient for decisions on strategic direction and funding that affect the community generally”.<sup>12</sup> What the Panel means here is that elected officials can be voted out by constituents if they make unacceptable choices when managing public money, and it would be questionable for the judiciary to enforce, as a matter of law, the funding priorities of previous elected bodies.<sup>13</sup> A public strategy is not in the nature of a legal contract to be enforced in the courts. As such, there are serious questions to be asked about the strength of the SPA’s legal influence on other statutes, given the difference in processes and purposes between the SPA and funding legislation. These differences in purpose would, at least to some extent, still remain even if amendments were made to the LTMA as suggested by the Panel (to include the broader concept of wellbeing in its purpose, bringing it closer to the LGA and SPA).<sup>14</sup>

With respect to the LGA (in particular, long-term plans and annual plans), the question of how to spend ratepayer money (and perhaps even more importantly, how much revenue to *raise*, including through rates) goes to the heart of local democracy and elected members’ accountability to their communities. There are reasonable arguments that this should not be undermined by excessively strong legal obligations on a council to fund a spatial strategy (which may have been developed by its predecessor, and/or strongly shaped by central government<sup>15</sup> or other councils within a region).<sup>16</sup> The Panel envisages that strategies would be reviewed every nine years,<sup>17</sup> which means it is at least possible they could reflect a quite different political and fiscal landscape to when they were created.

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<sup>9</sup> See LGA, s 83.

<sup>10</sup> The Panel also recommended that the purpose of the LTMA be amended to include broader wellbeings, to improve alignment between the LGA, the LTMA and the SPA.

<sup>11</sup> At 150.

<sup>12</sup> At 125.

<sup>13</sup> In the absence of any legally binding contract.

<sup>14</sup> For example, wellbeing under the Local Government is focused on local and regional communities and with a strong flavour of local democracy, whereas wellbeing under an amended LTMA would still be focused on land transport.

<sup>15</sup> See comments further below in this paper with respect to the proposed ministerial override power.

<sup>16</sup> The process envisaged for developing a spatial strategy involves many parties, and is likely to encompass multiple local authorities in one or more regions.

<sup>17</sup> Although they can be reviewed in part, and changed according to changing circumstances.

### A spotlight on the Auckland Plan

The implications of having a legally weak or strong spatial plan can be seen in the context of the Auckland Plan, which is (to an extent) analogous to the type of spatial strategies proposed for the SPA. The Auckland Plan, which was a statutory instrument required under bespoke legislation for the Auckland super city, was designed to provide a high-level blueprint which other instruments – especially the subsequent Unitary Plan under the RMA, but also associated funding mechanisms – would then achieve. But while the creation of the Auckland Plan was mandatory, the legal influence it had on other processes was always weak: the latter were obliged to “have regard to” the former.<sup>18</sup>

The Unitary Plan, where the rubber really hit the road for many things (including regulatory restrictions and zoning decisions affecting people’s property) had a more robust process involving an accountable council, an independent panel, and the courts. It was considered to be important that this – and associated funding decisions under other legislation like the LGA – could not be overridden by a more general and aspirational spatial plan created in a (in many ways) less formal manner and under a more general legislative purpose.

Similarly, the non-statutory Auckland Transport Alignment Project outlines a joint funding programme for transport in Auckland over the next ten years for central and local government. However, this does not have formal legal effect on funding frameworks and relies on the partners obtaining funding through the normal mechanisms to adhere to the agreement.

It would also be beyond the pale for long-term *central* government funding decisions to be bound by a high level, long-term strategy developed in a collaborative fashion, especially if it reflected the priorities and concerns of previous governments. The budget process, within the constraints of the Public Finance Act, is the preserve of a democratically elected government (and, ultimately, Parliament), which can come into sharp relief when the makeup of the government changes or where funding needs to be diverted elsewhere in a hurry (which can be seen with the Covid-19 response).<sup>19</sup> The Public Finance Act also contains clear principles about “responsible fiscal management” which the government must adhere to (subject to a narrow range of exceptions) and which should not be overridden in other statutes.<sup>20</sup> That said, public money can be committed to across electoral cycles through long-term contractual arrangements, the point being that spatial strategies having some degree of legal influence over funding decisions across governments would not be inappropriate (especially if spatial strategies themselves can be amended).

In short, funding decisions cannot just be about blindly implementing spatial strategies – they would need to be primarily about implementing the purpose and principles of the particular piece of legislation governing those decisions, which are some of the most constitutionally important provisions in the statute book.

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<sup>18</sup> Local Government (Auckland Transitional Provisions) Act 2010, s 145(2). Compare also the Sea Change – Tai Timu Tai Pari Hauraki Gulf marine spatial plan (2017), where the relationship with more formal legal instruments was unclear; see G Severinsen and R Peart *Reform of the resource management system: The next generation* (EDS, 2019) at 227.

<sup>19</sup> For example, funding for the Department of Conservation, or funding for roads of national significance.

<sup>20</sup> Public Finance Act 1989, s 26G.

The raising and expenditure of public money goes to the heart of local and central democracy and there is a strong case for it not to be strictly “bound” by a long-term spatial strategy, which may reflect the political priorities of previous decision-makers and would have been created under legislation (the SPA) in which other entities (including central government) had a strong voice. Existing funding frameworks, such as for annual plans under the LGA, provide carefully crafted safeguards that should not be “overridden”.

There are persuasive arguments that the legal effect of spatial strategies on funding frameworks should not be too strong. On the other hand, however, one of the issues with the numerous non-statutory forms of spatial planning that have occurred to date has been the uncertain and tenuous relationship between ambitious plans and the funding commitments required to realise their ambition. Funding often needs to come from multiple places, and a failure of one source can undermine the success of the whole. If the financial component of a plan falls through, then the remaining regulatory component may not be enough to achieve the objective sought.<sup>21</sup>

Simply making the *creation* of a spatial strategy mandatory does not itself mean it will be effective, if other processes can then largely ignore it. As the Panel has said, non-legislative efforts at spatial planning have suffered from:<sup>22</sup>

Insufficient legislative mandate and weight, including formal links between spatial plans and detailed resource management and funding plans.

And there is a risk that:<sup>23</sup>

a nationally significant project may be a priority in [a] spatial plan but have no recognition under the RMA or [the LTMA]; [and] a regionally significant project may have priority in a [regional land transport plan] but not be funded in the local council’s long-term plan.

The legal relationship therefore cannot be too *weak*. If regional spatial strategies (and the SPA itself) are to be worthwhile, strategies need to have real influence on other legal frameworks by which more targeted decisions (including regulatory and funding decisions) are made. Strategy is worthless if it does not lead to action.<sup>24</sup> Issues with weak (non-statutory) spatial planning exercises and reliance on ongoing negotiation processes between agencies can be seen in the Sea Change Tai Timu Tai Pari initiative (where implementation of a marine spatial plan finalised in 2016 is only now in mid-2021 being committed to by the government, and in a revised manner to that envisaged in the original spatial plan),<sup>25</sup> and in the wrangling between central and local government funding for the

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<sup>21</sup> G Severinsen and R Peart *Reform of the resource management system: The next generation* (EDS, 2019) at 268; Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 3.

<sup>22</sup> At 117. One commentator has suggested that that spatial plans should be *given effect* to: see Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 43.

<sup>23</sup> New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) *Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand* (2015) 35, 9.

<sup>24</sup> Compare Resource Management Review Panel *Transforming the resource management system: Opportunities for change – Issues and options paper* (2019) at 14.

<sup>25</sup> See Minister for Oceans and Fisheries *Revitalising the Hauraki Gulf – Government Sea Change Strategy* (2 July 2021).

*Let's get Wellington moving* transport initiative.<sup>26</sup> The non-statutory Auckland Transport Alignment Project has also not been without its issues. Some may simply see this as democracy in action – things change based on who is elected to make funding choices – but it is reasonably clear that it has become problematic where coordination is required.

### **A spotlight on transport in Auckland**

Auckland Council has set out a vision to radically transform the city away from a car dominated system to provide for a more integrated public transport network. Many infrastructure projects have been proposed, including rail links from the central city to the airport, light rail to the North Shore and an additional harbour crossing. Local government reform towards a unitary council in 2009 provided an opportunity for the development of a more integrated transport network.

Auckland's need for a more efficient and integrated public transport system has been a consistent issue in local government elections. When the Council consulted on the Auckland Plan in 2011, the discussion paper *Auckland Unleashed* saw 600 responses calling for the public transport system to be prioritised and for an increased focus on walking and cycling infrastructure.<sup>27</sup> This was reflected in the city's spatial plan, which acknowledges the need for an efficient transport system that reduces greenhouse emissions and moves away from traditional motorway focused sprawl in favour of encouraging more compact, higher density development and associated public transport.

However, local funding sources are insufficient to meet its vision. While the Auckland spatial plan came into effect in 2012, in practice the ability of the plan to influence and implement transport changes has been limited by heavy reliance on central government contributions. Conflicting political agendas of central and local government in relation to transport has proved problematic.

The City Rail Link is an example of a project that has been attempted many times over many decades. The previous government regarded the rail link as cost-inefficient and showed limited interest in the venture. Even once support was obtained in 2013, the start date was postponed to 2020, which was when the project was originally to have been completed.

In 2016, in order to bridge the gap between central and local government, the Auckland Transport Alignment Project was initiated. This was an effort by the Auckland Council and the government to agree on a bundle of priority transport projects for the region and brought many relevant entities together.<sup>28</sup> A revised deal was subsequently reached with the Labour-led government, resulting in additional funding and an agreed shift in priorities to focus more on public transport.

However, while funding has now been committed, Auckland Transport has still been obliged to apply for it, project by project. Lengthy delays in individual funding approvals can remain even where broad consensus and agreement has been reached.<sup>29</sup> There has been an inability to obtain agreement on projects in advance or simultaneously with the planning process, and funding

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<sup>26</sup> Despite a promise of a Crown contribution and commitment to the project, there has been uncertainty as to where the council's side of the funding would come from.

<sup>27</sup> This requirement was introduced by s 14 of the Land Transport Management Amendment Act 2013.

<sup>28</sup> The Ministry of Transport, NZTA, Treasury, State Services Commission, Auckland Council and Auckland Transport.

<sup>29</sup> <[www.stuff.co.nz/auckland/111590179/delays-and-red-tape-costs-hit-auckland-transport-projects?rm=m](http://www.stuff.co.nz/auckland/111590179/delays-and-red-tape-costs-hit-auckland-transport-projects?rm=m)>

pressures remain. Some of that pressure has come from a mismatch in timing for longer running projects.<sup>30</sup> And there can be considerable competition for national level funds between state highway proposals and local roading/public transport projects.<sup>31</sup> Despite the benefits of central and local agencies working together through the Alignment Project, the city continues to struggle with a long list of projects.

To some extent the Alignment Project highlights how issues can emerge from having multiple levels of government, each with their own democratic mandates and policy priorities, controlling land transport investment and planning. But it also points to the value of moving towards a more formal, coordinated and predictable partnership model with a legally influential spatial strategy as a reference point.

Another reason that spatial strategies need a reasonably strong legal link to funding decisions is because the former will, under the government's reform proposals, have to be "consistent with" national direction made under the NBA. National direction can have significant financial implications (such as the infrastructure needs of urban densification provided for in the NPS for Urban Development), and those legal obligations will need to be factored into detailed budgeting decisions for both central and local government.

Establishing a reasonably strong legal link between spatial strategies and funding frameworks would also have other benefits. Not only would it set out a strong expectation that the spatial strategies would need to be implemented; it would also inject a healthy dose of realism with respect to what those strategies sought to achieve in the first place. In other words, there would be an incentive to contemplate in spatial strategies only things that could be realistically achieved within expected funding and resourcing constraints, rather than containing overly aspirational wish-lists. While it should be ambitious, a spatial strategy should not be an aspirational vision – it needs to be firmly rooted in what is realistic and can be paid for.

There needs to be a reasonably strong relationship between the SPA and funding frameworks to make spatial strategies worth doing.

The upshot of the discussion above is that, in our view, the relationship between spatial strategies and funding decisions needs to operate in a middle ground somewhere between "binding" and a "relevant consideration". The Panel, for its part, opted for a direction that the following instruments would need to be "consistent with" a spatial strategy (which is stronger than, for example, the "have regard to" obligation of the Auckland Plan):<sup>32</sup>

- Natural and built environment plans under the NBA
- Long-term plans and infrastructure strategies under the LGA
- Regional land transport plans under the LTMA

<sup>30</sup> <[www.stuff.co.nz/auckland/113274258/auckland-transport-projects-face-big-funding-gap](http://www.stuff.co.nz/auckland/113274258/auckland-transport-projects-face-big-funding-gap)>

<sup>31</sup> <[www.interest.co.nz/news/99925/number-major-transport-projects-could-be-delayed-over-next-three-years-nzta-reviews-its](http://www.interest.co.nz/news/99925/number-major-transport-projects-could-be-delayed-over-next-three-years-nzta-reviews-its)>

<sup>32</sup> The Panel recommended that spatial strategies themselves *be* consistent with national level instruments, such as national direction under the NBA, the Government Policy Statement on Land Transport under the LTMA, a National Adaptation Plan under the CCRA and the Government Policy Statement on Housing and Urban Development under the Kāinga Ora Homes and Communities Act 2019.

This list could, of course, be made longer to reflect other statutory instruments under other legislation that may be needed to fund a spatial strategy. The list reflects the relatively narrow terms of reference of the Panel, which was tasked with only looking at the relationship of spatial planning with the RMA, LGA, LTMA and CCRA.

Being “consistent with” is a reasonably strong direction. Presumably a funder could not simply choose to divert funds elsewhere, particularly if a spatial strategy contained provisions relating to the specific timing of a development or other measure requiring investment.

