

Replacing the Resource Management Act

Risks and solutions

September 2025



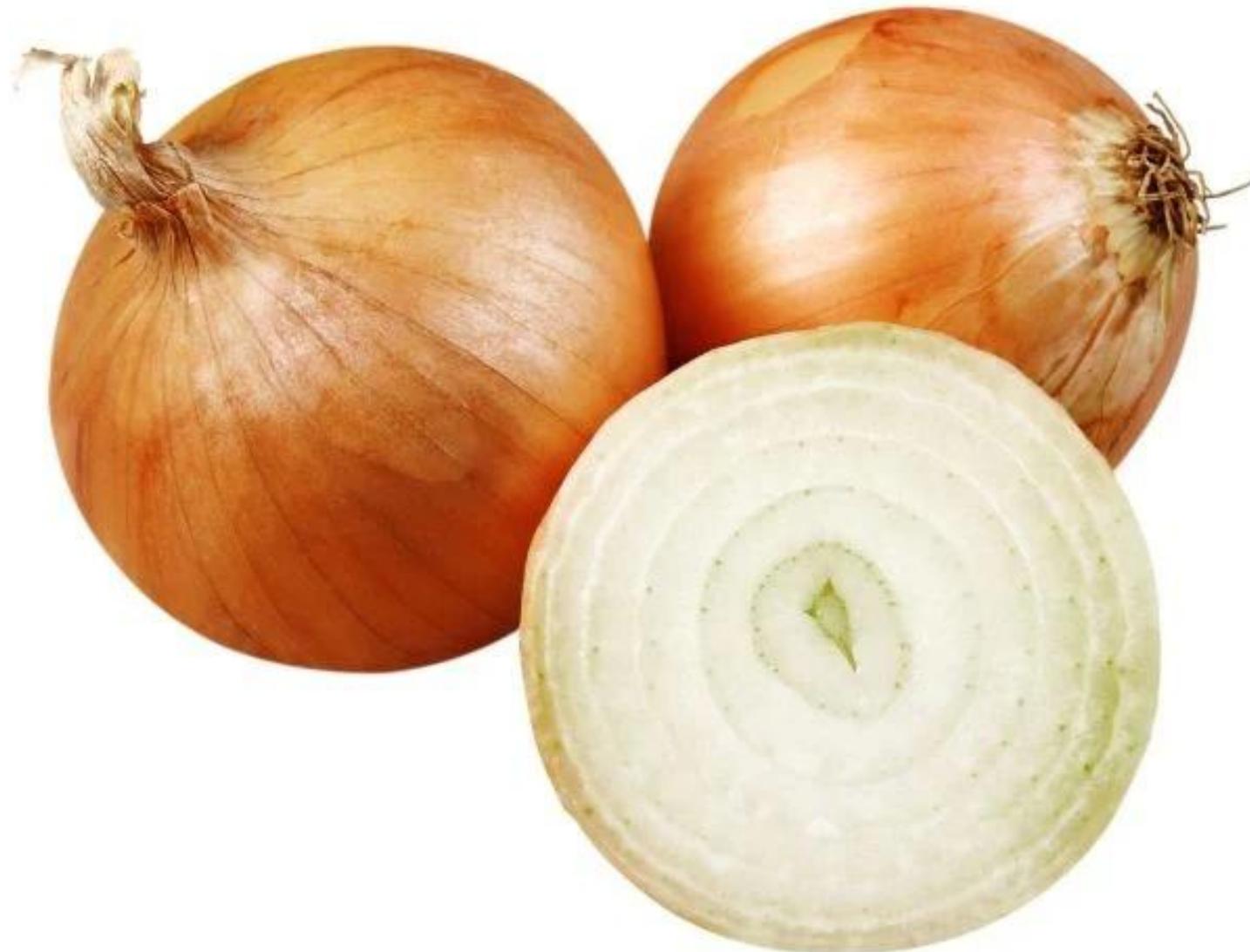
**Environmental
Defence
Society**



Forest & Bird
TE REO O TE TAIAO | *Giving Nature a Voice*



**Michael &
Suzanne
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Credit: Foodcraft HK

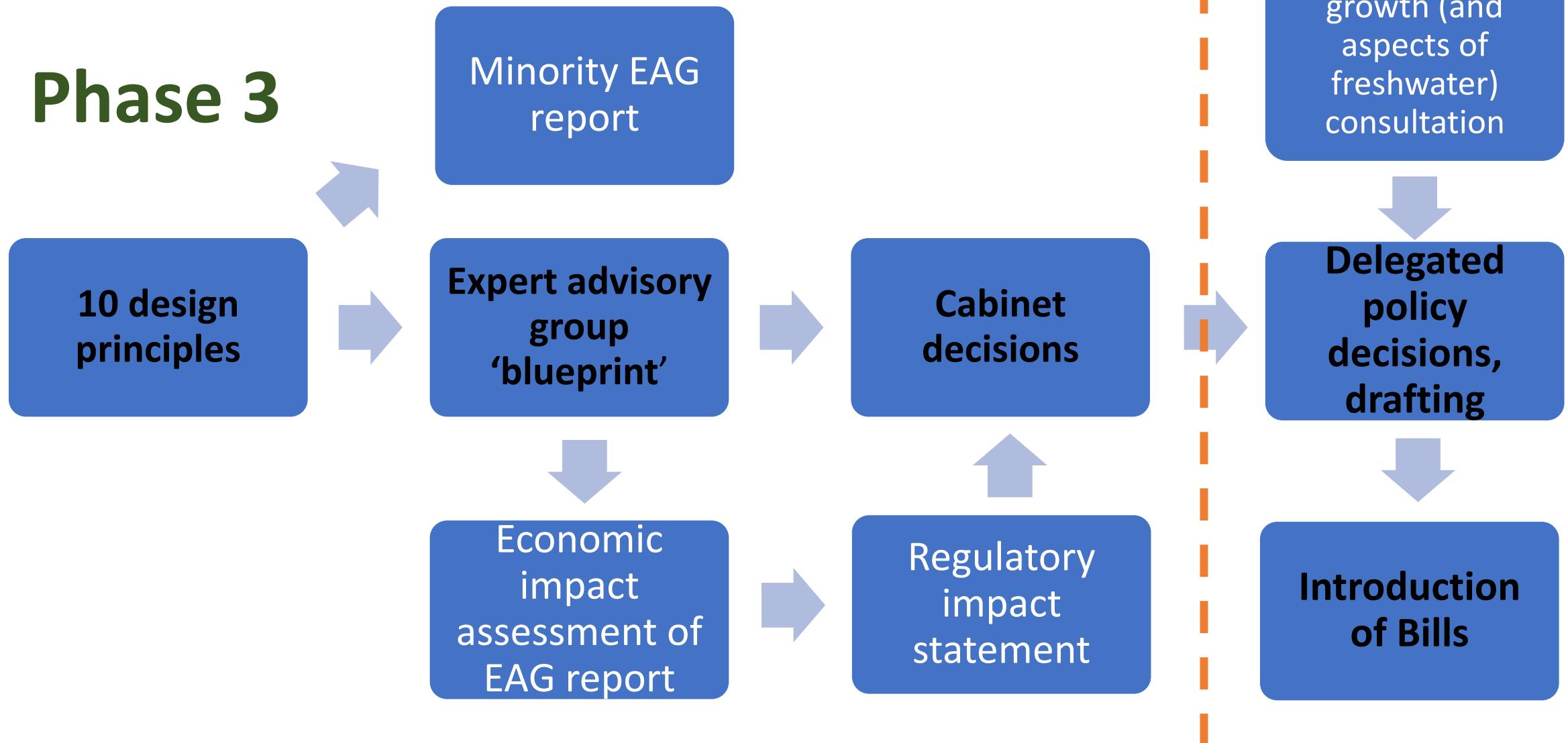
How we got here

Phase 1 – repeal of the Natural and Built Environment Act and Spatial Planning Act

Phase 2 – Fast-track Approvals Act, two RMA amendments, new and amended national direction

Phase 3 - replace the RMA entirely with two statutes premised on the enjoyment of property rights

Phase 3



Seven key shifts

System scope (externalities and higher threshold of effects)

Regulatory takings

Legislative design

Purpose and principles (tests for decision-making)

Environmental limits

Spatial planning

Standardisation

Shift 1: Scope

Cabinet has determined that:

Effects (relating to land use) borne solely by the party undertaking the activity would not be controlled.



Preventing land
contamination?



Protection of productive land?

