WHAT
WHY
HOW

Exploring the fundamental questions for resource management law reform in Aotearoa New Zealand

Paper 1: Context

Environmental Defence Society
2025

Acknowledgements

Grateful thanks go to the Royal Forest and Bird Protection Society of New Zealand and the Michael and Suzanne Borrin Foundation for supporting this work. Thanks to those who have given up their time to be interviewed for the project and have reviewed this paper, and to members of the project's advisory group, who provided valuable guidance and feedback.

Table of Contents

1 Introduction

"Reform is a treadmill."[1]

The Resource Management Act 1991 (RMA) is New Zealand's primary environmental and planning law. It is responsible for controlling how land is used, as well as managing the impacts of activities on the environment (including freshwater, soil, air, the marine environment and biodiversity). The current coalition government, in 'phase 3' of its resource management reform programme, intends to replace the RMA with two separate acts. These are to be premised on the 'enjoyment of property rights'.[2]

This reform follows close on the heels of the previous Labour government's own replacements for the RMA (the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA)), which lasted only a matter of months before being repealed (at which point the RMA was reinstated).[3] Repealing these Acts was 'phase 1' of the current government's reforms. A second phase involves two sets of amendments to the RMA,[4] new and amended national direction,[5] and the enactment of bespoke fast-track consenting legislation outside the RMA for nationally or regionally important projects (the Fast-track Approvals Act 2024). These 'phase 2' changes are proposed to be compatible with, and flow through into, the new framework under 'phase 3'.[6]

The government has not yet made detailed policy decisions on 'phase 3'. It has, however, provided a series of ten 'design principles' to guide it (see below, with our emphases added to highlight key points). It has also established an expert advisory panel (EAG) to provide advice on how to operationalise a new system based on its design principles. The EAG provided its report to Ministers at the end of 2024. At the time of writing, it has not been publicly released. Policy decisions on the major legislative architecture of the replacement RMA laws are to be taken by Cabinet in March 2025,[7] and legislation is planned to be introduced in September 2025.

The government's ten principles guiding replacement laws for the RMA[8]

- Narrow the scope of the resource management system to focus on managing **actual effects** on the environment.
- Establish two Acts with **clear and distinct purposes** – one to manage environmental effects arising from activities, and another to enable urban development and infrastructure.
- Strengthen and clarify the **role of environmental limits** and how they are to be developed.
- Provide for greater use of national standards to **reduce the need for resource consents** and simplify council plans. This would mean that an activity which complies with the standards cannot be subject to a consent requirement.
- Shift the **focus away from consenting** before activities can get underway, and towards compliance, monitoring and enforcement of activities' compliance with national standards.
- Use **spatial planning** and a simplified designation process to lower the cost of future infrastructure.
- Realise efficiencies by requiring **one regulatory plan per region**, jointly prepared by regional and district councils.
- Provide for a rapid, low-cost resolution of disputes between neighbours and between property owners and councils, with the potential for a **new Planning Tribunal** (or equivalent).
- Uphold Treaty of Waitangi settlements and the **Crown's obligations**.
- Provide **faster and cheaper** processes with less reliance on litigation, contained within shorter and simpler legislation that is more accessible.

These ‘principles’ are a mix of relatively specific directions (eg creating one plan per region) and a much more open-ended rethink (eg narrowing the scope of the system). But they are all being guided by the broader idea that the system should be based on the enjoyment of property rights (which we return to at the conclusion of this paper). Various speeches, and a high-level Cabinet paper, have provided some further insights into the government’s thinking about problems and solutions, although they are far from a detailed blueprint and leave open a wide field of possibilities.[9]

In interviews we have conducted thus far, opposition political parties did not express specific views on ‘phase 3’ reforms, other than a degree of unease about a system premised on the enjoyment of property rights. This was partly because it is not yet clear what those reforms will look like. For example, Labour spokesperson for the Environment Rachel Brooking noted that:[10]

> Everything being driven by private property rights is very disturbing but also I don’t really know what it means.

However, interviewee representatives of Labour, Te Pati Māori and the Green Party all emphasised the importance of having meaningful environmental limits to constrain property rights, protecting the rights and interests of Māori under Te Tiriti o Waitangi, and building on the platform provided by policy work on the NBA and SPA. In general terms, this is not obviously inconsistent with what the government is hoping to achieve. We are continuing to engage with all political parties as more detail around the shape of ‘phase 3’ reforms becomes known.

2 The risks of flip-flopping

“Every time … a potential change of government signals change, uncertainty reverberates through communities of land and water users, affecting their decisions.”[11]

Appetite for fundamental reform of the RMA has been growing for a decade, driven partly by poor environmental outcomes (eg freshwater degradation), decreased housing affordability, inconsistent implementation, and increasing cost and complexity of decision-making. However, a swinging cycle of repeal and enactment across governments will benefit no one. It will create (and indeed *has* created) cost, instability, complexity and friction.

There is a large fiscal cost (especially for the taxpayer) in undertaking large policy and legislative processes. The work programme relating to the reform of the RMA under the previous Labour government totalled over $180 million (in addition to the cost of the independent panel that advised on the reforms).[12]

Financial Year	2019/20	2020/21	2021/22	2022/23	2023/24*	Total
RMA Reform total ($ million)	0.0	9.8	44.0	70.1	23.2	**147.1**
Implementation costs ($ million)	0.0	0.0	9.6	10.3	14.7	**34.6**

*2023/24 spend is to 30 October 2023, as implementation ceased because of the General Election.

There are also significant costs involved in transitioning from an existing system to a new one, including implementation and inevitable litigation costs. A lot of this falls on councils (and therefore ratepayers), as well as business, consent applicants, and communities (eg as submitters on new plans). This can be seen in the high costs of implementing the RMA itself, its two dozen or so amendments over the years, and a growing array of disparate (and sometimes conflicting) national

direction.[13] All this is wasted effort if the underlying legislative framework changes periodically in fundamental ways; it takes much longer to implement a new statute than for politicians to replace it.