Subject to the caveats described in the following sections, we consider this reasonably strong direction to be appropriate. However, it emphasises the need (as mentioned earlier) for spatial strategies themselves to be informed *by* long-term funding processes under the LGA and LTMA (and, depending on the scope of the spatial strategy, possible also broader government agency financial planning under the Public Finance Act).

It also emphasises the need for some clarity in the legislation as to how detailed spatial strategies should be. In practice, how detailed and directive the actual instruments are may be the most significant factor in determining how strong the legal direction to be “consistent with” is.<sup>33</sup>

Furthermore, because of the relative strength of this legal direction (and the possibility that spatial strategies themselves *could* be quite detailed/directive), we consider there is a case for an additional layer of flexibility or nuance when it comes to implementing (ie paying for) a spatial strategy. For instance, funding frameworks could be required to be “consistent with” spatial strategies “unless/to the extent that<sup>34</sup> good reason can be shown”. “Good reason” could be defined as including where the purpose of a funding or other framework is in conflict with a spatial strategy (eg where investment in infrastructure would undermine responsible fiscal management,<sup>35</sup> a safe and efficient transport system,<sup>36</sup> statutory responsibilities to fund responses to conservation or biosecurity threats,<sup>37</sup> or environmental limits established under the NBA only after the creation of the spatial strategy).<sup>38</sup>

The Panel has pointed out that the RMA, LGA and LTMA have quite different purpose statements, and while it suggests that these should be made more “coherent” (including by making minor amendments to the purpose of the LTMA and creating a new purpose for the NBA),<sup>39</sup> there are good reasons for ongoing differences due to the quite different nature of the processes involved (eg erosion of private property rights, local democratic mandate, raising and expenditure of public

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<sup>33</sup> Similar to national direction under the RMA, where the obligation to give effect to a policy in national direction depends on how directive that policy is.

<sup>34</sup> Which could, for example, mean a delay in full funding rather than full license to depart from the spatial strategy entirely.

<sup>35</sup> Under, for example, the Public Finance Act or LGA.

<sup>36</sup> Under the LTMA.

<sup>37</sup> For example, implementing aspects of a spatial strategy should not undermine the Department of Conservation’s mandate to discharge specific conservation duties.

<sup>38</sup> This would need to be thought through carefully when it comes to the purpose of the LGA, where arguably a core driver is to retain the fiscal autonomy of councils. It may be a grey area as to when an “inability” to raise revenue (eg through rates) becomes simply a preference of an elected council to divert funds elsewhere.

<sup>39</sup> See Resource Management Review Panel *New directions for resource management in New Zealand* (Ministry for the Environment, June 2020) at 139.

funds). In fact, using the SPA’s broad purpose to effectively override or alter the application of another statute’s more targeted purpose would be a significant (and, from a design perspective, questionable) step.

The above recommendation would act as a safety valve to address this concern. If this were not present, it could lead to a situation in which the courts, potentially via judicial review proceedings, would need to consider whether to require elected officials to raise and spend large sums of money that conflicted with the purpose/principles of the legal frameworks under which that would need to happen.<sup>40</sup> That could create legislative conflict/inconsistencies that the Legislation Design Advisory Committee warns against.

We agree with the Panel’s reasonably strong direction that long-term plans, infrastructure strategies, annual plans and regional land transport plans should be “consistent with” a regional spatial strategy. However, this should be softened slightly by providing an exception where “good reason” or “sound justification” exists, which could be defined as including where and to what extent the statutory purpose of a funding framework conflicts with the requirements of a spatial strategy.

## How strong is a direction to be “consistent with” a spatial strategy?

It is also worth keeping in mind that spatial strategies would *already* be flexible, in two important senses. These would in practice be other ways to “soften” the direction that funding decisions be “consistent with” spatial strategies.

### The ability to amend a spatial strategy softens the strength of the legal direction

First, spatial strategies could *themselves* be amended over time, something that the Panel specifically contemplates. Any reviews and changes to them should be able to be influenced by funding processes under other legislation, on an ongoing basis.<sup>41</sup> In this way, spatial plans and funding processes should continue to inform *each other* in a reciprocal relationship, not just a top-down way.<sup>42</sup> In other words, spatial strategies would not be like national direction under the RMA, which must be given effect to in regional and district plans (without the corresponding ability for those plans to influence future iterations of national direction).

Funding processes should therefore start from the premise that they would need to be consistent with a spatial strategy. Through these processes, however, it could be identified that “good reason” exists for a degree of inconsistency (see discussion above).<sup>43</sup> For example, if a council can no longer afford to fund parts of a spatial strategy it signed up for (or in timeframes envisaged in the strategy)

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<sup>40</sup> We note the Panel’s recommendation that spatial strategies themselves be “consistent with” the purpose of the NBA, LGA and LTMA (at 139), so in theory conflict should not arise. However, as circumstances change, a spatial strategy may *no longer* be consistent with the purpose of other legislation.

<sup>41</sup> Especially to reflect changes in circumstances – such as the economic response to Covid-19.

<sup>42</sup> That reciprocal relationship – where instruments inform each other on a rolling basis – is recommended by the Panel in relation to regional spatial strategies and *national* level instruments (national direction under the NBA, the Government Policy Statement on Land Transport, the Government Policy Statement on Housing and Urban Development, and adaptation plans), but not in relation to *local* instruments.

<sup>43</sup> There could even be provision for close independent scrutiny of whether that is the case.

due to changed circumstances, there would need to be a process by which that could be reflected in changes to a spatial strategy, rather than the strategy itself being left to no longer reflect funding reality.<sup>44</sup> Of course, if a spatial strategy were phrased in such a high level way that no inconsistency arose, there would be no need to formally change it.<sup>45</sup> But even a high level strategy may require amendments in light of issues that only become apparent through detailed funding processes.<sup>46</sup>

We think that this flexibility would be appropriate. The policy imperative here is not necessarily to *prevent* a spatial strategy being changed in light of funding considerations under other frameworks (including local government processes),<sup>47</sup> but rather to ensure that any changes that *do* happen occur in an integrated way (to the spatial strategy itself) rather than separate planning and funding processes simply pulling in different directions, as they can do at present. So while a strong direction that (for example) annual plans must be “consistent with” spatial strategies may raise some concerns about the latter overriding local democracy, such concerns may be ameliorated if Local Government Act funding processes could themselves result in changes to (or a review of) the strategy.<sup>48</sup>

This emphasises that the process for *changing* a spatial strategy – including safeguards preventing arbitrary decisions not to fund core parts of it – will be as important as the process for creating it in the first place. For example, there could be a legal direction that decision-makers on a spatial strategy provide clear justification for any amendment linked to the purpose and principles of another statute (eg the LGA or LTMA). That could operate in a similar manner to section 32 reports under the RMA. There could also be monitoring of progress (eg by an independent commission) which could make independent but non-binding declarations as to whether an amendment is justified or not.

Another way in which the direction for funding decisions to be “consistent with” a spatial strategy could be softened is by allowing the spatial strategy itself to be amended following separate funding processes, accompanied by a requirement that such changes be justified.

### The high-level nature of spatial strategies softens the strength of the legal direction

Secondly, as mentioned earlier, spatial strategies could be flexible simply by virtue of their high-level nature. A seemingly strong direction to be consistent with a strategy would be weakened, in practice, if that strategy itself were not directive. That is not dissimilar to the situation that arises

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<sup>44</sup> The ability to change a spatial strategy should be subject to the imperative to give effect to the proposed national planning framework under the new NBA, including the paramountcy of environmental limits contained within it. As discussed in a previous report provided by EDS to the Ministry for the Environment, environmental limits may require spatial expression, and these should not be flexible.

<sup>45</sup> Indeed, this is what the Panel envisaged.

<sup>46</sup> For example, if there were changes as to who was expected to pay (eg if three waters arrangements changed, if Kāinga Ora took over some developments under the Urban Development Act, or if the funding sources available to councils were to fundamentally change).

<sup>47</sup> Except to the extent necessary to give effect to environmental limits under the NBA, including their expression in spatial form (eg protected areas).

<sup>48</sup> In a conceptually similar way that annual plans do not have to give effect to a long-term plan; they can identify any variation from it, and in practice lead to reconsideration of a long-term plan.

under the RMA, where a strong instruction to “give effect” to national direction is not always strong in practice where national direction itself is worded in general terms.<sup>49</sup>

However, it is not yet clear how “high-level” spatial strategies would be, or whether the legislation would spell this out or leave it vague.<sup>50</sup> On the one hand, it is not fanciful to imagine that future development strategies, required under the NPS for Urban Development, may form the core of new spatial strategies (at least in regions where the drive for spatial planning is rapid urban growth). These vary but can be quite specific in terms of where and by when core infrastructure is to be provided as an urban area expands or densifies.<sup>51</sup>

Similarly, the Panel has envisaged that mandatory content for spatial strategies would include things like future transport corridors and other major infrastructure (including social infrastructure), including indicative costs and timing.<sup>52</sup> Spatial strategies could also conceivably identify significant areas for ecological protection and significant land use change,<sup>53</sup> with the consequent expectation of funding for pest control, planting, fencing or even purchase/compensation where protections prevent the reasonable use of privately held land (spatial strategies are not just about aligning urban land use change with infrastructure). Being “consistent with” such strategies could, in practice, *require* funding decisions to be made in particular ways (especially if rezoning of land under the NBA to residential were happening in parallel).

To the extent that a regional spatial strategy was to be quite detailed in terms of what needs to be funded, by when, and by whom (eg for sequenced land release and associated infrastructure for urban growth), then a legal obligation for funding frameworks to be “consistent with” it will be a strong one (and may need to be softened in the ways outlined earlier).

However, it is equally possible that spatial strategies may actually have very few direct funding implications for things like annual plans, regional land transport plans, and agency annual budgets. In other words, a direction for these funding decisions to be “consistent with” spatial strategies may leave a lot of room for interpretation, because the strategy would be fairly vague in terms of what exactly would need to be funded, by when, and using which revenue raising tools.

For example, a strategy might outline a spatial vision for an area over 30 years and expect it to “be” funded, but not tackle by when or by whom<sup>54</sup> components would be paid for (or in what relative measure). It would be difficult to take legal action (eg judicial review) on the basis that a funding instrument was not “consistent with” such a strategy, not least because it would be unclear *who* that action should be taken against. The direction would therefore be much weaker than it appeared.

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<sup>49</sup> The direction to “give effect to” an NPS is strong, but what that means in practice is determined by how strong the wording of policies and other provisions within the NPS is (eg whether it is about “avoiding” or “considering” or “implementing” things).

<sup>50</sup> The Panel identifies some core mandatory content, but not in drafting form.

<sup>51</sup> Furthermore, it is already clear that the infrastructure required to support density in some urban areas (mandated by the NPS for Urban Development) will need to be provided, which may be reflected in spatial strategies.

<sup>52</sup> At 142.

<sup>53</sup> At 143.

<sup>54</sup> Future development strategies are different from regional spatial strategies, because they are primarily focused on guiding *council* funding and regulatory processes, rather than the funding and other processes of multiple other agencies.

For its part, the Randerson Panel envisaged that funding for *specific projects* necessary to implement a spatial plan (ie which agencies contributed to what, and when) would be resolved through more bespoke “implementation agreements”, not in a spatial strategy itself.<sup>55</sup> A spatial strategy would provide “flexibility” for budgeting processes to consider a broader range of issues (because of its generality, it would not be regarded as “binding”). We consider implementation agreements below.

To the extent that a regional spatial strategy was to be worded/mapped in a general way, it may have relatively few direct implications for funding processes. Being “consistent with” a very general, high-level document could leave a lot of room for interpretation and render this strong-sounding direction much weaker in practice.

Because of the potential for at least some spatial strategies to be worded in relatively detailed terms, we reiterate our earlier recommendation that the SPA needs to include a “safety valve”. A legal direction for funding frameworks to be consistent with spatial strategies should therefore be accompanied by (1) an exception where (and to the extent that) “good reason” can be shown for departing from a spatial strategy, and (2) a mechanism by which a strategy can be amended in light of changed circumstances identified through funding processes.

## The legal status of implementation agreements

If spatial strategies did not have significant funding implications in and of themselves (due to their high-level nature), the more important thing to consider may be the legal nature and influence of *implementation agreements*. It may even be that spatial strategies need not have a strong (or any) legal link to actual budgeting processes (eg annual plans, national land transport programme, or agency financial planning under the Public Finance Act). Instead, legal influence would be exercised through more specific implementation agreements, which would make it more obvious what funding processes actually need to do. In other words, funding processes (eg annual plans) could be required to be consistent with implementation agreements, but not necessarily consistent with spatial strategies.<sup>56</sup> If that was the case, there would need to be a strong legal link between spatial strategies and implementation agreements (with the latter having the purpose of “giving effect to” or “implementing” the former).

It would be possible for spatial strategies to have little or no formal legal influence over funding frameworks. Legal influence could instead be achieved by requiring funding processes to be consistent with implementation agreements. If that approach were adopted, there would need to be a clear legal link between spatial strategies and implementation agreements, so that the former clearly guided the latter.

Alternatively, the SPA could make a distinction in terms of which funding processes were influenced by a spatial strategy and which were influenced by an implementation agreement. For example, a spatial strategy could legally influence only longer-term and more strategic instruments like long-term plans, infrastructure strategies and government policy statements on land transport, while implementation agreements could influence shorter-term and more operational funding instruments like annual plans, regional land transport plans and central agencies’ budget bids.

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<sup>55</sup> At 143.

<sup>56</sup> Subject to the flexibility measures outlined earlier.

However, on closer inspection, it is not obvious exactly which funding processes should be influenced by spatial strategies and which should instead be influenced by implementation agreements (which are about a stream of projects and may conceivably cover a one-year period but could also cover a more “strategic” ten-year period, or both).<sup>57</sup> Making a distinction may create undue complexity in the system when the imperative is for greater simplicity. That complexity would be particularly problematic if there was the ability to expand the list of legislation that spatial strategies had legal influence over (eg if it were extended to cover plans made by Kāinga Ora under the Urban Development Act),<sup>58</sup> because a potentially wide range of instruments would need to be “pigeon-holed” into two distinct categories.