Source: RNZ

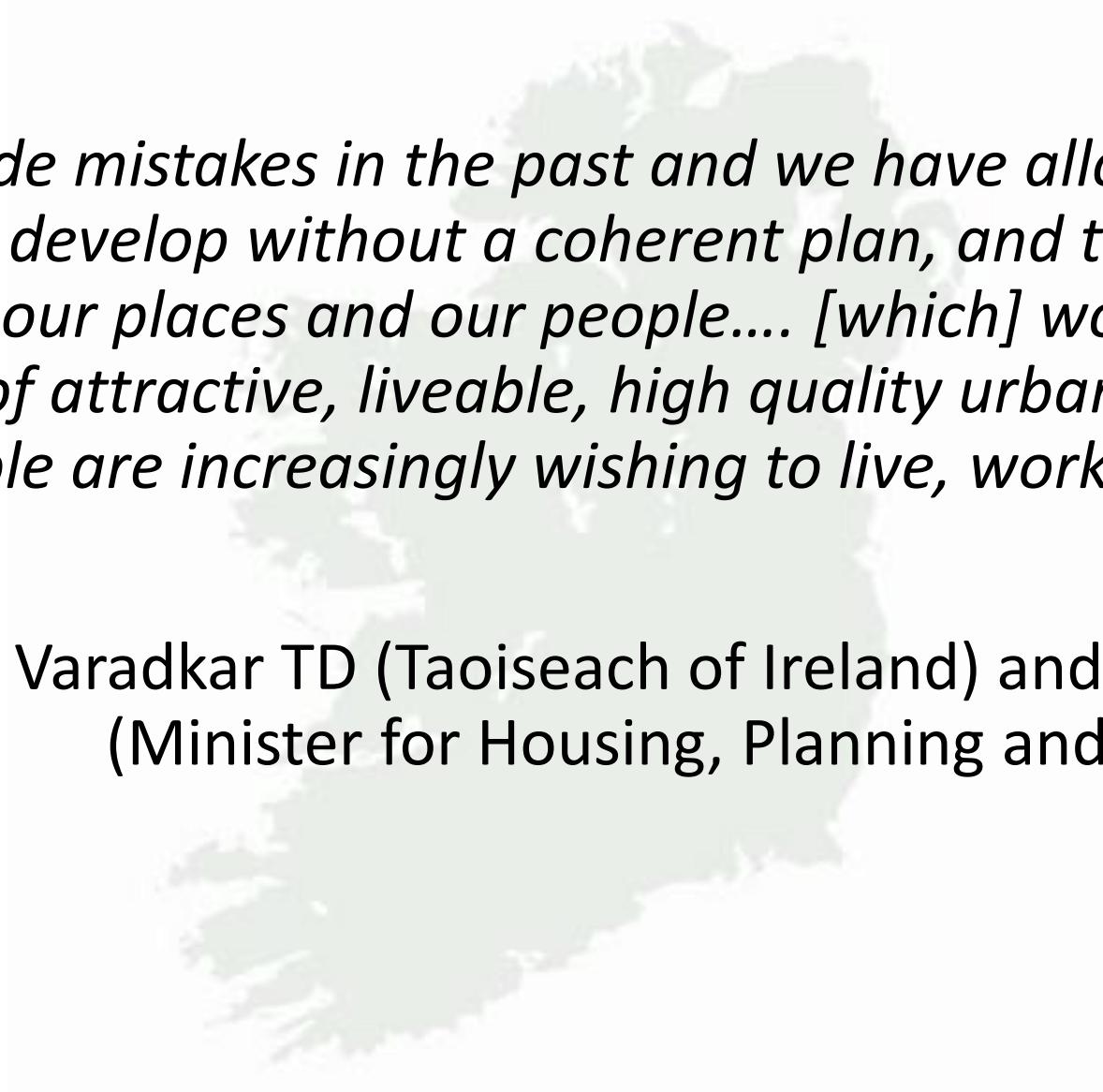
A photograph of a dense forest floor. The ground is covered in a thick layer of green moss and various small ferns. In the background, tall, dark trees stand, their trunks partially obscured by mist or sunlight filtering through the canopy. The overall atmosphere is lush and ancient.

Protection of indigenous biodiversity on private land?

Source: RNZ

An aerial photograph of a large urban sprawl. The image shows a dense network of roads, cul-de-sacs, and residential areas. In the center, there is a large, multi-level interchange or roundabout. The surrounding areas are filled with rows of houses and apartment complexes, creating a pattern of urban sprawl. The terrain appears to be a mix of developed land and some green spaces.