A microcosm of the impact of flip-flopping can be seen in the recent 11th hour (and retrospective) changes to the RMA that prevented the Otago Regional Council from notifying its freshwater plan, despite the significant time (5 years) and cost (estimated $18 million) that went into developing it.[14] How much more costly will it be if we have a 'new RMA' every three or six years? Councils may well come to the view that it is better to never implement anything.

There are other costs of constant reform that are harder to quantify. These include impacts on business certainty. In interviews, we heard that businesses may be much less likely to invest in projects if the underlying policy settings (and thus potentially the project's cost and viability) are unstable. This has been highlighted recently by the Fast-track Approvals Act, where opposition political parties have declared the possibility of revisiting approvals granted under it.[15]

The Parliamentary Commissioner for the Environment highlights a recent Survey of Rural Decision Makers, where four in ten respondents said they struggled with constantly shifting goalposts even within the ecosystem of the RMA.[16] The perennial introduction and changing of concepts, terminology and philosophies about things like 'planning' also risk decision-makers like councils becoming cautious in their approach (with the ever-present risk of litigation) and therefore slower, defeating one of the major policy ambitions of the current reforms.

Above all, flip flopping creates a risk to the natural environment. Environmental indicators can be eroded much faster than they can be restored (consider the 'load to come' problem with freshwater, where much harm has already been baked in for many years).[17] In addition, private rights (whether 'property' rights or otherwise) are not easily undone once granted, meaning that public interest protections seeking to constrain such rights will face an uphill battle (or one involving large costs to the taxpayer for compensation).[18] This means that cycles of 'protective' and 'development' focused laws will inevitably degrade the environment over the long run.

If a new system is to be durable, it needs to be developed through a process that is public facing and inclusive of different political and philosophical perspectives. Resource management reform needs to happen once, it needs to happen well, and it needs to happen in the right order. The core of primary legislation needs to be stable, even if it allows for flexibility in implementation (eg through plans and consents) and there are targeted amendments around the margins (there will always be bugs to sort out).

3 The EDS project

"It is better to get an approximate answer to the right question than an exact answer to the wrong question."[19]

There are fundamental design questions – and possible disagreements – that demand careful attention before any government replaces the RMA. The Environmental Defence Society (EDS) is conducting a project that seeks to go back to these basics. We are looking at what the core of a future resource management system should look like.

EDS's project has most immediate relevance to phase 3 of the current government's RMA reform, and it is therefore tailored to that context as far as possible. Given that detailed policy decisions have not been taken, this is by necessity somewhat speculative (for example, a system based on property

rights could mean many things). However, our project is also intended to guide future governments and draw any debate about resource management back to a set of common principles.

The remainder of this paper provides the background to a series of papers that will explore three conceptual questions about the system – *what, why and how*.

1. *What* is the resource management system (its proper scope)?
2. *Why* does the system manage resources/the environment (what outcomes should it be seeking to achieve)?
3. *How* (and therefore *when* and by *whom*) should decisions be made? What complementary measures may be needed to help (eg funding, institutional design, environmental data)?

Without broad agreement on the basic answers to such questions – which are all on the table in the phase 3 reforms – legislation will never be stable. In exploring the *what, why and how*, we will consider where the RMA may (or may not) be falling short; what could usefully be built on from the NBA and SPA (can some modules like environmental limits, spatial planning and compliance monitoring and enforcement be clipped into a new system without reinventing the wheel?), and what the government's focus on 'the enjoyment of property rights' and its ten design principles might mean.

We will also be exploring international examples, including Australia, Ireland, the United Kingdom and Singapore. This is partly because these counties have also been on Ministers' minds. Do they provide useful models?

The project is not intended to explore the system in a granular or comprehensive way. Nor is its purpose to provide hard and fast recommendations for reform – although in some cases our suggestions will be fairly emphatic. Primarily, it is concerned with properly framing the key questions that will need to be addressed and highlighting the considerations that need to be given attention. Most of all, we want to avoid policy makers rushing headlong into deep change without thinking carefully about the places where change is (and is not) justified.

We make a brief note here on methodology. The project involves engagement with primary sources and relevant literature, of which there has been a great deal in recent years.[20] But it considers these within the quite different context within which current reforms are being progressed. We have, thus far, interviewed around 65 people, including representatives of the government, opposition parties, officials, local government, Māori experts, academics and development interests, as well as officials in comparator jurisdictions. We established an advisory group comprised of a range of eminent and experienced members (judicial, legal, te ao Māori, planning) for whose feedback we are grateful. We have also engaged James Whetu, an experienced Māori planner, to support the work and whose input is integrated into the papers.

4 Is RMA reform needed?

"*There is almost universal agreement that the RMA is broken.*"[21]

No one should reform legislation for the sake of it. Sir Geoffrey Palmer, one of the architects of the RMA, has been critical of successive governments who have tinkered with grand legislative schemes (such as the RMA), making them increasingly incoherent and complex over the years to little practical benefit.[22] But it is worth being clear from the outset: the resource management system *does* need to change and at the heart of the system is the RMA.

The report of the independent Randerson Panel, appointed by the previous Labour government, synthesised most of the Act's issues – of which there are many – and four years later this continues to present a compelling case for reform.[23] We do not repeat them here. But it is important to note that there are two distinct kinds of problem with the RMA (outcomes and process), which may demand quite distinct solutions. These should not be conflated, lest babies be thrown out with bathwater.