We consider that it would be unworkable for regional spatial strategies to have formal legal influence over some instruments, and implementation agreements to have formal legal influence over others.

The strength of legal influence of implementation agreements on funding processes (eg annual plans) is not made certain in the Panel’s report. It states that an “implementation agreement *would* be progressed through central and local government budget processes”,<sup>59</sup> but it is not clear if this is envisaged to be a legal obligation of some shape or form or simply an expectation. Elsewhere, the Panel hints that implementation agreements are not to have any formal legislative link to budgeting processes for local or central government, in that:<sup>60</sup> “final decisions on the quantum and timing of commitments would be left to budgets to confirm” and the spatial planning process would simply “inform” and “input into” investment priorities and funding requirements.<sup>61</sup>

Greater clarity is required here. For one, the specific legal mechanism (if any) by which detailed implementation agreements would exercise influence should be outlined in the SPA, including who (if anyone) should have legal standing to take relevant public authorities to court for a failure to spend public moneys in a way consistent with an implementation agreement. For example:

- Are agreements to be in the nature of a memorandum of understanding with no legal weight?

This may not provide the necessary assurance that funding will be forthcoming to support a spatial strategy, undermining the legal influence accorded to a spatial strategy.

- Alternatively, should they be binding contractual arrangement between agencies, where only parties can enforce provisions through the courts?

Public authorities can and do enter contracts frequently, and these can be enforced in the normal way; however, it is by no means clear that the type of things to be included in an

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<sup>57</sup> An implementation agreement might be an annual thing (corresponding to annual plans and budget bids) but it might equally be a ten year thing, with commitments being described in more general terms the further out they extend. The Auckland Transport Alignment Project funding programme, for example, covers a wide range of projects over different time periods through the course of the next decade.

<sup>58</sup> A development plan integrates all sorts of things across bespoke timeframes.

<sup>59</sup> At 492.

<sup>60</sup> At 144.

<sup>61</sup> At 125.

implementation agreement would comprise a contract from a legal perspective or whether it would be appropriate to do so.<sup>62</sup>

- Should the courts be involved in forcing the expenditure of public money in particular ways if an agreement is not in the nature of a binding contract?

Probably not – this treads into constitutionally dangerous territory, does not allow sufficient flexibility, and ignores the relative importance of electoral rather than judicial accountability in this space.

Overall, we think it would be more appropriate for implementation agreements to be treated as a new kind of statutory instrument, rather than a contractual or similar obligation to be litigated in the courts. But the legal influence of implementation agreements on funding frameworks should be reasonably strong, to reflect the similarly strong obligation that flows from spatial strategies to funding frameworks.

The exact strength of this link could usefully be clarified through further policy development, but we see a case for funding instruments to be “consistent with” or to “take steps to implement” such agreements once they are made (as long as there is appropriate flexibility – such as where there is “good reason” for departure from them, as discussed earlier in the context of spatial strategies).

That said, we reiterate our earlier comment that the more specific and directive the nature of the instrument, the stronger in practice a direction to “be consistent with” it will be. An implementation agreement will need to be very specific. It may therefore be more appropriate to prefer a formulation of “take steps to implement” an implementation agreement, rather than to “be consistent with” it, to allow a greater degree of flexibility in democratically important funding processes.

For example, to be “consistent with” an agreement to supply \$100 million to a project over two or three years does not provide any wriggle room if funds need to be diverted due to sudden changes in community circumstances. What is needed is a firm nudge towards commitment, not a straitjacket.

Although the Panel did not address the issue directly, we consider that implementation agreements should have some form of legal status and influence over decision-making under funding frameworks. However, these agreements should not be “binding”; an appropriate formulation may be to “take steps to implement”.

As mentioned earlier, it will also be important for the legal relationship between spatial strategies and implementation agreements to be clarified. In particular, the value of having a spatial strategy that is fairly high level may be diminished if there is no legal obligation to then create a corresponding implementation agreement (especially if multiple different funders are required to

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<sup>62</sup> The terms of reference for the Auckland Transport Alignment Project makes clear that the agreement is an expression of intention, not a contractual document: see <https://www.transport.govt.nz/assets/Uploads/Other/ATAP-Terms-of-Reference.pdf>. Similarly, the project’s agreed investment programme does not formally bind processes for the expenditure of money under the LGA, LTMA or other legislation.

implement the strategy). Where multiple funding streams need to be coordinated to implement a strategy, the SPA should make it clear that there is a legal requirement to pursue or even reach an implementation agreement.

The legal relationship between spatial strategies and implementation agreements should also be clarified, in that the latter should be obliged to give effect to, or “implement”, the former. It should be made clear that where multiple funders are involved in preparing a spatial strategy, an implementation agreement is mandatory.

As with spatial strategies, there will also need to be a robust process (with appropriate safeguards) by which implementation agreements could be changed. These changes should be able to be triggered by processes under both central and local funding frameworks. This would be to ensure that (1) implementation agreements do not become out of sync with funding realities, but also (2) to prevent arbitrary decisions to change implementation agreements simply because there is no longer the appetite to fund things previously agreed to. To safeguard the latter, there could be a degree of independent oversight of any changes to ensure an implementation agreement continued to give effect to a spatial strategy.

There needs to be flexibility for implementation agreements to be amended, but some safeguards should be put in place to ensure that these do not depart from a spatial strategy. This should be a reasonably simple and agile process to ensure the spatial planning framework does not become too complex.

A number of other issues also arise with respect to implementation agreements. For one, it is unclear how (or if) implementation agreements are to be established if “agreement” cannot actually be reached. There may be little point in having a spatial strategy with which funding decisions need to be “consistent” if the specifics of who has to pay for it (and in what measure) cannot be finalised in a timely way through one or more implementation agreements.

Perhaps surprisingly, the Panel is silent on this question, given the relative importance for funding that it assigns to these agreements vis à vis “higher level” spatial strategies.<sup>63</sup> Should there be, for example, principles or criteria (eg subsidiarity, fairness, ability to pay) which must guide the negotiation process between agencies, or should public authorities be given the freedom to come to their own arrangements? Should an agreement be brokered by an independent third party? What should be the role of the courts in determining the legitimacy of the final agreement? Should there be timeframes for reaching agreement on core issues?

And what if consensus cannot be reached at all? A key question here is whether a ministerial power to resolve any outstanding disputes is appropriate for implementation agreements in the same way as has been proposed for spatial strategies. This has implications for local democracy (see further below) and may make a nonsense of the term “agreement”.

Clarity is needed as to how implementation agreements – if they are to be mandatory – are to be resolved if “agreement” cannot be reached. Much comes down to how much public authorities,

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<sup>63</sup> In that generally worded spatial strategies may have very little actual impact on specific funding decisions under budgeting processes unless more specific implementation agreements are also legally linked to those processes.

including elected representatives, should be “trusted” to negotiate on behalf of their constituents in a flexible way.

Overall, we consider that implementation agreements between relevant institutions will be a valuable element of the SPA, especially if spatial strategies are to remain high level (and therefore lack obvious direction to guide specific funding processes). Implementation agreements could form separate instruments or be contained in schedules to the relevant spatial strategy (not the SPA).<sup>64</sup> However, there could usefully be:

- (1) clear guidance in the SPA as to what is expected to be contained in a spatial strategy vis à vis an implementation agreement;
- (2) a clearer (although not overly complex) statutory structure around how implementation agreements are to be reached, and what happens if agreement cannot be reached in a timely way;
- (3) clarity as to the legal relationship between spatial strategies and implementation agreements; and
- (4) clarity as to what the legal effect of implementation agreements are on various funding frameworks.

The final product of implementation agreements may look similar to a more structured, broader reaching and durable version of the Auckland Transport Alignment Project,<sup>65</sup> or a statutory concept of negotiated “city deals” made between central and local government.<sup>66</sup>

## Central government influence over local government funding

If they are to have legal implications for how public money is raised and spent, there is an important relationship between central and local government powers under the SPA (in the creation of both spatial strategies and implementation agreements). In particular, the Panel has proposed a ministerial power for “dispute resolution” where parties involved in the spatial planning process cannot reach consensus.

This arguably presents a risk to local democracy when combined with a reasonably strong legal direction for subsequent local government funding decisions to be “consistent with” a spatial strategy (or implementation agreement). Essentially, it could mean that ministerial powers are used to bring into existence a plan which councils are then obliged to fund (in part), potentially against their wishes (or even ability).<sup>67</sup> The term “dispute resolution” used by the Panel is arguably not an apt one to describe far-reaching decisions on “content and approval” of spatial strategies.

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<sup>64</sup> Regional spatial strategies themselves would include reference to indicative sources of funding, so it could be useful to append implementation agreements and link them to relevant parts of the spatial strategy rather than having them separate.

<sup>65</sup> See <https://www.transport.govt.nz/assets/Uploads/Report/ATAP20212031.pdf>

<sup>66</sup> On city deals, see <[www.newsroom.co.nz/2018/03/06/94600/government-lukewarm-on-wellington-city-deal##](http://www.newsroom.co.nz/2018/03/06/94600/government-lukewarm-on-wellington-city-deal##)>

<sup>67</sup> Noting, of course, that this already can happen, including through the creation of new (and often expensive) obligations on councils under RMA national direction (eg for housing and business land assessments under the NPS for Urban Development). However, imposing funding obligations on councils for purposes (eg

This is a subtle but important aspect of the SPA for policy-makers to consider. Discussion about spatial strategies at a regional level do not occur in a constitutional vacuum; it needs to be placed firmly within a broader conversation about the respective constitutional roles/status of local government vis-à-vis ministers, and the review of local government currently underway.

Indeed, the Panel has pointed to extensive work undertaken by the Productivity Commission on local government, which has identified that there is a “lack of understanding of each other’s roles and of the constitutional status of local government” in New Zealand. There can be an assumption that additional responsibilities can simply be conferred on councils, or that powers can be softened or removed. That may be slightly less controversial where statutory jurisdiction is shared in a hierarchical fashion (eg when national direction imposes additional and sometimes expensive obligations under the RMA/NBA on councils). But when it comes to choices about the direct expenditure of locally raised revenue under the LGA – especially through rates – it raises more fundamental issues.

While ministers under the SPA will have a legitimate role in achieving coordination between regions and across legislation (and, through a “national priorities statement”, should be able to direct that spatial planning processes occur and the order in which they do so), central involvement in a regional spatial plan should arguably not be a “back door” for central government to unduly influence local decision-making directly in ways it previously could not. That may include shifting funding responsibility from central agencies to councils where that conflicted with the ability or willingness of communities to pay for things (especially where it is beyond the scope of what is envisaged in the purpose of funding legislation like the LGA).

A ministerial power to resolve disputes as to the content and approval of a regional spatial strategy (and any potentially similar power with respect to implementation agreements) raises important constitutional issues about the role of local government, because those instruments are intended to have significant legal influence over revenue raising and funding decisions.

Of course, *some* mechanism by which a spatial strategy or implementation agreement is able to be finalised (where consensus cannot be reached) is a necessary feature where these instruments are mandatory. A *ministerial* power to overcome any irreconcilable differences between parties involved – to make something actually happen – is also a logical option if strategies are too values-based to be amenable to consideration by the courts.<sup>68</sup> The risk would otherwise be that spatial planning processes simply drag on forever, when they reach an impasse or where governments and councils change composition and have to start again from scratch. However, close consideration should be given to several things in the interests of local democracy:

1. The broader *incentives* for central and local government, as funders (alongside mana whenua, as decision-makers), to participate and reach consensus over a spatial strategy. Different funding mechanisms, which are explored later in the paper, can provide different incentives (especially for councils) and these should be designed as far as possible to *encourage* agreement to be

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infrastructure) that belong firmly within local and not central jurisdiction, would be quite a different proposition.

<sup>68</sup> Local Government New Zealand *Transforming the resource management system: Opportunities for change – Local Government New Zealand’s submission on the issues and options paper* (February 2020) at 5. Compare New Zealand Planning Institute *Submission on the building competitive cities discussion document* (2010) at 8.

reached so that a ministerial power is unnecessary. While these were outside of the Panel's terms of reference, we recommend that funding settings be revisited in the ways described further below.

Funding and financing settings, especially for local government, should be revised to provide appropriate incentives to fund spatial strategies and adhere to implementation agreements.

2. Whether a ministerial power to resolve disputes should be limited to things within central government's sphere of influence (ie not including things for which councils would be obliged to pay), instead of being a broad power to approve or reject a spatial strategy following a dispute resolution process. Here, the purpose of a spatial strategy would be less about a central-local hierarchy and more about a forum for dialogue and coordination within each level of government.

This is in keeping with the Panel's view that the "spatial planning process is as important as the resulting spatial strategy". Bringing together multiple institutions in a single forum has been highlighted as one of the biggest benefits of spatial planning exercises, even if they are non-statutory (like Smart Growth in the Bay of Plenty).<sup>69</sup> It is an opportunity to improve the working relationship between central and local government as joint funders, not a hierarchical intrusion on local decision-making by central government ("in general, decision-makers on plans should be those responsible for the later decisions required to implement those plans").<sup>70</sup>

However, this approach may be problematic, given that the funding of local infrastructure (water, transport, social infrastructure) by councils is likely to be core to spatial strategies in urban areas (where there is a strong impetus for spatial planning). Potentially leaving significant amounts of infrastructure funding out of a spatial strategy may mean it is much less effective.

Careful consideration should be given to whether (or the extent to which) a ministerial power to determine the final content of a spatial strategy should be able to result in the strategy having legal influence over LGA funding processes. There will need to be careful checks and balances on how a Minister exercised such powers.