First, the RMA has failed to achieve the kinds of outcomes it was always intended to achieve (or to rectify from previous legislation). Social and economic challenges are part of this picture. Such problems are becoming increasingly prominent, and include housing unaffordability (only 60 percent of people now own the home they live in), homelessness, urban congestion, resistance to densification in cities, and a failure to enable major infrastructure upgrades for things like water supply and treatment.[24] Significant pressures have been driven by population growth, especially in urban areas.[25]

Many have commented that the RMA is unresponsive to growth because it does not supply enough residential (or other) land in light of demand, thus increasing land prices.[26] Indeed, New Zealand in recent years has had one of the least affordable housing markets in the OECD (the relative picture as of 2025 is not as clear).[27] In the past, some have estimated that increasing land supply could reduce the cost of housing by 31 to 47 percent.[28]

Ministers have also expressed disappointment with economic and productivity outcomes more broadly, pinning some of the blame for sluggish productivity on an RMA that stops things happening.[29] For example, a recent report from the Infrastructure Commission found that the RMA provides barriers to the fast deployment of infrastructure necessary to decarbonise the economy, notably renewables for electricity generation, at a cost of billions of dollars.[30] Costs have risen significantly over the last decade.

While some of the issues that have led to a failure to achieve desired outcomes can be ascribed to the RMA, the Act is not entirely to blame. In particular, although residential land supply is one vital ingredient for an affordable housing market, there are many other complex factors in play which are beyond the RMA, including funding constraints (which prevent timely provision of infrastructure like water pipes to service new houses), labour markets for construction, supply chain issues, institutional incentives, the perceived risks of investing in apartments, land banking, and macro-economic and tax settings.[31] Indeed, one study by Auckland Council showed that the price differential between urban and rural land was mainly because urban land was serviced by infrastructure (and therefore more valuable) rather than because of the underlying zoning imposed by the RMA.[32] The Resource Management Law Association has even said that "there is no credible evidence base that the RMA [itself] is the sole (or even a predominant) cause of such issues",[33] and a technical advisory group report to the government stressed that:[34]

> house and section prices are a product of many influences, including planning decisions and the regulatory regime of the RMA. In addition to construction costs, interest rates and the availability of credit are at least of equal or greater significance.

The evidence suggests that decisions made *under* the RMA must bear their share of the historical blame for land undersupply, notably in Auckland.[35] To a large extent the issue is, therefore, with how the Act has been implemented rather than its legislative wording per se. As explained by Infrastructure New Zealand and the Productivity Commission, there have been strong incentives on some councils to use the RMA to ration land, both financially (due to the high costs of associated infrastructure provision and, for some, debt ceilings) and as a matter of political economy (the perceived costs of growth among ratepayers and 'NIMBY' – not in my backyard – resistance to

intensification in low density areas).[36] Furthermore, prior to the amalgamation of its many councils in 2010 and a more integrated Unitary Plan years later, part of the issue with Auckland was that fragmented local government lacked proper strategic or integrated oversight of population growth.

It is unclear whether future land supply for housing remains a significant issue in light of changes to the Auckland Unitary Plan (which provide for significant density and greenfields growth) and requirements in national direction for development capacity to be provided in high growth areas around the country.[37] The bigger question is whether there are funding and financing tools to pay for the infrastructure required to unlock the land's potential, and issues with the affordability of housing more generally.

Facilitating the deployment of renewable energy, another key concern of reformers, is also more complex than just providing a more enabling consenting framework. Although there are high profile cases where consent has been declined under the RMA,[38] most wind farms have been approved.[39] A lot of wind generation has already been consented but not built, pointing to more complex issues with the incentives provided by electricity markets.[40]

Key points	While it has a role to play, the RMA should not be used as a scapegoat for more systemic issues hindering housing affordability or the deployment of renewable electricity infrastructure.

Of greater concern with respect to outcomes is that the RMA has failed to achieve what has always been its primary goal - arresting the decline of the natural environment.[41] This is even where outcomes like protection of freshwater quality, indigenous biodiversity and soil health are firmly within both its purpose and tools (rather than those of other statutes). By any measure, the RMA cannot be said to have been an environmental success.

A spotlight on environmental decline

Environmental reporting over the past decade reads as a litany of environmental loss.[42] The literature on this is extensive, but a selection includes the following:

- Nearly three-quarters of native forests have been cleared since human settlement.
- Nearly 4,000 native species are threatened or at risk of extinction (90 percent of all seabirds, 84 percent of reptiles, 76 percent of freshwater fish and 74 percent of terrestrial birds).[43] We have the highest proportion of threatened indigenous species in the world according to one study.[44] Changes brought by human settlement resulted in the extinction of at least 81 animal and plant species.
- In 2014, 71 ecosystems were identified as rare ecosystems in New Zealand because they represented less than 0.5 percent of the country's land area. Forty-five were classified as threatened with collapse.
- Ninety percent of wetlands have been lost since pre-human settlement, and the remnants provide a habitat for two thirds of our threatened freshwater fish species.
- Water in many rivers is degraded primarily from the way we use land.[45] Almost one-third of our waterways are not swimmable. Models have estimated that of our 3,813 lakes, 46 percent rated poor or very poor in terms of nutrient enrichment (as measured by Trophic Level Index) between 2016 and 2020.
- Groundwater quality lacks reliable data but is heavily degraded in places (including through nutrient enrichment).[46]