3. Whether there should be a "gateway" test for the development of a spatial strategy. This could require the relevant Minister(s) to be satisfied that certain preconditions existed making a spatial strategy desirable or necessary from a national perspective (for example, high growth pressures<sup>71</sup> or climate change risks), and thereby justify stronger ministerial dispute resolution powers to influence local funding decisions.

The Panel considered and rejected the idea of spatial planning occurring only where trigger points are reached, citing the inconsistency that would result across the country. While that view has merit and we do not fundamentally disagree with making spatial strategies mandatory, the

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<sup>69</sup> New Zealand Productivity Commission *Using land for housing* (2015) at 278.

<sup>70</sup> Resource Management Review Panel *New directions for resource management in New Zealand* (Ministry for the Environment, June 2020) at 125.

<sup>71</sup> Conceptually that would not be dissimilar to the approach taken under the NPS for Urban Development with respect to the development of Future Development Strategies, although trigger points for spatial strategies should be broader than just urban growth pressures.

SPA could usefully include reasons *why* spatial planning is thought to be needed from a central government standpoint. That list (even if non-exhaustive) could provide a more robust justification as to why a strategy should be able to influence local funding decisions where ministerial “dispute resolution” powers are used to finalise a spatial strategy (especially where objections remain from councils).

While spatial strategies should be mandatory, the SPA could usefully indicate reasons or principles as to why spatial strategies would be desirable from the perspective of the national interest. These principles should not be a jurisdictional straitjacket used to prevent the finalisation of a strategy but would be used to guide the exercise of any ministerial “dispute resolution” power that would have influence over local government funding decisions.

There could also be a mechanism by which a spatial strategy could influence only some, but not all, funding instruments. This would allow the legal effect of spatial strategies to be flexible depending on the needs of the region/area in question.

For example, if a spatial strategy did not require the contribution of local government funding to be successful (eg if it required only RMA-style controls and funding through various central agencies), then there may not be a need for long-term plans and annual plans to be “consistent with” it as a legal requirement.<sup>72</sup>

In this option, spatial planning would remain mandatory, as suggested by the Panel. But the actual powers (ie which frameworks were legally required to be consistent with a spatial strategy)<sup>73</sup> would be identified by the spatial planning partners upfront based on the needs and circumstances of the region(s). This would be reasonably easily achieved, by requiring any given spatial strategy to choose which frameworks were influenced by the strategy (from a list of possible frameworks contained in a schedule to the SPA).<sup>74</sup>

The risk of adding an additional stage of decision-making here (ie which funding frameworks should and should not be influenced by a spatial strategy) is that it could make the framework for spatial planning more complex. However, on the other hand, it could arguably *simplify* the framework, by reducing the number of statutes having a legal relationship with the SPA in any given area and therefore making decisions more targeted/streamlined.<sup>75</sup> This is consistent with the general policy intent of the Panel, which suggests spatial planning – including its scope and the entities involved – should be tailored to each area/region’s circumstances.<sup>76</sup>

The approach may be particularly valuable in places where the main driver for spatial planning is not the management of urban growth (where the need to link land transport funding with a spatial plan

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<sup>72</sup> One might consider the needs of an area like the Mackenzie Basin, which could benefit from more integration through a spatial strategy but not require the expensive transport and water infrastructure core to spatial planning triggered by urban growth or pressures for land supply for housing in (for example) Auckland or Wellington. This would mean that no legal link would be authorised to bind funding decisions under the LGA or LTMA.

<sup>73</sup> And covered by an implementation agreement.

<sup>74</sup> More could be added via an amendment process to the spatial strategy if it became clear they were necessary.

<sup>75</sup> Conceptually, this idea of creating a bespoke toolbox of powers for particular locations is similar to models that were discussed for urban development authority legislation, recognising that not all areas have the same needs.

<sup>76</sup> At 134.

is clearer). While in some cases it may be that the SPA needs to link to all other frameworks listed in the Act's schedule, we think it is at least worthwhile for authorities to turn their minds to whether all those links would be necessary.

There could usefully be a mechanism in the SPA whereby regional spatial plans (and implementation agreements) can have legal influence over some, but not all, legislation contained in the Act's schedule. This would ensure that only those frameworks actually needed to implement the spatial strategy can be influenced by it, thereby minimising the number of inter-statutory relationships needing to be managed. This measure may be particularly useful if there were to be many frameworks influenced by the SPA (ie beyond the limited range of acts like the NBA, LGA, LTMA and CCRA that were within the Panel's terms of reference).

## The influence of spatial strategies and implementation agreements on central government funding mechanisms

Above, we have noted some measures to soften (or at least make more nuanced) the impact of the SPA on local democratic decision-making. The flipside of this is that stronger mechanisms under the SPA may be needed to influence *central* government decision-making.

Although it is not made explicit, and its policy intent is not abundantly clear, the Panel appears to have made a distinction between the legal influence of spatial strategies on (1) local government decision-making and (2) central government decision-making. Regional spatial strategies are proposed to have strong legal influence over funding under the LGA and regional land transport plans under the LTMA, but very little formal legal influence over central government funding strategy (eg through the LTMA's Government Policy Statement on Land Transport and broader agency budgeting processes, including the budgeting process under the Public Finance Act).<sup>77</sup> Here, there seems to be an assumption that any "central government" financial implications of spatial planning will be confined to the urban growth context and therefore borne primarily by Waka Kotahi/New Zealand Transport Agency (NZTA).<sup>78</sup>

Arguably this distinction between "local" and "central" funding is explicable by the fact that the Panel's terms of reference included the LGA and LTMA but not wider central government funding processes. However, that is not entirely convincing. For example, the GPS on land transport is not proposed to be influenced by a spatial strategy, nor are "other relevant national strategies". It is also implied that central government would be able to "update" implementation agreements simply in response to "changes in government direction" while councils, presumably, would be less flexible to do so.<sup>79</sup> This would not be conducive to the stability and predictability required of spatial planning.

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<sup>77</sup> The Panel makes a reference to spatial strategies still retaining flexibility for "central and local" budget processes, implying that they have some legal influence over central government budgeting. However, this may be a reference to budgeting by Waka Kotahi/the New Zealand Transport Agency as reflected in regional land transport plans, not wider central government budgeting (eg operational departments) that was beyond the Panel's terms of reference.

<sup>78</sup> Although even that is questionable, given that urban growth has enormous financial implications for other agencies (eg education, in the building of schools, health, in the building of hospitals, etc). Indeed, elsewhere, the Panel contemplates that mandatory content of spatial strategies will include central government infrastructure like hospitals and schools (at 142).

<sup>79</sup> At 144.

Overall, it is interesting to ponder and test the assumption that central government funding decisions cannot legitimately be legally influenced by spatial planning, whereas local government (as well as Crown entities), as creatures of statute rather than constitutionally autonomous entities, can.

The extent to which central government funding mechanisms should be influenced by a regional spatial strategy is a question that is as important as the influence spatial strategies should have on local funding processes.

While it is appropriate that central government concerns should *drive* some of the content of spatial strategies (they should be strongly informed by, for example, the Government Policy Statement on Land Transport), it is equally important that central government funding then be forthcoming to support their implementation once they are created. Government funding is often crucial to the success of spatial planning. Some have even said that “without the Crown’s active involvement and commitment to the spatial plan we seriously question the justification for statutory direction to prepare a spatial plan.”<sup>80</sup> This is backed up by the example of Omokoroa:<sup>81</sup>

in 2002 Omokoroa was planned as an urban growth area in part because NZTA had designated an upgraded state highway from Tauranga to Omokoroa which at the time was projected to be completed by now. Thirteen years later this [had] not yet occurred and it [was] having a negative effect on the development of this area, resulting in unused capacity in utility network infrastructure and significant holding costs for the local authority as development to fund the up-front cost ... stalled.

There is a case for spatial strategies to influence central government funding processes as much as it does councils. To the extent that government is involved in the planning process, Crown funding is central to its success, and if it was formally signed off by a responsible Minister,<sup>82</sup> there may be a case for the government (or agencies) to be obliged to follow through on an agreed regional spatial plan in the same way as councils would be. The risk otherwise is that there may be significant investment in community engagement and buy in for strategic planning at a local level, but this cannot be achieved due to central government failing to provide adequate funding. Some degree of long-term consistency and predictability is required over time and across multiple levels of government, based on apolitical legislative principles rather than sharp policy swings.<sup>83</sup>

While the Panel speaks of the need for regional land transport plans to be consistent with a regional spatial strategy, it is silent as to whether the National Land Transport Programme (under which central government investment decisions are made by Waka Kotahi/NZTA, and which are informed by regional land transport plans) also needs to be consistent with a spatial strategy. Decisions not to fund elements of a regional land transport plan through the national land transport programme could potentially undermine the regional spatial strategy.

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<sup>80</sup> A Dormer and others *Report of the Urban Technical Advisory Group* (July 2010) at 40.

<sup>81</sup> New Zealand Productivity Commission *Using land for housing* (2015) at 283, citing the submission of Western Bay of Plenty District Council at 7.

<sup>82</sup> On the need for the government to sign off regional spatial plans, see Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019).

<sup>83</sup> Compare Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 32.

This is important when it comes to the legal effect of both spatial strategies and implementation agreements. We recommend that there be at least some meaningful legal link between these and central government budgeting processes (even if it is not one as strong as being “consistent with”).

There should be some legal link between SPA instruments (regional spatial strategies and implementation agreements) and central government funding processes in a comparable way that local government funding processes are influenced (and with the same “safety valves” described earlier). That should include funding decisions under the National Land Transport Programme.

## Which legal frameworks should be influenced by spatial strategies?

Clarity will be needed in the SPA as to exactly *which* funding frameworks or instruments will need to be “consistent with” or “take steps to implement” spatial strategies or implementation agreements. Instruments under the LGA and LTMA are obvious (at least where the scope of a spatial strategy includes urban growth infrastructure). If (as envisaged by the Panel) spatial strategies were to encompass the coastal marine area as well as land, then they may have LGA funding implications for councils and their activities in the marine environment (and in catchments that flow into estuaries). We have, in a separate report, previously provided recommendations to the Ministry with respect to the role of the SPA in spatial planning in the marine environment.

But there is a broader question as to what other legal frameworks the SPA should influence – whether, for example, strategic planning for climate change adaptation, and the funding measures needed to support that (eg a new adaptation fund),<sup>84</sup> should occur through the spatial planning process, or whether this should occur separately (eg under the CCRA or a new Climate Change Adaptation Act) and then be used to *inform* spatial strategies.

The Panel quite rightly suggests that a spatial strategy will need to be consistent with a national adaptation plan made under the CCRA but does not specifically address the legal link between a spatial strategy and a possible climate change adaptation fund. Should that fund be required to be deployed in a way that is “consistent with” a spatial strategy? That may be a problematic direction, given that not all expenditure from an adaptation fund may be “spatial” in nature (eg some might be to help industries transition towards a more resilient operating model rather than physically moving) and the legal framework for expenditure from the fund may have its own, more nuanced, criteria for what things to fund and in what order of priority.

There may also be several other funding tools that need to be linked to spatial strategies and implementation agreements in a future system. A link may be needed to the Public Finance Act, and the exact places where that link is made requires further attention. Implementing a spatial strategy may require significant funding from a variety of central government agencies, including in the marine environment to the extent that a strategy encompassed the coastal marine area (costs associated with implementation may be significant, for example in the government’s strategy for implementing the Sea Change Tai Timu Tai Pari marine spatial plan). Beyond central government agencies, links to others’ funding processes may depend on what the scope of spatial strategies are, and the entities expected to “sign up” to fund it (eg whether the funding processes of Crown

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<sup>84</sup> See further below in this paper.

Controlled Organisations (CCOs), State Owned Enterprises, Crown entities like Kāinga Ora, new three waters entities, and so forth must be consistent with a spatial strategy). There may be a need for the SPA to link to a fairly long list of “funding” frameworks to be effective.

In particular, there is an unresolved question as to whether planning and funding decisions taken under the Urban Development Act (which is essentially designed to allow Kāinga Ora to undertake large scale urban greenfields expansion projects and brownfields regeneration activities in a way that overrides normal processes under the RMA) should be obliged to adhere to spatial strategies (or whether this legislation is, instead, intended as a way to “get around” the constraints of a spatial strategy). Even more fundamentally, there is a question as to whether the Urban Development Act (or some of the more extensive powers it confers to “override” the RMA) will be required once the NBA and SPA are in force.

These are complex questions that may not need to be resolved before enactment. As suggested by the Panel, flexibility to include other “funding” frameworks in a schedule to the SPA would be desirable (with a robust process for adding any additional statutes to the list). We also note that this could support the use of the option we mentioned above: a process for establishing which powers, including funding powers, need to be included in a particular area at the outset of a spatial planning process (ie picking and choosing relevant frameworks from the SPA’s schedule). For example, if there were no need for Kāinga Ora to be involved in large scale urban development in some regions, it would make little sense for the Urban Development Act to be bound or influenced by a spatial strategy.

Clarity will be needed in the SPA as to exactly *which* funding frameworks or instruments will need to be “consistent with” spatial strategies or implementation agreements. Some link should be made to the Public Finance Act and the Urban Development Act, among others.

## Supporting measures

The relationship between the SPA and funding frameworks goes beyond a purely legal one. Policy-makers will need to closely consider deeper design questions about whether the funding tools and associated institutional settings we have now are the right ones to enable and encourage spatial strategies to be implemented.

The ways in which public authorities can raise revenue and fund things provide powerful incentives with respect to the choices they make. The Panel recognised this, in its conclusion that “consideration could also be given to whether other new tools or incentives might be desirable to encourage agreement” (and, presumably, *implementation*).<sup>85</sup> It also pointed out that barriers to achieving the full potential of spatial planning include “infrastructure funding and financing constraints and poor understanding of the costs and benefits of growth”<sup>86</sup> and that spatial planning “would not address underlying funding constraints and political incentives.”<sup>87</sup> While it pointed to the need to address funding constraints and incentives, the Panel did not directly make recommendations on these matters, as they lay beyond its terms of reference.

Yet the Productivity Commission and Infrastructure New Zealand have shared similar sentiments. For example, the latter submitted to the Panel that:<sup>88</sup>

For spatial planning to be effective, spatial plans must be delivered. To be delivered, spatial plans need to be funded. To be funded, bodies overseeing investments need to benefit from investments made and have the ability to raise resources. If entities responsible for delivering plans and elements of plans are not incentivised or capable of performing their role then implementation will fail and so will plans. We strongly encourage the Panel to consider whether, in their preferred model, public institutions have both the willingness and the ability to ensure plans, and therefore public outcomes, can and will be delivered.

In short, there are two main reasons why a spatial strategy may not be implemented well. The first is if the actors responsible for delivery do not have the capacity and capability to perform their functions. The second is if they have the capacity and capability but lack strong enough incentives to do so.

### Funding settings relating to urban growth

The funding incentives and constraints on authorities charged with implementing a spatial strategy are most noticeable in the context of urban growth. This is because of the enormous costs associated with the provision of public infrastructure to support urban development (notably for transport and water).

Ensuring that infrastructure is funded and delivered in a timely way (to align with land use change) will be an important component of a number of spatial strategies (in urbanised areas), particularly because of the policy imperative to provide development capacity for housing. The key question

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<sup>85</sup> At 150.

<sup>86</sup> At 117.

<sup>87</sup> At 127.

<sup>88</sup> At 154.

here is whether the existing funding and financing tools by which this infrastructure is delivered will be adequate to implement a spatial strategy. A lot of that is the responsibility of councils, calling into question the adequacy of how local government is funded.

The Productivity Commission has persuasively argued that the core of the system by which we fund and finance councils' functions remains appropriate.<sup>89</sup>

The current main funding tools of local government in New Zealand measure up well against the principles of a good revenue-raising system, including simplicity, efficiency and revenue stability. The current framework provides councils with considerable flexibility in how they raise revenue, and this is reflected in the diversity of ways in which they do so.

Funds can be raised through, for example, rates, fees, user charges, and development contributions.<sup>90</sup> The Commission has shown that, overall, rates have remained relatively stable when compared to per capita and household income,<sup>91</sup> and they provide a reasonably fair and easily administered system for raising core revenue for council functions (especially infrastructure and related services).<sup>92</sup> It has previously pointed out the desirability of removing exemptions for rates on Crown land, which in effect results in local communities subsidising central government despite the need for funding flows to be moving in the opposite direction.<sup>93</sup>

Similarly, despite some public perceptions to the contrary, council debt remains a desirable mechanism to spread substantial capital investment across generations of people who benefit from it.<sup>94</sup> Growing debt levels, say the Commission, are not of concern given corresponding population growth (and therefore the ability for the debt to be serviced over time). In fact, the concern is quite the opposite: in some cases, such as where there is a need to service new residential land in rapidly growing cities, there are excessive constraints on raising further necessary finance through debt, and.<sup>95</sup>

It's common to see councilors campaigning on a platform of low or no debt, as if a council has a budget to be managed like a household's grocery bill. In fact, debt is an important instrument for sharing the high upfront costs of essential infrastructure across the generations who will benefit from it. Most councils are well below their debt limits, but their reluctance to take on debt can mean necessary investments in essential infrastructure (such as renewals or upgrades) are deferred. Deferring investment can help keep rates growth low in the short term, (sic) but passes the costs of inadequate and failing infrastructure down the line to future residents.

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<sup>89</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 6.

<sup>90</sup> As well as many other mechanisms: see G Severinsen and R Peart *Reform of the resource management system: The next generation* (EDS, 2019) at 249-251.

<sup>91</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 159-160.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid at 10.

<sup>94</sup> Ibid at 2.

<sup>95</sup> New Zealand Productivity Commission *Local Government Insights* (2020) at 15.

In other words, in some situations debt constraints on councils may mean there is an inability to invest in infrastructure to the extent needed to realise the longer-term vision of urban growth in a spatial strategy. Legislation has recently been enacted to achieve this (the Infrastructure Funding and Financing Act 2020). We are not clear as to the extent to which this has addressed the debt financing concerns raised by the Productivity Commission and we recommend this be explored.

More broadly, however, the Productivity Commission suggests that we will need to expand the council toolkit to target particular problems where there are acute funding pressures and constraints.<sup>96</sup> The use of tools in an expanded toolkit also needs to reflect what is fair, in that those benefiting from a measure should generally be expected to pay for it (if they can). We find this reasoning compelling.

Type of funding or financing pressure	Issues to be addressed	Tool(s) required to respond
<p>Rapid urban growth requires the timely provision of new infrastructure and/or upgrades to existing infrastructure.</p>	<p>Some councils are approaching their debt ceilings,<sup>97</sup> so cannot use this to finance infrastructure in a way that spreads its costs over future residents or generations.<sup>98</sup></p>	<p>Create “special purpose vehicles” to remove debt from the balance sheets of debt constrained councils and allow for greater private financing of infrastructure. These entities would be able to impose levies to recoup the costs of development over time.</p>
	<p>Councils also take significant risks in making large capital investments up front based on growth forecasts that may underestimate or overestimate actual growth, and may ration the supply of infrastructure (provide it on a “just in</p>	<p>Legislation has recently been enacted to achieve this (the Infrastructure Funding and Financing Act 2020).</p> <p>Greater use of user-charging mechanisms (eg volumetric charging for wastewater, road congestion charges) and targeted rates to reflect that</p>

<sup>96</sup> New Zealand Productivity Commission *Local government funding and financing* (2019).

<sup>97</sup> For example, to preserve their credit rating and comply with binding debt to revenue ratios: see *ibid* at 161. The independent nature of credit rating means one cannot simply regulate all constraints out of existence. Under the Local Government Borrowing Act (2011) the Local Government Funding Agency (LGFA) can assist councils with funding but only if the proportion of their income spent on interest payments is less than 20 percent. This means that the borrowing potential of local government increases as its income increases but also that it is constrained by its income generating capacity. In short, council income rather than infrastructural need drives infrastructure funding.

<sup>98</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 156, ch 7.

	time” basis) to minimise this risk. <sup>99</sup>	those who benefit should be those who pay. <sup>100</sup>
		The ability to capture value uplift (increased property values resulting from public investment in infrastructure or services, eg a new mass transit system). <sup>101</sup>
		Structured contributions from central government transparently linked to demand or need.
		A centralised urban development authority - Kāinga Ora – could play a greater role in funding and financing new developments, <sup>102</sup> de-risking large scale developments for councils.
The renewal and replacement of ageing or failing infrastructure.	Significant (and ultimately unknown) amounts of infrastructure are ageing and at risk of failure, particularly in the three waters sector.	Again, the use of “special purpose vehicles” to remove debt from the balance sheets of debt constrained councils (and see the Infrastructure Funding and Financing Act 2020). <sup>103</sup>
		Greater use of targeted rates to reflect that those who benefit from upgrades should be those who pay.
		Need-based or principle-based contributions from central government to address large capital works.

<sup>99</sup> Ibid at 175.

<sup>100</sup> Ibid from 150.

<sup>101</sup> Which could be achieved by expanding the concept of a targeted rate to link it to increases in unimproved land value.

<sup>102</sup> In our view, only where needed to be consistent with a spatial strategy, not as a central government planning override.

<sup>103</sup> As the Productivity Commission points out, this requires enabling the placement of debt-servicing obligations on existing residents if this mechanism is to be used for brownfields or intensification of existing residential areas; see New Zealand Productivity Commission *Local government funding and financing* (2019) at 185.

Climate change adaptation	There are significant costs involved in moving, upgrading or increase the resilience of existing infrastructure in light of climate impacts (eg rising sea levels, more frequent and severe weather events).	Some cost sharing mechanism between central and local government in the form of a dedicated fund, which could be capitalised in various ways.
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More needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure. That will be important to enable councils to fund the measures envisaged in a spatial strategy.

### Deeper funding reform: engaging with institutional incentives

Rather than just expanding councils' funding toolbox to increase available revenue, some commentators have pointed out the need to go further and rethink the incentives that core funding tools can provide for both raising money and spending it appropriately.<sup>104</sup> This is important, as it may impact on the willingness of councils to sign up to spatial strategies and implementation agreements, and to then implement them through funding processes under the LGA. At the core of this issue are questions about council rates as a revenue raising tool.

Perhaps the most alarming example of poor incentives can be seen in the systemic underinvestment in the maintenance and renewal of inter-generational urban goods like water infrastructure over recent decades. This is important when it comes to the implementation of spatial strategies, because urban growth envisaged through densification may rely heavily on existing infrastructure;<sup>105</sup> intensification cannot be achieved if not supported by the replacement or upgrade of infrastructure within an existing urban footprint.

Infrastructure New Zealand has highlighted an unacceptable backlog of investment running into the billions, and echoing similar sentiments we have pointed out previously that:<sup>106</sup>

Due to political constraints on rates increases and constraints on borrowing, there may be a temptation for some councils to prioritise spending on things the community wants at the expense of the renewal of some kinds of essential infrastructure – notably water

<sup>104</sup> New Zealand Productivity Commission *Local government insights* (2020) at 27.

<sup>105</sup> Even greenfields growth may rely on existing trunk infrastructure and facilities like wastewater treatment plants.

<sup>106</sup> G Severinsen and R Peart *Reform of the resource management system: The next generation* (EDS, 2019) at 251; compare New Zealand Council for Infrastructure Development (now Infrastructure New Zealand) *Integrated governance, planning and delivery: A proposal for local government and planning law reform in New Zealand* (2015) at 17, 19. Compare New Zealand Productivity Commission *Local Government Insights* (2020) at 16.

infrastructure. Some councils have adopted a “run to fail” approach for underground assets, not investing in upgrades until there are problems (such as sewage overflows or public health problems such as with inadequate treatment of potable water).

Although the issue is by no means ubiquitous throughout the country (some councils have invested strongly in water infrastructure), it highlights the risks of leaving decision-making and prioritisations on inter-generational issues to those accountable through three yearly election cycles, especially if failures only become visible to the public years after they should have been pre-empted (as with underground and unmonitored assets like water).<sup>107</sup> Institutional reform for three waters is required, and is being progressed through a parallel government workstream.

While this strays from the focus of this paper on the SPA and funding, institutional settings are linked to the former topics (for example, in the ability of institutions to raise debt finance, the trade-offs they make in expenditure across different community services, and the ability to socialise costs across larger areas). We have previously recommended a more “regionalised” and “arm’s length” model for three waters service delivery (with potential for the exclusion of stormwater), accompanied by the creation of an economic regulator. This is, for the most part, in line with what is being proposed, and will allow the depoliticization of investment decisions, greater ability to socialise costs across the urban-rural divide, and improved economies of scale and concentration of expertise.

In short, a reformed three waters sector would be well positioned to deliver on regional spatial strategies, as long as it worked closely with councils and government agencies in doing so. That said, it will be important that any new legal framework for cross-regional three waters entities (including their revenue raising and funding choices) is firmly linked to the achievement of a spatial plan in the same manner as councils and others. Such entities may be crucial to the plan’s achievement alongside central government agencies/entities and CCOs.

Incentives to underinvest in three waters infrastructure should, following a large capital injection from central government, be addressed through institutional reforms (a regionalised model and an economic regulator). Any new three waters entities, and their funding processes, will need to have clear links to regional spatial strategies.

### Incentives to fund urban growth

A more explicable situation in which councils have lacked adequate funding incentives, and where improvements are needed to incentivise the implementation of spatial strategies, is where there is a need to pay for the infrastructure required to service rapid urban growth. Here, there is an argument that councils have incentives to provide growth infrastructure on a “just in time” (or, indeed, too late) basis. This is particularly obvious for large scale greenfields expansion. New suburbs are expensive and investment in them is of little direct benefit to existing residents, yet that is

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<sup>107</sup> Compare Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 32.

perceived to be subsidised through rates or imprudent levels of debt.<sup>108</sup> As we have pointed out previously.<sup>109</sup>

there can be strong political incentives on councils not to increase rates, especially if they are being used to service new development and the benefits are not apparent to existing residents who are paying for it (and who are the ones voting in local elections). This ... can lead to an institutional bias in councils against growth, and therefore resistance to the timely and proactive provision of serviced land for [affordable] residential development.

The Productivity Commission agrees that there is at least a *perception* among ratepayers/voters that the community as a whole does not obtain net benefit from growth and yet is obliged to fund it.<sup>110</sup> It describes this as an issue of political economy (as opposed to an economic reality). But it is the perception among constituents that ultimately matters in local decisions, because those people are the ones that establish political mandates for councillors.

The phenomenon also applies to infill and brownfields developments, in which case funding constraints – a reluctance of ratepayers to pay for new or upgraded infrastructure that benefits only some – can reinforce existing residents’ preference for amenity values associated with low density (preserving leafy green streets). Why pay for things that you think not only fail to benefit you, but also which you actively oppose? Furthermore, where urban growth pressures are large, significant financial risks need to be borne by local government, in that:<sup>111</sup>

Councils that install new infrastructure ahead of housing demand may find themselves facing high borrowing and depreciation costs, particularly if growth occurs at a slower rate than anticipated. For this reason, many councils tightly control the supply of new infrastructure.

While it would be wrong to paint all councils negatively as being “risk averse” by nature, there are understandable political and financial incentives for prudence that may not produce the best overall outcomes. This has been described as “a broken system for financing infrastructure that delays or prevents developments going ahead”<sup>112</sup> and a “serious social and economic problem” contributing to the housing crisis.<sup>113</sup> It also means that funding incentives may sit uneasily with the achievement of a spatial plan premised on the need to provide growth infrastructure rapidly.

According to Infrastructure New Zealand, the same basic problem underpins all of these phenomena: there is misalignment as to where the benefits and costs of investment fall. That may

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<sup>108</sup> New Zealand Productivity Commission *Using land for housing* (2015) at 325.