- New Zealand is among the highest emitters of greenhouse gases per dollar of GDP in the world.
- In 2018–19, about a quarter of people on registered drinking water supplies did not have access to water that met drinking-water standards.
- Sedimentation of waterways and the coast (smothering marine life and reducing light for photosynthesis) are significant issues in parts of the country, notably from activities like forestry harvesting and urban development. Data from 2012 showed that an estimated 192 million tonnes of eroded soil entered our rivers each year, 200 times historical rates in places like Waikato.
- Eighty percent of measured soil sites failed to meet the targets for at least one of the seven soil quality indicators for the period 2014–18 (although "data on the health of our soils are insufficient to shed light on trends").[47]
- Between 1977 and 2013, human influence led to an estimated 74 percent increase in total nitrogen loads into the ocean, with more than a quarter of estuaries highly or very highly susceptible to ecosystem harm from nutrients.
- There are upwards of 200 invasive introduced species in the country (the second highest in the world), causing significant damage to native species (26.6 million egg and chick losses for native bird species every year).
- Microplastics are now pervasive in our food chains, notably in seafood.
- Contaminants like E.Coli are a dozen times higher in pastoral than forested catchments and even higher in urban waterways.
- Stormwater infrastructure does not just move floodwater; it carries untreated "nutrients, heavy metals, fuels, oils, polycyclic aromatic hydrocarbons (PAHs), legacy pesticides (such as DDT, lindane, dieldrin and chlordane), legacy synthetic compounds (such as PCBs), newer emerging organic contaminants (EOCs) including pharmaceuticals and pesticides, and pathogens."
- There has been a 7.1 percent increase in ocean acidity in the past 20 years due to climate change, with significant risks for marine life (including kai moana).
- On average, coastal waters have warmed by 0.2 degrees Celsius per decade between 1981 and 2018.
- A changing climate will have different effects in different places, but risks exacerbating floods, droughts and extreme winds as well as saltwater intrusion.

Key pressures are both historical and as a result of ongoing impacts of invasive species, changes in land and sea use (eg habitat clearance), direct exploitation of species, climate change, and pollution (sediment, nutrients, heavy metals). Many places around the country are more severely degraded than these general figures indicate. For example, rivers in Canterbury and the Manawatū suffer from high levels of nutrient enrichment, while sedimentation is a big problem in Tairāwhiti and the Waikato.[48] Lake Horowhenua has enormous water quality problems.[49] A recent deep dive into the polluted state of the Ashburton Lakes revealed alarming and systemic human induced harm, largely from pastoral farming.[50] For Māori, environmental degradation is inextricably linked to cultural and spiritual health, including "values like the condition of mahinga kai and kaimoana (traditional foods), recreation (swimming, waka ama), and oranga (health and well-being)".[51]

These are just examples of the things we know. The Parliamentary Commissioner for the Environment has repeatedly and forcefully pointed out that our environmental data is riddled with holes.[52] Things are almost certainly worse than we realise.

Key points	The key problem with the RMA is that it has failed to protect the natural environment from significant decline, or to turn around historical degradation.

The second kind of problem with the RMA is the *way* in which it achieves (or fails to achieve) its outcomes. In particular:

- It takes too long and costs too much money to reach decisions (on plans and consents), meaning that development can be delayed and environmental protections can be unresponsive to changing risk.[53] This is a significant problem.
- Consenting decisions can be unpredictable and discretionary, and plans (and national direction) fail to give clear answers about what people can and cannot do.
- The system has become increasingly complex and fragmented, and "impenetrable" to users (eg through increased length, confusing structure, turgid drafting, the introduction of multiple procedural options, reliance on case law to understand legislative meaning, and legislative carveouts).[54] The RMA is twice as long as it used to be.
- The Act has become a playground for lawyers and experts, making it a very litigious law to apply.
- There are too many plans, which are too long, complex and have arbitrary differences between districts and regions.
- Māori feel excluded or marginalised from decision-making processes and the system does not reflect Te Tiriti principles.[55]
- The system is not well aligned with other statutory frameworks and processes (eg for infrastructure planning and funding, biodiversity protection, or climate change mitigation or adaptation).
- The RMA and most instruments under it are mainly focused on managing a stable environment (they are reactive), and not driving change or preparing for an inevitably different future.

Key points	The RMA has several procedural issues, including the cost, time and unpredictability involved in its processes.

Concerns with the RMA are not new, and they have driven a number of changes to and around the Act (including its complete replacement by the NBA and SPA, amendments, and various fast-track processes). Significant further change is also needed, notably when it comes to an effective framework for environmental limits and to make things faster, more certain, simpler and cheaper. That said, not everything about the RMA is broken, and policy makers need to exercise caution when changing it. Interviewees repeatedly said that there are risks in treating the entirety of the RMA as bad, and solutions need to be targeted to problems. For example, there would be risks in overhauling the Act's purpose and principles, where carefully crafted case law has evolved to define key terms.

Moreover, there are deeper problems about implementation that will not be solved through legislative change alone. In particular, councils face significant political and resourcing issues when it comes to their environmental functions, and central government direction under the RMA can be inconsistent and conflicting (and impose unfunded mandates on local government). There are big gaps in environmental information and data. Changes to the Act are certainly needed, but they need to be accompanied by a focus on better implementation as well.

5 Concluding comments and a word on property rights

"How long will it be before we can all stop adding a postscript to our advice and reports regarding the uncertain impact of RMA reform?"[56]

"The issue we've always had in this country is a clash of ideology and worldview."[57]

With all this in mind: what are the key questions that policy makers will need to tackle when designing a new system? A methodical approach is called for. In our second paper, we will start with the *what* (the proper scope of the system as a whole). In following papers, we will delve into the *why* (outcomes, purpose and principles in a new system) and the *how* (the system's mechanics, and complementary measures like funding and institutional design lying beyond the RMA). These categories of question are conceptual ones, but they have very tangible consequences for system design.

Across all them is a much more philosophical quandary. We mention it here because it permeates all the other design questions.

The quandary is this: any resource management framework reflects perspectives on what is right and wrong, how to measure it, and therefore what ought to happen (or not happen) in response. It reflects different attitudes about what is 'mine' and what is 'ours', and what might not even be about humans at all. When it comes to the environment, people can have vastly different worldviews about why things should be protected or used, who should bear the benefits and costs of doing so, and more generally when public authorities should be involved in determining such questions. Ponder the following:

> Regulations should be a last resort and only to solve real problems that cannot be solved by private negotiations or markets…[58]

> Land is not a "fiscal asset" to be considered within a "productivity paradigm", but is tāonga tuku iho (a treasure handed down).[59]

> A healthy soil determined purely on its ability to supply goods is equivalent to measuring human health based on a person's ability to do work or a person's economic value as a member of … society.[60]

Different worldviews (eg neoliberalism, te ao Māori or various different flavours of ecocentrism) may also approach the concept of property, and its importance in our society and economy, quite differently. Is it an immutable part of the capitalist system in which we live? Is it a means to a social and environmental end? Are there reasonable middle grounds to reach? These are all moral or ideological questions.

Recent ministerial statements have ranged from the anthropocentric (concerned mainly with human welfare) to the neoliberal (focused on spillover effects and the rights of property holders), which may have profound implications for system design that have not yet been made clear.[61] Such comments stand in contrast to te ao Māori:[62]

> In the Māori worldview (te ao Māori), Matariki and wellbeing are intrinsically connected with mauri. Mauri is an important Māori concept that describes the health and vitality of living systems. It has been described as the spark of life and active component of that life (Mead, 2003), and the binding force that holds together the physical and spiritual components of a being or thing (Durie, 1998; Morgan, 2006). Mauri is found in water, land, and forests as well as mist, wind, soil, and rocks (Hikuroa et al, 2011). The essential bond between the physical and spiritual is weakened when actions negatively impact the mauri of something. Broken bonds can lead to the separation of the physical and spiritual elements causing the loss of capacity to support life. (Morgan, 2006).

We need to be upfront about where fundamental ethical disagreements lie. What are our values as a country? How do we operationalise a new system "given the differences in worldview between te ao Māori and a mixed market economy based on the paradigm of individual property rights"?[63] Can we

embrace the benefits of pluralism rather than seeking to impose a single worldview every time there is the political possibility of doing so? We have explored these deeper questions in previous work and encourage readers to look there,[64] but they will permeate all matters of system design – from its scope, to its purpose, to its toolkit. Above all, we need to provide a respectful space for dialogue about the difficult questions – a place, perhaps, to meet in the middle. That seems to be a harder and harder ask. But we will not create a stable system without it.

What is a property right?

At the heart of phase 3 reforms is the idea that property rights need to be respected and protected. By itself, that is not a controversial proposition. Property is "a foundational element of the democratic system that we enjoy" and the basis of a capitalist economy in which competition leads to prosperity.[65] Aside from constitutional rights, "property rights are the strongest interests recognized by our law."[66] This includes land. As the Parliamentary Commissioner for the Environment has said:[67]

> the bundle of rights that attach to land ownership are likely to remain a cornerstone of our society. Those rights are not immutable, but attempts to regulate that cut across them need to be compatible with them.

Yet one needs to be clear about what is actually meant by a 'property right' to understand whether, and when, it is infringed at all, let alone whether an infringement is justified. Here, there can be some very different philosophical views. Subject to the constitutional implications of Te Tiriti and enduring customary title and rights, the Crown has 'radical title' to most land in New Zealand.[68] This means that most legal rights to land ultimately derive from grants from the Crown and are not absolute, which is a hangover from a system of tenure that evolved in feudal times.[69] A person's 'property right' in land is therefore shorthand for various bundles of rights, defensible against other claimants in the courts, which have been granted by law (whether fee simple or otherwise).[70] David Grinlinton notes that:[71]

> If we go back to the feudal origins of tenure, it can be seen that those who had occupation rights to land also owed certain 'incidents of tenure' to the superior lord… Such social obligations also arguably implied the avoidance of wastage or damage to the land.

The reality is that bundles of rights in land are not, and have never been, absolute or shielded from non-consensual regulatory controls legally authorised by Parliament or the common law.[72] Rights frequently come with associated responsibilities where the public interest demands it. Some are extremely intrusive, such as when it comes to compulsory acquisition (noting that this is allowed even where land is needed for *private* residential or commercial development)[73] or the destruction of property like bees or cattle to deal with biosecurity risks on land.[74] Other statutory controls, like the official cash rate, can have greater impacts on property values than environmental regulation, yet are almost universally accepted as necessary for the health of the financial system. Even basic *human* rights are not absolute.[75] Our society is rife with legitimate regulatory constraints on rights and freedoms.

New Zealand also does not have constitutional protections for regulatory 'takings' as in the United States, and there is no property right "that overrides the supremacy of Parliament."[76] The desirability of preventing, or compensating for, regulatory impacts on property are public policy questions, not legal ones. The pertinent question is the point at which regulation is proportionate to the public interest, and what (if anything) happens in response to any diminution of freedom or value (eg compensation or assistance). It is therefore incorrect to frame RMA controls as something that transforms property rights into 'privileges', since there is no legal right for property owners to create

harm to others or the environment (including property itself).[77] One might equally claim that animal welfare laws transform ownership rights in a pet dog or farm animal into a 'privilege'; in both cases there are significant moral dimensions over which society has a say.

It is also interesting to consider the reverse situation: where public intervention *enhances* the value of property. In many cases, protecting things like natural character and greenery and providing amenities like public transport have positive externalities that are partly captured by property values.[78] Rezoning rural land to residential (and providing associated infrastructure/services) frequently gives a windfall to owners. Yet there has been little appetite among property rights purists for giving up rights where they have accreted in this way (eg through a capital gains tax or, so far, a value uplift tax).[79] This highlights that the real public policy question is about striking a balance that is fair, proportionate and politically palatable, not the defence of a set of rights that has been defined since time immemorial.