<sup>109</sup> G Severinsen and R Peart *Reform of the resource management System: The next generation* (EDS, 2019). Compare Resource Management Review Panel *Transforming the resource management system: Opportunities for change – Issues and options paper* (2019) at 13.

<sup>110</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 175.

<sup>111</sup> New Zealand Productivity Commission *Using land for housing* (2015) at 7.

<sup>112</sup> <[www.beehive.govt.nz/speech/speech-government-economics-network-2019-conference](http://www.beehive.govt.nz/speech/speech-government-economics-network-2019-conference)>

<sup>113</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 10.

still be the case even if users were able to be charged fully for the services they use (ie if the costs were internalised), because there would still be little prospect of *benefit* for councils and therefore weak incentives (they would be neutral at best, and the risk burden would remain if cost-recovery had to happen after investments were made). For example, it is understandable that councils are reluctant to pay for rapid urban growth, because its presumed benefits (in the form of increased economic activity)<sup>114</sup> accrue mainly to central government via income tax and GST. For example, it has been pointed out that:<sup>115</sup>

the major issue facing councils is that their primary source of revenue – rates – is detached from council or area performance and instead linked to constituent perceptions of need and affordability ...

Without a financial benefit from decisions which improve welfare, the dominant priority for councils is minimising rates increases for existing residents. [While] the government benefits directly from improved economic performance via growth in income, corporate and sales taxes... local government expenditure which improves economic performance requires an increase in rates with the tax windfall returned to central [but not local] government.

The Productivity Commission has agreed that incentives to raise and spend money need to be corrected.<sup>116</sup> However, it suggests fairly targeted measures to do so. Many of these are about shifting particular costs to those who enjoy associated benefits.<sup>117</sup> That would see councils charging users more directly to recover costs where feasible (eg volumetric charges for water), but otherwise through broader proxy measures, such as targeted rates or value uplift capture, where:<sup>118</sup>

owners who enjoy “windfall gains” in the value of their property because of nearby infrastructure that the public has funded, would be required to pay a portion of this gain to the council. In turn, revenue raised would help the council fund future growth.

Value uplift capture is used extensively overseas and in our view is attractive from standpoints of both efficiency and equity. The Commission also envisages greater need-based or performance-based assistance (ie stable grants, rather than allocation from ad hoc funds) from central government where there is a national interest. The idea is that rapid urban growth, where envisaged

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<sup>114</sup> There is an interesting relationship between population growth and economic growth, and they are not necessarily always correlated in a positive way. Having more people *requires* more economic growth to “grow the pie” and ensure no decline in overall living standards, but it is by no means guaranteed to *generate* it. See Yuval Noah Harari *Homo deus: A brief history of tomorrow* (Vintage, 2016).

<sup>115</sup> Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 15.

<sup>116</sup> New Zealand Productivity Commission *Local Government Insights* (2020) at 27.

<sup>117</sup> New Zealand Productivity Commission *Using land for housing* (2015) at 4.

<sup>118</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 6. Compare Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 26. This could be done through a new tax, or by changing targeted rates to allow them to be levied on changes in land value due to public investment in infrastructure or amenities (New Zealand Productivity Commission *Better urban planning* (2017) at 334).

in a spatial strategy, would not be seen as a financial burden or a political risk, but rather as a fiscally neutral task to be embraced.

Councils should be incentivised to provide growth infrastructure to realise a spatial strategy, including through the use of value uplift capture, need-based central government grants, and user charging (as long as equity issues were addressed).

However, others have gone further, arguing that instead of just shifting growth costs onto those who benefit (future residents and central government), we should embrace the other side of that coin: shifting the *benefit* to those who bear the costs (councils). Some have therefore suggested allowing local government itself to collect income tax, thereby providing an incentive for councils to invest in measures that will enhance people's incomes. Creating a local income tax may be difficult to implement at a local level, given the complexity of the system required and challenges with tying people's incomes to small geographical areas within New Zealand.<sup>119</sup>

Another potential solution floated by the Productivity Commission has been a system of central government grants to councils, proportionate to new building work (eg based on the value of building consents issued).<sup>120</sup> The idea is that this would be a carrot for councils to increase the supply of serviced land, but through a mechanism that may be more easily and efficiently administered than others (eg a local income tax). That more systemic and predictable approach would, in our view, be a much better method for government assistance than a continuation of using ad hoc funds that are parcelled out on a discretionary basis and can be vulnerable to politics.<sup>121</sup> As Infrastructure New Zealand has observed, "Infrastructure funding and financing solutions for one council area risk opening an argument for similar assistance elsewhere, disincentivising central government from intervening".<sup>122</sup> This demand-driven funding could even be given directly to arm's length CCOs (with Crown representation on boards) and earmarked for specific types of infrastructure rather than councils themselves.

An alternative that we see considerable merit in is deploying a form of local GST (as long as it were met by a corresponding reduction in national GST), rather than relying on an extensive system of government grants to facilitate urban growth.<sup>123</sup> There are many challenges and benefits of using GST,<sup>124</sup> but the benefit we find most compelling is not a particularly technical one: it would provide communities with greater control over their own destinies and better reflect subsidiarity. As Infrastructure New Zealand has pointed out, regional economic development is currently,

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<sup>119</sup> It would be possible to do so, but it would be expensive and complex, and no doubt cause jurisdictional issues.

<sup>120</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 182. Compare B Craven, J Goldingham-Newsom and O Hartwich *#localismNZ: Bringing power to the people* (2019) at 42.

<sup>121</sup> For example, the Provincial Growth Fund or Housing Infrastructure Fund.

<sup>122</sup> Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 30.

<sup>123</sup> Although government grants seem necessary for some things, such as correcting historical underinvestment deficit in three waters infrastructure and the need to meet strengthened national standards.

<sup>124</sup> For example, the Productivity Commission has pointed out that GST and some forms of income tax (eg pay as you earn) are less painful than mechanisms like rates, because it is less visible and people are not faced with a standalone bill. However, they are also complex to design, implement and enforce.

counterintuitively, a central government activity: “Successive Governments have sought to lift regional economic performance, but with little demonstrable success. Major central investments risk the appearance of backing winners”.<sup>125</sup> Similarly, another commentator has pointed out the OECD’s view that:<sup>126</sup>

local governments need greater incentives to promote and accommodate economic development and growth in a way that best suits their region, not the current one-size-fits-all approach.... [and] once local governments in New Zealand are given more autonomy and incentives, they will offer a package of goods and services that meets the needs and demands of the residents of that region.

The assumption that localism is best clearly does not hold for all cases – we might think of the poor inter-generational outcomes produced by regulatory “services” that protect the natural environment in cities and in the countryside (freshwater pollution, biodiversity decline) and the systemic underinvestment we have seen in water infrastructure. But overall it does suggest the desirability of putting substantial fiscal control in the hands of local government, subject to strict environmental limits and national oversight. It would also continue the New Zealand tradition of recognising the fiscal autonomy of local government,<sup>127</sup> which in turn reflects its position as a partner rather than a subsidiary of the Crown to be handed money when necessary.<sup>128</sup>

Introducing a local GST, for example, could encourage the funding of growth in line with a spatial strategy, because it would generally be seen as a profitable thing for councils to do.

There should be further investigation into the merits of a local GST as a means to provide incentives for councils to invest in growth infrastructure where envisaged in a regional spatial strategy.

That said, we do not see a local GST as a viable replacement for rates as a core funding tool. Increases in spending – and therefore GST revenue – would not correlate with the need to fund all public goods and services. In particular, we need to remember that funding is also about ensuring a sustainable standard of living for communities declining in population or economic activity. While declining urban areas are to be commended for efforts to attract more residents and visitors, a decline is often due to factors beyond the control of communities (eg the attractions of a larger city). Managed decline may be needed in many cases to adapt to change rather than fight it.<sup>129</sup>

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<sup>125</sup> Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019) at 25.

<sup>126</sup> B Craven, J Goldingham-Newsom and O Hartwich *#localismNZ: Bringing power to the people* (2019) at 40, citing OECD *Economic Surveys: New Zealand* (2017).

<sup>127</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 297.

<sup>128</sup> Compare New Zealand Productivity Commission *Local government funding and financing* (Draft report, 2019) at 265: “Central government should not expect local government to act simply as its regulatory agent. Rather, the two levels of government should seek a regulatory partnership based on mutual respect and an agreed protocol.”

<sup>129</sup> Compare New Zealand Productivity Commission *Local government funding and financing* (2019) at from 204; J Hollander and others *Planning shrinking cities* (2009) 72(4) *Progress in Planning* 223. Contrast the more optimistic view of the New Zealand Initiative in B Craven, J Goldingham-Newsom and O Hartwich *#localismNZ: Bringing power to the people* (2019) at 40.

Yet the basic health and wellbeing of those remaining in a community (especially dependent on the quality of water and transport infrastructure), should not depend only on what people can spend. That can also vary considerably from year to year and make long-term planning challenging. Rates, fixed to an unchanging amount of land in an area, provide reasonable predictability of service because they are based on an assessment of community need rather than predictions of economic performance.<sup>130</sup> In other words, while a local form of GST may provide appropriate incentives for councils to fund infrastructure in a spatial strategy geared towards rapid growth, over-reliance on this funding mechanism would not enable councils to implement spatial strategies dealing with urban contraction or decline.

Overall, we agree that the way forward is to expand our toolbox, not replace it. We see merit in including a local GST within that toolbox, among other things that spread costs more equitably, raise sufficient revenue in a timely way, address pressing short-term deficits, and provide systemic incentives to invest in measures to achieve spatial strategies. Consideration should also be given to the introduction of an “environmental footprint tax”, described in our work on resource management reform, which could go to central and local government. This would provide incentives not just for councils and others to invest in growth, but also in *green* growth and environmental aspects of a spatial strategy not linked to urban expansion (eg restoration of significant natural areas, climate change mitigation, and protection of waterways).

The need for systemic institutional and funding reforms for infrastructure provision can be seen in the cautionary tale of the Mangawhai Community Wastewater Scheme. This highlights that urban infrastructure issues are not limited to large or rapidly growing centres, and that such issues can stem from weak funding and institutional arrangements.

#### **A spotlight on the Mangawhai wastewater scheme**

Mangawhai, a small community in Northland, historically had no centralised wastewater scheme. Instead, it relied on the use of septic tanks, package plants or long drop toilets. Aware of growing water quality issues, Kaipara District Council proposed a range of communally based wastewater schemes throughout the 1980s. However, residents consistently rejected all schemes, questioning the need for them and complaining that the costs were too high. Matters came to a head when the Council notified its District Plan in 1996 and the continuing lack of provision for wastewater was contested by the Minister of Conservation. More restrictive land use controls were sought in the Environment Court due to the adverse environmental effects that urban development was having on the Mangawhai Harbour. A study confirmed that reliance on septic tanks presented an increasing health risk and was causing both groundwater and coastal contamination.

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<sup>130</sup> This concern may be reduced in the event of local government structural reform (a move towards larger regional entities), and the ability to subsidise some parts of a region from greater economic activity in others. We note that the government is in the early stages of a review of local government, which may include such things.

The Council identified three options, and it was decided that a centralised reticulated wastewater scheme was needed. Council funds were, however, constrained. There was limited ability to take on higher levels of debt (for every one dollar of debt, the council needed \$2.50 of income under regulations at the time).<sup>131</sup> The Council looked to the private sector for a solution, through the formation of public private partnership.

After an initial bidding round, the Council awarded Simon Engineering “preferred proponent status” in 2002, on the basis of a proposed contract it had negotiated with the company. The arrangement envisaged that Simon Engineering would build the wastewater plant and then operate and maintain it for a 25-year period, after which the asset would be transferred back to public control for no charge. The Council would be obliged to make annual payments during that period (“toll payments”), to cover the capital costs of construction (with a maximum total payment of \$13.5 million), as well as the operating and maintenance costs for the scheme. A pricing structure was calculated on this basis. However the proposed arrangement proved problematic.<sup>132</sup>

- In December 2002, before an agreement was finalised, the LGA changed the rules in play by specifying that arrangements with the private sector could last for up to a term of 15 years. This meant that the private partner would no longer be able to take advantage of taxation benefits from owning the assets over the anticipated 25-year period, so negotiations continued and the Council contribution had to be increased (alongside new public consultation).
- The scheme required resource consent from Rodney District Council and Auckland Regional Council (since incorporated into the Auckland Council) to dispose of the effluent from the wastewater scheme to land. Only one option was seen as consentable but it required the council to purchase land from a third party. That party had been subdividing other parts of its land and was itself going through the consent process. When the vendor’s consent became conditional upon the upgrade of a road, it threatened to withdraw from the sale if an amount was not added to the purchase price to cover that cost. Council agreed. Costs were snowballing.
- The Council filed 13 separate resource consent applications with the regional council. All were publicly notified, 61 submissions were received, and several appeals were lodged. But consent was eventually granted following a mediation process that required the Council to (1) construct the wastewater treatment plant in a different location, (2) seal an additional road, and (3) cover the costs of connecting properties to the sewer network. Council bore this additional financial burden on top of its obligation to pay capital costs for construction of the plant.
- The required capacity of the plant was based on past growth rates. However, subdivision in the area exceeded predictions. Between 2001 and 2006 the Council approved consents for an additional 875 new lots. Capacity at the plant had to be increased.

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<sup>131</sup> Under the Local Government Act 1974 (largely repealed).

<sup>132</sup> For a detailed discussion of the project and issues surrounding see R Mulgan *Transparency and the performance of outsourced government services* (Research paper commissioned by the Queensland Office of the Information Commissioner and the Australia and New Zealand School of Government, 2015) at 15. See also Controller and Auditor General *Inquiry into the Mangawhai community wastewater scheme* (2013).

- Matters became worse when the global financial crisis hit. Its impact on the property market reduced the Council’s projected income from rates and development contributions. By September 2004, the contract with Simon Engineering had still not been signed (although approval to proceed had been obtained). Then, in November 2004, the parent company of Simon Engineering failed, and negotiations had to be abandoned. The Council eventually entered into a contract with another company, at a “significantly higher” cost.
- Between 2002 and 2005 the Office of the Auditor-General received five complaints about the scheme from residents and ratepayers, primarily concerned with affordability and the adequacy of consultation.

The scheme was eventually completed due to assistance provided under the government’s sanitary works subsidy scheme, which was designed to help small communities afford wastewater schemes. Yet by 2005, the debt accrued by the Council led to a proposed rates increase of 30 percent, and as a result, ratepayers initiated legal proceedings against the council. An inquiry was launched into the matter.<sup>133</sup> That inquiry highlighted broad, systemic challenges for small local government units in infrastructure funding, including a lack of capacity and expertise (engineering services had been contracted out to a private company and the Council only had one in house engineer), noting that:<sup>134</sup>

it can be difficult for public entities to pay the market rate for scarce specialist expertise or to keep enough specialists in one location to make a particular function viable... There are also limits to what entities with limited funding bases can afford in terms of the number of staff and their skill level.

The project had also seen a range of different mayors and councillors come and go through that period, further affecting institutional capacity and knowledge.

The Kaipara District Council saga is particularly alarming and complex, but the underlying problems are not unique.<sup>135</sup> Some issues were contractual or to do with a shifting regulatory landscape, but foundational institutional and funding reform – including local government structural reform, a more systemic role for central government, and an expansion of funding tools – is required to ensure urban infrastructure will meet expectations set under a spatial strategy. Simply requiring councils’ funding processes to be “consistent with” such strategies will not always be enough.

The incentives provided by the current system of funding infrastructure in the context of urban growth and renewal require correction if councils are to achieve the visions outlined in spatial strategies. Targeted measures to shift the costs of infrastructure onto those who benefit will help. In particular, the Crown should be responsible for a much larger proportion of the costs (and control) of drinking water and wastewater infrastructure.

However, we also see merit in allowing councils to levy a local form of GST, which provides incentives for funding growth while allowing communities more control over their own destiny. That

<sup>133</sup> One News “Kaipara District Council faces another day in Court” (4 February 2014).

<sup>134</sup> Controller and Auditor General *Inquiry into the Mangawhai community wastewater scheme* (2013) at 26.14.

<sup>135</sup> New Zealand Productivity Commission *Local Government Insights* (2020) at 15.

cannot be a replacement for rates but would be a useful addition to the toolbox to incentivise investment in growth infrastructure.

The funding toolbox should also be expanded to include environmental or green taxes, to support the implementation of aspects of a spatial strategy concerned with environmental protection and climate change mitigation.

## Reducing pressure on infrastructure

Because new infrastructure is extremely expensive, a future system also needs to incentivise its efficient use through demand-side controls. This could be significant when it comes to achieving spatial strategies that require large amounts of investment to facilitate urban growth, because reducing pressure on existing infrastructure may reduce funding pressures overall. For example, it might defer the need for an upgrade in one place, allowing investment to be concentrated in another. Reducing pressure on existing infrastructure can also have synergistic benefits for the environment.

Greater application of user-charging has been mentioned above as a way to equitably spread the costs of funding infrastructure. This cannot be absolute, as water and transport are public goods vital to the dignity of life for all.<sup>136</sup> But some degree of user-charging also provides incentives for people to make more efficient use of services, so that both monetary and environmental costs are minimised.<sup>137</sup> It is a good example of economic efficiency approaches being used in the service of broader public policy goals, rather than being adopted for their own sake. Volumetric charging for potable water could, for instance, be deployed more widely. This approach has been very effective in driving more efficient use (which is increasingly important in light of Auckland's water security issues and the looming threat of climate change).<sup>138</sup>

Charging for stormwater services could also have benefits, causing people to reduce the burden on public infrastructure by internalising their impacts onsite (eg through rain gardens, rooftop gardens, impermeable surfaces, or rainwater harvesting systems) where that could be done in an economic and healthy way. This iterative change could be an efficient way to reduce the need for massive trunk infrastructure upgrades, and to make systems more resilient to more extreme weather events as climate change becomes more apparent. Incentives for onsite stormwater management could also have significant co-benefits if rolled out across an urban area, in terms of amenity, urban cooling, pollution-prevention, biodiversity and climate change. It would complement the outcomes sought by the NBA's regulatory regime (eg targets for urban biodiversity) and climate change

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<sup>136</sup> Separate redistributive policies could be used as long as they were effective (eg rates relief), but equally we do not see a problem with an element of free provision (eg first X number of litres provided for no charge).

<sup>137</sup> Compare also New Zealand Productivity Commission *Local government funding and financing* (2019); Infrastructure New Zealand *Building regions: A vision for local government, planning law and funding reform* (2019).

<sup>138</sup> It has been pointed out that "where applied, volumetric metering and pricing appears to have reduced peak water consumption and waste by up to 30%... [and] peak daily water use decreased by about 25% in the two years after universal metering was put in place": see New Zealand Productivity Commission *Local government funding and financing* (2019) at 283.

legislation (both adaptation and mitigation). Recycling rainwater and greywater rather than drawing on potable water (which in many parts of the country may become scarcer) for some activities – like watering the garden – makes a great deal of sense from both an economic and ethical standpoint and could support the goals of a spatial strategy well beyond those relating to the funding of urban growth.

User-charging should be deployed more in a future system both to provide a fair way to fund related services and to incentivise the efficient use of resources. A focus should be on the policy synergies this provides. However, charging and other forms of demand-based tools cannot be absolute and must carefully consider how impacts on the poor or vulnerable are to be addressed.

### Funding settings for climate change adaptation and environmental enhancement

Most of the conversation about funding and financing occurs in the urban context, and in particular the incentives for councils to fund the infrastructure needed to implement rapid land use change in fast growing urban areas. But while we focus on that here – and it is what the Panel and its submitters seems to be referring to when they speak of the importance of funding and financing incentives and other supporting measures – it is also worth remembering that there are other reasons for spatial strategies, and therefore other lenses through which policy makers will need to look at the adequacy of funding and financing tools.

A core element of many spatial strategies is likely to be climate change adaptation, which requires a deep rethink of how that (in all its manifestations) will be paid for over time. We know that the costs of adapting to climate change will be enormous.<sup>139</sup>

Some funding challenges are faced by central government (eg in the need to relocate nationally owned assets), while others are faced by councils (eg the need to strengthen flood protection measures or move three waters infrastructure). Others are shared (eg the need to reduce risks to the roading network). Many actions needed to adapt to a changing climate will be reflected in a spatial strategy, and there will need to be an effective mechanism by which those can be funded and supported. A sensible investment approach guided by a coherent strategy is needed, as can be seen in the example of Awatarariki below.

Some of this will be about ensuring that existing funding frameworks are deployed in a way that supports the adaptation goals contained in a spatial strategy. For example, new coastal roads funded under the LTMA, and flood protection structures funded under the LGA, should not be allowed to undermine long-term adaptation goals. Funding required for other reasons – eg that infrastructure has reached the end of its useful lifespan and needs replacing – can be an opportunity to reduce future climate risk by choosing to, for example, reroute it away from at risk areas.<sup>140</sup> The Productivity Commission has suggested taking measures to “make room” for rivers rather than seeking to control them through new expensive infrastructure,<sup>141</sup> and Judy Lawrence warns against creating public

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<sup>139</sup> See Ministry for the Environment and Statistics New Zealand *New Zealand's environmental reporting series: Environment Aotearoa 2019* (2019).

<sup>140</sup> See New Zealand Productivity Commission *Local government funding and financing* (Draft report, July 2019) at 228.

<sup>141</sup> New Zealand Productivity Commission *Local government funding and financing* (Draft report, July 2019) at 227, 229.

expectations of ongoing protection (eg funding seawalls).<sup>142</sup> Locally unpopular funding choices may need to happen across the country to overcome local political pressures to continue to fund development having undue climate risks.

### A spotlight on Awatarariki

In 2005, an intense storm triggered a huge debris flow down the Awatarariki Stream catchment at Matatā, in the Bay of Plenty. Twenty-seven houses were destroyed and 30 percent of the properties in the township were damaged. The likely return period for a storm of that size was initially thought to be around 200 to 500 years. Between 2005 and 2012 the council investigated a range of options for mitigating further such events, and residents were given permission to repair and rebuild their homes in the same location.

By 2012, the Whakatane District Council had invested \$7 million in building new retaining walls above affected properties and another \$55 million had been set aside for improving stormwater drains over the following 10 years. The Council estimated the recovery costs would be \$10 million, with around one third coming from Government.<sup>143</sup> A new rail bridge and underpass were constructed and around \$5.2 million was earmarked for a debris damn and flood channel.

However, all this expenditure was committed prior to an engineering solution being found to address future debris flow risk. Such a solution proved elusive and there remained the danger that any debris dam would fail. An updated meteorological report determined that, due to climate change, by the end of the century storms of the magnitude of the 2005 event would have a return period of closer to 40 to 80 years.<sup>144</sup>

A voluntary retreat package was investigated, and residents were made offers based on property valuations. This in turn led to several years of negotiations, with a number of residents appearing determined to stay. Eventually, the Council decided a plan change should be sought to extinguish existing use rights, on the basis the area posed a risk to the life of residents.

In 2018, an agreement was reached between the government and the Bay of Plenty Regional Council on a process to explore funding for a further acquisition package. Residents were also notified of a \$15 million fund to voluntarily buy owners out of their properties,<sup>145</sup> and changes were proposed to the district and regional plans to enable a forced retreat from the area.<sup>146</sup> Independent commissioners came out in support of plan changes identifying the area as at significant risk, despite

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<sup>142</sup> J Lawrence “Implications of climate change for New Zealand's natural hazards risk management” (2016) 12(3) Policy Quarterly 10.

<sup>143</sup> M Watson ‘Still struggling a year after devastation’ *The Dominion Post* (22 May 2006).

<sup>144</sup> *Report and decisions of the hearing commissioners in the matter of proposed plan change 1 to the Whakatane District Plan, and proposed plan change 17 to the Bay of Plenty Regional Natural Resources Plan* (26 March 2020) at [19].

<sup>145</sup> K Shanks “Awatarariki fan head saga: What you need to know” (New Zealand Herald, 17 July, 2019).

<sup>146</sup> N Macdonald “Mismanaged retreat? The life-limiting limbo of Matata’s red zone” (Stuff, 13 July 2019).

some objections from residents.<sup>147</sup> They considered that protection of the health and safety of people should be the dominant concern in such high hazard areas.<sup>148</sup>

The Awatarariki example demonstrates the considerable costs associated with a reactive response to climate change, both in terms of time and money, and the personal impact on the people and communities involved. It also highlights the need for more formal and systematic risk assessments to be undertaken so that high risk areas are identified and durable strategies and associated funding mechanisms are put in place early on. It was pure luck that no lives were lost at Awatarariki and similar situations are likely to become more common in future.

All of this reinforces (1) the need for infrastructure funding frameworks to have a reasonably strong legal link to a spatial strategy that reflects adaptation needs (to prevent inconsistent, ad hoc and short-term funding choices), and (2) for a spatial strategy itself to be relatively flexible to respond to changes in an adaptation strategy.<sup>149</sup>

Existing funding frameworks will need to have strong legal links to a spatial strategy that is itself strongly influenced by a plan for climate change adaptation.

However, some climate-related funding challenges are novel, and will require new approaches. For example, some people may find their properties uninsurable or prohibitively expensive to insure as risk increases.<sup>150</sup> There may be a need to relocate entire communities, to buy new land and to compensate for the loss of existing property.<sup>151</sup>

A lot of this will need to be reflected in a spatial strategy but is unlikely to be able to be funded through the normal LGA and LTMA (or, arguably, Public Finance Act) processes. Indeed, Jonathan Boston, Judy Lawrence and others have pointed out that no existing funding mechanisms are likely to be adequate, including to provide a principled approach to compensation.<sup>152</sup> The scale of investment that will be required will be enormous, given that billions of dollars of assets and tens of

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<sup>147</sup> Their decision was made in line with objective 5 and policy 25 of the NZCPS. Objective 5 is to ensure that new developments are located away from areas prone to climate change risks and to consider responses, including managed retreat. Policy 25 encourages redevelopment or changes in land use to reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation, removal or abandonment.

<sup>148</sup> *Report and decisions of the hearing commissioners in the matter of proposed plan change 1 to the Whakatane District Plan, and proposed plan change 17 to the Bay of Plenty Regional Natural Resources Plan* (26 March 2020) at [240].

<sup>149</sup> Risks are constantly changing and need to be managed adaptively; see New Zealand Productivity Commission *Local government funding and financing* (Draft report, July 2019) at 267.

<sup>150</sup> New Zealand Productivity Commission *Local government funding and financing* (Draft report, July 2019) at 268.

<sup>151</sup> Other measures may be less tangible; compensation for lost rights, measures to enhance social and ecological resilience, or support for vulnerable or transitioning industries.

<sup>152</sup> As Jonathan Boston and Judy Lawrence have pointed out: "In the absence of a well-designed, principled and consistent system of compensation, there will be political pressures for governments to implement high-cost "solutions" to protect vulnerable properties (and also threats of legal action)" J Boston and J Lawrence "Funding climate change adaptation" (2018) 14(2) *Policy Quarterly* 10 at 46.

thousands of people are at risk.<sup>153</sup> A dedicated adaptation fund is needed to support the climate change adaptation components of a spatial strategy. How that is structured, capitalised (including by whom) and used (including when and where, and for what purposes) will be crucial design questions.

### **Funding mechanisms for climate change adaptation**

Irrespective of who or what contributes, we see a strong case for the establishment of a national Climate Change Adaptation Fund as a core mechanism for funding necessary measures over the long period of time contemplated by spatial strategies.<sup>154</sup> It would make sense for this new Fund to be established and managed under a new Climate Change Adaptation Act or the CCRA, but for funding to be deployed in accordance with more specific spatial strategies under the SPA.