One also needs to keep in mind the quite different approach to 'property' and 'environment' in te ao Māori, which needs to inform how property rights are conceived of in a future system:

> Māori relationship to land and natural resources is fundamentally different from the Western concept of property rights. For Māori, land/whenua is not just a commodity to be owned, bought, and sold, but is deeply intertwined with cultural, spiritual, and ancestral connections… The reference to people and communities (and social and cultural conditions), recognises the entwined and inherent connection and relationship between people and environment.[80]
>
> [it is artificial to] separate people and economics from the natural world"[81] and land is not a "fiscal asset" to be considered within a "productivity paradigm", but is tāonga tuku iho (a treasure handed down).[82]
>
> Given the holistic view that Māori have of the environment, clashes have inevitably occurred in a multitude of RMA cases between private property owners' aspirations and Māori interests.[83]

Ultimately, as Jonathan Boston points out:[84]

> the fundamental logic for planning legislation is not … 'the enjoyment of property rights' but rather to constrain the exercise of these rights, thereby protecting the public interest and the natural environment.

That is not just an academic perspective. The courts have been equally emphatic from the early days of the RMA that "it is a necessary implication of such a regime that common law property rights pertaining to the use of land or sea are to be subject to it."[85]

---

[1] Tina Porou, comment in panel discussion, Resource Management Law Association annual conference, September 2024.
[2] Note the subtle but significant difference in the media release of 20 September 2024, where the laws are said to have "the enjoyment of property rights as *their* guiding principle" (emphasis added) rather than "a" guiding principle.
[3] With some minor saving provisions, including the NBA's fast track consenting process. See Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.
[4] A relatively targeted amendment to the RMA (the Resource Management (Freshwater and Other Matters) Amendment Act 2024), which simplifies and streamlines the process for creating national direction, makes changes to national direction concerning freshwater and indigenous biodiversity (notably removing the ability of councils to apply the hierarchy of Te Mana o te Wai to consenting decisions and preventing the identification of new significant natural areas). A second Bill is currently being progressed through Parliament: see Resource Management (Consenting and Other System Changes) Amendment Bill.
[5] Including the creation of, and amendments to, instruments relating to freshwater, indigenous biodiversity, the coastal environment, renewable electricity generation and transmission, and infrastructure more generally.

[6] See www.beehive.govt.nz/release/replacement-resource-management-act-takes-shape. The intent is that "instruments from Phase Two, and other important elements of the existing system such as plans will transfer over, with a "switching off" of any elements incompatible with the new system."
[7] See *Coalition government's Q1 action plan for New Zealand (1 January – 31 March 2025)* at www.beehive.govt.nz/sites/default/files/2025-02/Q1%20Action%20Plan%202025.pdf
[8] See www.beehive.govt.nz/release/replacement-resource-management-act-takes-shape
[9] See www.environment.govt.nz/assets/publications/Cabinet-papers-briefings-and-minutes/MfE-Proactive-Release-Replacing-the-RMA.pdf; https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act; https://www.beehive.govt.nz/speech/speech-new-zealand-planning-institute
[10] Personal communication, February 2025.
[11] Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[12] Ministry for the Environment response to Official Information Act request, dated 27 August 2024.
[13] For example, the estimated cost of implementing the Essential Freshwater Package (including the most recent iteration of the National Policy Statement for Freshwater Management) was over $166 million per annum (noting that its monetisable benefits greatly outweighed its monetisable costs by a factor over over two). See Essential Freshwater Package: Benefits Analysis by Resource Economics https://www.mfe.govt.nz/publications/fresh-water/essential-freshwater-package-benefits-analysis
[14] www.rnz.co.nz/news/national/531775/regional-council-fumes-over-late-changes-to-rma
[15] Hon Rachel Brooking comments at Environmental Defence Society conference, 12 June 2024. See www.youtube.com/watch?v=UnJbpoOysrk
[16] Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[17] For example, nutrients in groundwater can persist for up to 100 years with effects felt much later than the act causing the pollution.
[18] For example, in Otago 'deemed permits' for mining granted prior to the RMA were treated as water permits in the new system, and only expired in 2021. See Resource Management Act 1991, s 413(3).
[19] Dr Stefan Hajkowicz, keynote presentation to Resource Management Law Association annual conference, September 19 2024.
[20] Notably, see Resource Management Review Panel *New Directions for Resource Management in New Zealand* (2020); Productivity Commission of New Zealand *Better urban planning* (2017); Infrastructure New Zealand *Integrated Governance, Planning and Delivery: A Proposal for Local Government and Planning Law Reform in New Zealand* (2015); Infrastructure New Zealand *Building Regions: A Vision for Local Government, Planning Law, and Funding Reform* (2019) and Local Government New Zealand *A Blue Skies Discussion about New Zealand's Resource Management System* (2016); Greg Severinsen and Raewyn Peart *Reform of the Resource Management System: The Next Generation - Synthesis Report* (Environmental Defence Society, Auckland, December 2018); Greg Severinsen *Reform of the Resource Management System: A Model for the Future – Synthesis Report* (Environmental Defence Society, Auckland, 2019).
[21] www.nzinitiative.org.nz/reports-and-media/opinion/fast-track-approvals-are-necessary-but-should-be-temporary/
[22] "New Zealand exhibits a habit of passing big statutes, finding we do not like the results and then engaging in a constant series of amendments whereby the statutes lose both their principles and their coherence… the New Zealand habit of continual legislative meddling needs to be broken": G Palmer *Ruminations on the problems with the Resource Management Act* (Keynote address to the Local Government Environmental Compliance Conference, November 2015).
[23] These include (a) failure to protect the natural environment, (b) failure to keep pace with urban growth, (c) failure to respond to the effects of climate change, (d) failure to effectively involve Māori in the RMA process, (e) the failure to provide and efficient and effective process to support development. See Resource Management Review Panel *New Directions for Resource Management in New Zealand* (2020).
[24] See www.hud.govt.nz/stats-and-insights/change-in-housing-affordability-indicators/affordability-indicators; https://www.hud.govt.nz/stats-and-insights/homelessness-outlook/homelessness-indicators; https://www.transport.govt.nz/assets/Uploads/Paper/DefiningCongestion.pdf; Productivity Commission of New Zealand *Better urban planning* (2017).
[25] See generally New Zealand Infrastructure Commission Te Waihanga *Rautaki Hanganga o Aotearoa New Zealand Infrastructure Strategy 2022-2052* (2022).
[26] New Zealand Infrastructure Commission Te Waihanga *Rautaki Hanganga o Aotearoa New Zealand Infrastructure Strategy 2022-2052* (2022) at 122; New Zealand Productivity Commission *Local Government Funding and Financing: Final Report* (2019).
[27] https://www.corelogic.co.nz/news-research/news/2024/affordability-challenges-persist-despite-soft-housing-values-and-rising-incomes; https://webfs.oecd.org/Els-com/Affordable_Housing_Database/HC1-2-Housing-costs-over-income.pdf; https://webfs.oecd.org/Els-com/Affordable_Housing_Database/HC1-1-Housing-related-expenditure-of-households.pdf
[28] See New Zealand Productivity Commission *Using land for housing* (2015) at 2. Completely different forces transpired to reduce land prices by almost as much, including 36 percent in Wellington: www.rnz.co.nz/news/national/540873/average-wellington-house-prices-plummet-nearly-25-percent-in-latest-official-valuations
[29] See https://www.beehive.govt.nz/speech/speech-minerals-west-coast-forum

[30] New Zealand Infrastructure Commission Te Waihanga *Rautaki Hanganga o Aotearoa New Zealand Infrastructure Strategy 2022-2052* (2022).
[31] See generally Productivity Commission of New Zealand *Better urban planning* (2017); See generally T Hazledine "Economics and the resource management system" in G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 3 (EDS, 2018) at 158; G Severinsen *Reform of the Resource Management System: The urban context* (Environmental Defence Society, August 2020). Also note "a clearer and more consistent approach to funding and financing is required across the system:" New Zealand Infrastructure Commission Te Waihanga *Rautaki Hanganga o Aotearoa New Zealand Infrastructure Strategy 2022-2052* (2022).
[32] SL Martin and DS Norman An evidence-based approach: Does the rural urban boundary impose a price premium on land inside it? (Auckland Council, Chief Economist Unit, February 2020).
[33] Resource Management Law Association Submission on issues and options paper: Transforming the resource management system – opportunities for change (2020) at [18].
[34] A Dormer and others Report of the Urban Technical Advisory Group (July 2010) at 1.
[35] Constraints in the supply of residential land, especially in places where growth is rapid and demand high, have been identified as a significant factor in driving up the price of land. See New Zealand Productivity Commission *Using land for housing* (2015); New Zealand Productivity Commission *Housing affordability inquiry* (2012).
[36] Productivity Commission of New Zealand *Better urban planning* (2017); Infrastructure New Zealand *Integrated Governance, Planning and Delivery: A Proposal for Local Government and Planning Law Reform in New Zealand* (2015); Infrastructure New Zealand *Building Regions: A Vision for Local Government, Planning Law, and Funding Reform* (2019).
[37] Auckland Council's Housing and Business Development Capacity Assessment indicates sufficient capacity for both residential and business development to meet forecast demand over the next 30 years. See https://akhaveyoursay.aucklandcouncil.govt.nz/housing-and-growth; https://knowledgeauckland.org.nz/publications/housing-and-business-development-capacity-assessment-for-the-auckland-region-2023-national-policy-statement-on-urban-development-2020-appendices/. See also www.nzinitiative.org.nz/reports-and-media/opinion/the-long-road-to-housing-affordability/; Housing Technical Working Group *Analysis of availability of land supply in Auckland: Results from improved land efficiency indicators and discussion on their use for policy* (November 2024) at 2 (which notes improvements in Auckland under the Unitary Plan).
[38] For example, Project Hayes in central Otago and Dunedin's Blueskin Bay wind project.
[39] R Peart and others *Caring for the landscapes of Aotearoa New Zealand* (EDS, 2021) at 38.
[40] For example, New Zealand currently has around 2,500 MW of consented wind power capacity, meaning that much wind power has been granted resource consent to be built (although not all of it is currently operational). As of November 2023, around 1,059 MW of wind power was installed and operational. Moreover, "it is not expected that all consented wind energy projects being investigated will be end up being constructed, as many commercial and logistical factors need to be assessed". See Onshore Windfarm Pipeline - NZ Wind Energy Association.
[41] Compare G Palmer *Ruminations on the problems with the Resource Management Act* (Keynote address to the Local Government Environmental Compliance Conference, November 2015).
[42] Ministry for the Environment & Stats *New Zealand Environmental Reporting Series: Environment Aotearoa 2022* (2022). See also MA Brown and others *Vanishing nature: Facing New Zealand's biodiversity crisis (EDS, 2015);* MA Brown and others *Evaluating the environmental outcomes of the RMA* (EDS, 2016).
[43] Only around 18 percent of beetles, 26 percent of freshwater fish, 38 percent of marine mammals, 12 percent lizards, 5 percent of snails and 50 percent of plants are listed as not threatened or not at risk.
[44] See CJA Bradshaw and others *Evaluating the relative environmental impact of countries* (PLOS One, 2010). New Zealand is a hotspot of endemism, in that around 40 percent of plants, 90 percent of fungi, 70 percent of animals and 80 percent of freshwater fish found nowhere else on the planet.
[45] See also Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[46] See https://www.lawa.org.nz/explore-data/groundwater-quality. Compare https://www.thepress.co.nz/nz-news/350268801/selwyn-council-spend-5m-hunt-nitrate-free-drinking-water
[47] Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[48] *Going with the grain: Changing land uses to fit a changing landscape* (Parliamentary Commissioner for the Environment, 2024) citing Our Land and Water National Science Challenge – McDowell et al and Snelder, Smith et al
[49] https://www.horizons.govt.nz/HRC/media/Media/Water/Lake-Horowhenua-Report-122017.pdf?ext=.pdf
[50] Ministry for the Environment *Ōtūwharekai/Ashburton Lakes lessons-learnt report: A Case Study Examining Ongoing Deterioration of Water Quality in the Ōtūwharekai Lakes* (Wellington, 2023).
[51] Ministry for the Environment and Statistics New Zealand *New Zealand's environmental reporting series: Environment Aotearoa 2019* (2019) at 70.
[52] Parliamentary Commissioner for the Environment *A review of the funding and prioritisation of environmental research in New Zealand* (2020); Parliamentary Commissioner for the Environment *Focusing Aotearoa New Zealand's environmental reporting system* (Office of the Parliamentary Commissioner for the Environment, Wellington, November 2019).
[53] See https://media.umbraco.io/te-waihanga-30-year-strategy/py0p420w/the-cost-of-consenting-infrastructure-projects-in-new-zealand.pdf
[54] See S Elias *Righting environmental justice* (address to the Resource Management Law Association, 25 July 2013) at 2.