A fund could be capitalised in a variety of ways. Inter-generational equity demands that the current generation, which has helped cause the problem, bear a significant amount of the burden despite not having yet felt the full effects of change, although the cost needs to be spread. Some have suggested that revenue from auctioning units under the emissions trading scheme could be directed to an adaptation fund.<sup>155</sup> Risk-based contributions could also be imposed as conditions on resource consents that allow urban development in higher risk areas, or through the deployment of targeted rates.

There would be common principles for apportioning support from this fund based on need and urgency, so it was not a competitive lolly scramble.<sup>156</sup> This could be similar to the Natural Disaster Fund administered by the Earthquake Commission, but would be deployed in a more pre-emptive way to promote resilience and avoid risk rather than respond to it.<sup>157</sup> One potential model could be akin to that under the LTMA (where regional level plans prioritise projects, inform a national programme, and seek money from a national land transport fund in accordance with common criteria).<sup>158</sup> In that model, the government (ie the Ministry/Minister) can set policy expectations, but is not directly involved in fund management (which is done at arms' length by a Crown entity). Fund managers could be required to deploy funds to "support" the adaptation elements of a spatial strategy, with government signalling priorities through a national priorities statement.

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<sup>153</sup> See J Boston and J Lawrence *The case for new climate change adaptation funding instruments* (Institute for Governance and Policy Studies and New Zealand Climate Change Research Institute, 2017).

<sup>154</sup> Compare J Boston and J Lawrence *The case for new climate change adaptation funding instruments* (Institute for Governance and Policy Studies and New Zealand Climate Change Research Institute, August 2017); New Zealand Productivity Commission *Local government funding and financing* (2019).

<sup>155</sup> New Zealand Productivity Commission *Local government funding and financing* (2019) at 254.

<sup>156</sup> Compare New Zealand Productivity Commission *Local government funding and financing* (Draft report, July 2019) at 268: "Formulating a set of principles about funding the costs of adaptation to climate change is a helpful place to start." These could be based on need, ability to pay, and ambition.

<sup>157</sup> Questions would need to be answered as to what it would cover: for example, would it be used to compensate landowners for reduction in property values due to the identification of hazard zones?

<sup>158</sup> The existing LTMA framework is only focused on one type of infrastructure, so provides an interesting model but cannot perform the broader role itself. Some have pointed out that neither the Earthquake Commission nor the Public Works Act frameworks work well in the climate change context, so something new is needed: see B Dudley Tombs and B France-Hudson "Climate change compensation: An unavoidable discussion" (2018) *Policy Quarterly* at 55.

If spatial strategies are to concern themselves with climate change adaptation, novel funding mechanisms will be required to implement them. One option with merit is a dedicated climate change adaptation fund, which will need a robust legal framework around how (and by whom) it is capitalised, how (and by whom) it is managed, and how (and when) it is used.

Another core element of a spatial strategy may need to be environmental enhancement. There is then the question of how that is paid for (and who bears the cost), particularly where strong spatial protection is desirable (eg to create ecological corridors) and measures must be taken on private land.

However, achieving a spatial strategy's vision for environmental improvement may require broader thinking than just how public authorities will pay or contribute to things like pest control, fencing or purchasing ecologically valuable areas of private land. It may also require consideration of the economic instruments and incentives that could support society as a whole – not just public authorities – to achieve that vision (for example, through green taxes or an environmental footprint tax). We have described these and related matters in our work on resource management reform.<sup>159</sup> Further thought also needs to be given to how marine responsibilities (including environmental research and information gathering) are funded, which is something we are currently considering in our Oceans System Reform project.

#### **A spotlight on climate/green finance<sup>160</sup>**

A fertile area for further exploration is climate or sustainable finance. There are innovative mechanisms for funding and financing that could be developed to support spatial strategies' climate change goals while at the same time delivering on broader environmental outcomes (including land use change). For example, a new system could see the deployment of novel financial products (eg loans with interest rates adjusted to reflect climate and environmental risk), the issuing of green bonds allowing people and firms to invest in certified projects having both climate and sustainability benefits,<sup>161</sup> and the creation of various funds (eg to purchase rights in conventionally clear-felled, monoculture forests at scale, and transition them towards supporting continuous cover and mixed forestry identified in spatial strategies). Overall, these measures are about catalysing investment in synergistic forest projects that have not just economic value, but broader benefits for the public good. These are the types of things that should be envisaged in spatial strategies, with incentives to implement them.

Novel funding mechanisms should be considered to encourage implementation of the environmental components of spatial strategies.

## The purpose of the SPA

Our final point is a higher level one, relating to the normative core of the SPA. The purpose and principles of the SPA will be extremely important when it comes to managing urban growth, because

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<sup>159</sup> See G Severinsen and R Peart Reform of the resource management system: The next generation (EDS, 2019).

<sup>160</sup> See generally Aotearoa Circle *Sustainable Finance Forum: Interim report* (2019).

<sup>161</sup> See generally *Native forest bond scheme: Indicative business case* (Mohio Research Ltd).

it will have significant legal influence over how cities expand, contract and densify (in that long-term plans, infrastructure strategies, annual plans, regional land transport plans and natural and built environment plans will need to be consistent with spatial strategies).

The purpose of the SPA drafted by the Panel is intentionally broad, based on different forms of wellbeing. That is understandable, as it needs to encompass many types of decisions and be consistent with the purposes of a number of other frameworks. However, we sound a note of caution here. It will be important that this purpose does not, by its breadth, allow for more narrow approaches to be adopted (such as strict approaches to competitive urban land markets, where land release occurs automatically, anywhere, or in any sequence based only on economic/market considerations).

While well-functioning urban land markets, and responsiveness to market signals, are important to contribute to the supply of land (especially for housing), the expansion and change of an urban footprint (where land is and is not released, how fast, and where infrastructure must be deployed to support it) in our view remains a “planning” decision that should not be left to artificial economic trigger points (eg price differentials across an urban-rural boundary or demand for land). Many factors need to be taken into account, including environmental ones, considerations of good urban design, and the benefits of a compact urban form. In other words, the SPA should not simply require land release and the associated funding and delivery of infrastructure, simply because the market demands it.

The purpose and principles of the SPA will also be important when it comes to the design of spatial strategies beyond the context of urban growth. For example, a purpose that emphasised the importance of synergies between different forms of wellbeing (including environmental wellbeing) could influence infrastructure choices embedded in spatial strategies and implementation agreements (eg a preference for green infrastructure or electrification of public transport routes).

At a bigger picture level, it would also be desirable to revisit the purposes and principles of funding legislation, to strengthen environmental considerations within them. While considerations of sustainability are already present in the LGA and LTMA, we see potential for them to be made much stronger and more aligned with the purpose of the SPA and NBA.

The purpose and principles of the SPA will need to be crafted with great care if they are to guide the development of spatial strategies having strong legal influence over regulatory and funding decisions elsewhere. In particular, they should not be worded in a way that allows for narrow economic approaches to urban planning and growth to underpin spatial strategies.

## Concluding comments and summary of recommendations

In this report we have considered two broad matters relevant to the design of the SPA as it relates to funding. The first is the nature of the legal relationship between the SPA (and spatial strategies and implementation agreements made under it) with the separate legal frameworks under which public authorities make decisions as to how to raise and spend money in order to implement spatial strategies. The second matter is the suite of supporting measures – notably new or amended funding tools – that may be needed to support the implementation of spatial strategies.

Again, we reiterate that the focus on *public* authorities in this paper is because these are the entities that will be expected to fund core elements of a spatial strategy, and who operate under formal legislative frameworks that require a legal link to the SPA. This means that such legal relationships are an important consideration when designing the SPA. However, that focus is not intended to diminish the importance of various related matters:

- The role of other decision-makers or partners in the spatial planning process (including mana whenua) who are not funders operating under legislative frameworks; or
- The role of others who will be expected (or incentivised) to provide investment in support of a spatial strategy, including the private sector; or
- The need to provide adequate funding and resourcing for the spatial planning process itself (including the role of mana whenua), not just for the implementation of the actions contained within a spatial strategy.

Below, we provide a summary of recommendations.

#### **Legal relationships between the SPA and funding frameworks**

1. A clear legal link between a regional spatial strategy and the statutory frameworks under which its measures are funded (such as the LGA and LTMA) will be important. If there is no link, the measures envisaged in a spatial strategy may not end up being funded, undermining the whole exercise.
2. A first generation of spatial strategies should be informed by, or occur alongside, funding processes under other legislation (including long-term plans, infrastructure strategies and regional land transport plans under the LGA and LTMA).
3. The raising and expenditure of public money goes to the heart of local and central democracy and there is a strong case for such processes not to be strictly “bound” by a long-term spatial strategy. However, there needs to be a reasonably strong relationship between the SPA and funding frameworks to make spatial strategies worth doing.
4. We agree with the Panel’s reasonably strong direction that long-term plans, infrastructure strategies, annual plans and regional land transport plans should be “consistent with” a regional spatial strategy.
5. However, this direction should be softened slightly by providing an exception where “good reason” or “sound justification” exists, which could be defined as including where and to the extent that the statutory purpose of a funding framework conflicts with the requirements of a spatial strategy.
6. Another way in which the direction for funding decisions to be “consistent with” a spatial strategy could usefully be softened is by allowing the spatial strategy itself to be amended following separate funding processes (eg a long-term plan), potentially accompanied by a requirement that such changes be justified.
7. Although the Panel did not address the issue directly, we consider that implementation agreements should also have some form of legal status and influence over decision making under funding frameworks. However, these agreements should not be “binding”. An appropriate formulation may be for funding frameworks to “take steps to implement” an implementation agreement (again, except to the extent “good reason” exists).
8. The legal relationship between spatial strategies and implementation agreements should be clarified, in that the latter should be obliged to give effect to, or “implement”, the former.

9. It should be made clear that where multiple funders are involved in preparing a spatial strategy, an implementation agreement is mandatory. Spatial strategies would be of less value if an implementation agreement on funding it was not forthcoming.
10. There needs to be flexibility for implementation agreements to be amended over time, but some safeguards should be put in place to ensure that these do not depart from a spatial strategy in any fundamental way. This should be a reasonably simple and agile process to ensure the spatial planning framework does not become too complex.
11. Clear guidance should be contained in the SPA as to what is expected to be contained in a spatial strategy vis a vis an implementation agreement. At present, the distinction has been left fairly vague.
12. A clearer (although not overly complex) process should be included as to how implementation agreements are to be reached and outlining what happens if agreement cannot be reached in a timely way.
13. There will need to be careful checks and balances on how a Minister(s) exercises “dispute resolution” powers to finalise or approve a spatial strategy, especially if this is not supported by local government where councils are expected to fund it.
14. While spatial strategies should be mandatory across the country, the SPA could usefully indicate reasons or principles as to why spatial strategies would be desirable from the perspective of the national interest. These principles should not be a jurisdictional straitjacket but would be used to guide the exercise of any ministerial “dispute resolution” power that would have influence over local government funding decisions.
15. There could usefully be a mechanism in the SPA whereby regional spatial plans could have legal influence over (1) all, or (2) only some, legislation contained in the Act’s schedule. This would mean only those frameworks actually needed to implement the spatial strategy would be legally influenced by it, thereby minimising the number of inter-statutory relationships needing to be managed. In many cases, it may be appropriate and simpler to give a spatial strategy wide influence, but in some cases it may not.
16. There should be some legal link between spatial strategies/implementation agreements and central government funding processes. This should be in a comparable way that local government funding processes are influenced. Central processes influenced should include funding decisions under the National Land Transport Programme.
17. Clarity will be needed in the SPA as to exactly *which* funding frameworks or instruments will need to be “consistent with” spatial strategies or implementation agreements. Some link could usefully be made to the Public Finance Act and the Urban Development Act, among others. Relevant frameworks should be listed in a schedule to the SPA.

#### **Supporting measures: funding tools**

18. More needs to be done to expand the funding and financing tools available to local government, particularly to support its functions relating to urban infrastructure. That will be important to enable councils to fund the measures envisaged in a spatial strategy.
19. Incentives to underinvest in three waters infrastructure should, following a large capital injection from central government, be addressed through institutional reforms (a regionalised water service delivery model and an economic regulator). Any new three waters entities, and their funding processes, will need to have clear links to regional spatial strategies.
20. Councils should be incentivised to provide growth infrastructure in a timely/anticipatory way to realise a spatial strategy, including through the use of tools like value uplift capture and need-based central government grants.

21. User-charging should be deployed more in a future system both to provide a fair way to fund related services and to incentivise the efficient use of resources. A focus should be on the policy synergies this provides. However, charging and other forms of demand-based tools cannot be absolute and must carefully consider how impacts on the poor or vulnerable are to be addressed.
22. There should be further investigation into the merits of a local GST as a means to provide incentives for councils to invest in growth infrastructure where envisaged in a regional spatial strategy. This should be in addition to, but not a replacement for, rates.
23. The funding toolbox should also be expanded to include environmental or green taxes, to support the implementation of aspects of a spatial strategy concerned with environmental protection and climate change mitigation.
24. Existing funding frameworks will need to have strong legal links to a spatial strategy that is itself strongly influenced by a national plan for climate change adaptation.
25. If spatial strategies are to concern themselves with climate change adaptation, novel funding mechanisms will be required to implement them. One option with merit is a dedicated climate change adaptation fund, which will need a robust legal framework around how (and by whom) it is capitalised, how (and by whom) it is managed, and how (and when) it is used.
26. The purpose and principles of the SPA will need to be crafted with great care if they are to guide the development of spatial strategies having strong legal influence over regulatory and funding decisions made elsewhere. In particular, they should not be worded in a way that justifies narrow economic approaches to urban planning – such as competitive urban land markets – to underpin spatial strategies.