[55] See R Joseph "The Treaty, tikanga Māori, ecosystem-based management, the RMA and power sharing for environmental integrity in Aotearoa New Zealand – possible ways forward" in G Severinsen and R Peart Reform of the resource management system: The next generation - Working paper 3 (EDS, 2018) at 34; Waitangi Tribunal The stage 2 report on the national freshwater and geothermal resources claims (Wai 2358 report), 2019; Waitangi Tribunal Ko Aotearoa tenei: A report into claims concerning New Zealand law and policy affecting Māori culture (Wai 262, 2011) at 266.
[56] Ministry for the Environment framing questions for panel discussion, Resource Management Law Association Conference September 2024.
[57] Comment from Jamie Tuuta, panel session at Resource Management Law Association Conference September 2024.
[58] https://www.act.org.nz/an-environmental-protection-act-that-works
[59] Ngā Aho and Papa Pounamu *Review of "Better Urban Planning" draft report* (2016) at 41. "Whakatipu rawa (the need to retain the resource and asset base for future generations)" is important: See Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[60] EL Ng and J Zhang "The search for the meaning of soil health: Lessons from human health and ecosystem health" 11 *Sustainability* (2019), 3697.
[61] For example, the possibility of putting a dollar value on environmental harm.
[62] Ministry for the Environment & Stats *New Zealand Environmental Reporting Series: Environment Aotearoa 2022* (2022).
[63] Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[64] See G Severinsen and R Peart *Reform of the Resource Management System: The Next Generation Synthesis* Report (Environmental Defence Society, Auckland, December 2018).
[65] D Grinlinton "The intersection of property rights and environmental law" (2023) 25(3) Environmental Law Review 202.
[66] *White v Chandler* [2001] 1 NZLR 28 at [67]. Although it has also been noted that New Zealand has relatively weak recognition of property rights compared to OECD countries. For example, Ireland recognises property rights in its constitution.
[67] Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[68] Note that "the radical title of the Crown is a technical and notional concept. It is not inconsistent with common law recognition of native property… Any property interest of the Crown in land over which it acquired sovereignty therefore depends on any pre-existing customary interest and its nature": *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 at [31].
[69] See D Grinlinton "The intersection of property rights and environmental law" (2023) 25(3) Environmental Law Review 202.
[70] Property is "a description of a legal relationship with a thing… a degree of power that is recognised in law as power permissibly exercised over the thing" See *Yanner v Eaton (1999)* 201 CLR 351; *Minister of State for the Army v Dalziel* (1944) 68 CLR 261; P O'Connor "The changing paradigm of property and the framing of regulation as a taking" (2011) 36 Monash University Law Review 50 at 54–6.
[71] D Grinlinton "The intersection of property rights and environmental law" (2023) 25(3) Environmental Law Review 202.
[72] *The Kiwi Party Inc v Attorney General* [2020] NZCA 80.
[73] Which has been made plain under the Urban Development Act 2020, where land can be acquired compulsorily for a housing or commercial development and then sold to private persons.
[74] See Biosecurity Act 1993.
[75] See Bill of Rights Act 1990, s 5.
[76] *The Kiwi Party Inc v Attorney General* [2020] NZCA 80 at [53].
[77] One commentator has pointed out that property rights themselves can be regarded as privileges: see B France-Hudson "Property Rights versus Environment? A critique of the coalition government's approach to the reform of the Resource Management Act" (2024) 20(4) Policy Quarterly 35 at 37.
[78] See The Nature Conservancy *Outside our doors: The benefits of cities where people and nature thrive* (2016).
[79] Ministers signalled the intention to pursue value uplift capture mechanisms at a speech at the Local Government New Zealand conference in March 2024: see https://www.lgnz.co.nz/news/media-releases/new-funding-and-financing-tools-could-be-a-game-changer/.
[80] James Whetu *Think piece on consideration of kaupapa Māori ideals in a future resource management system* (commissioned by EDS, December 2024).
[81] Ngā Aho and Papa Pounamu *Review of "Better Urban Planning" draft report* (2016) at 41.
[82] Ngā Aho and Papa Pounamu *Review of "Better Urban Planning" draft report* (2016) at 41. "Whakatipu rawa (the need to retain the resource and asset base for future generations)" is important: Parliamentary Commissioner for the Environment *Going with the grain: Changing land use to fit a changing landscape* (May 2024).
[83] RJ Bollard "The Resource Management Regime and Private Property Rights and Interests — Is there an Untoward Tension between the Two?" (2010) 14 NZJEL 1 at 22.
[84] J Boston "Assessing Aotearoa's Latest 'War on Nature' – or 'Goodbye Freddy" (2024) 20(4) Policy Quarterly 3 at 7.
[85] *Falkner v Gisborne District Council* [1995] 3 NZLR 622.