Urban limits and compact cities?



We have made mistakes in the past and we have allowed the country to sprawl and develop without a coherent plan, and to the detriment of many of our places and our people.... [which] works against the creation of attractive, liveable, high quality urban places in which people are increasingly wishing to live, work and invest.

Leo Varadkar TD (Taoiseach of Ireland) and Eoghan Murphy TD
(Minister for Housing, Planning and Local Government)

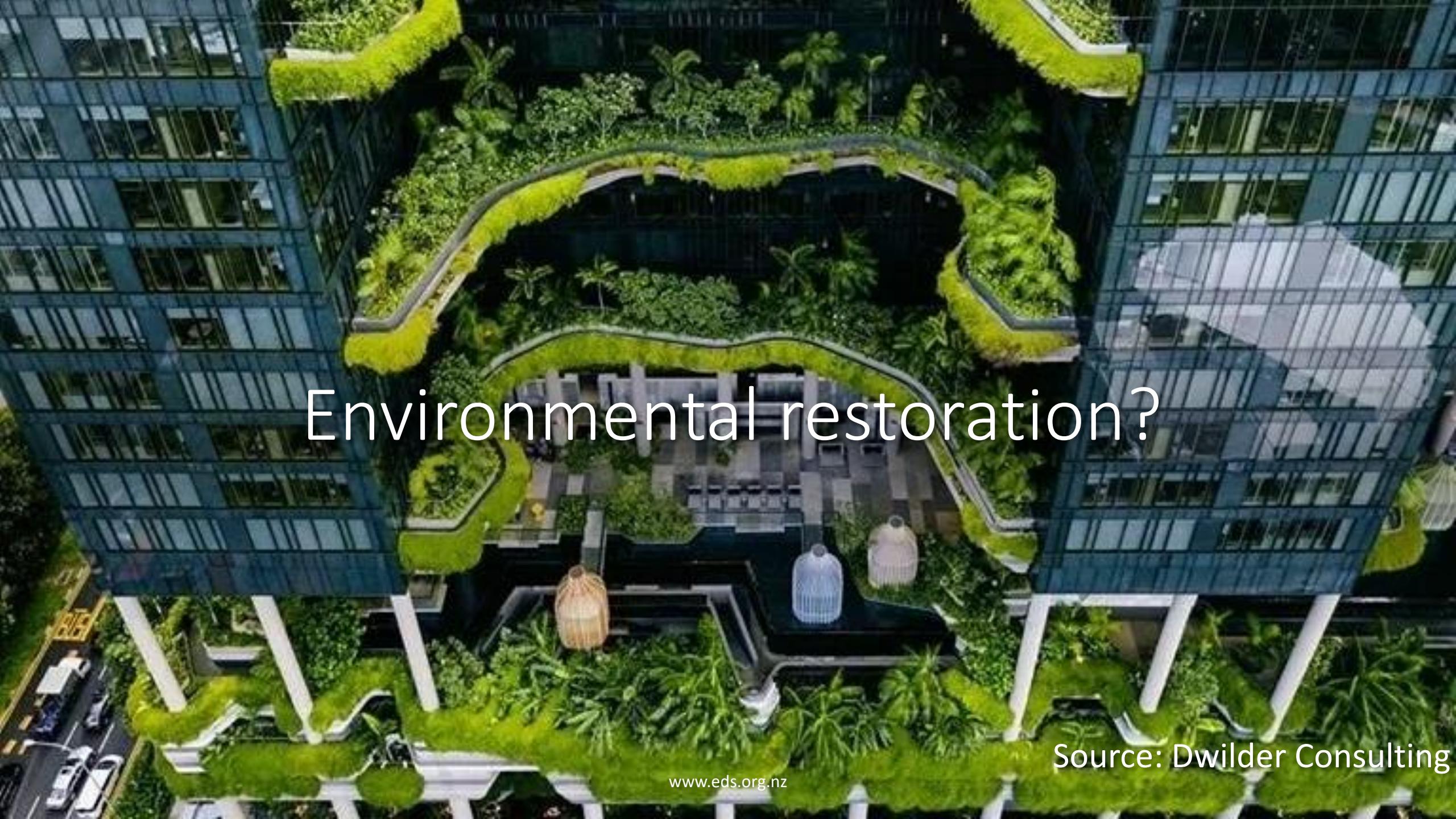


Good urban design?



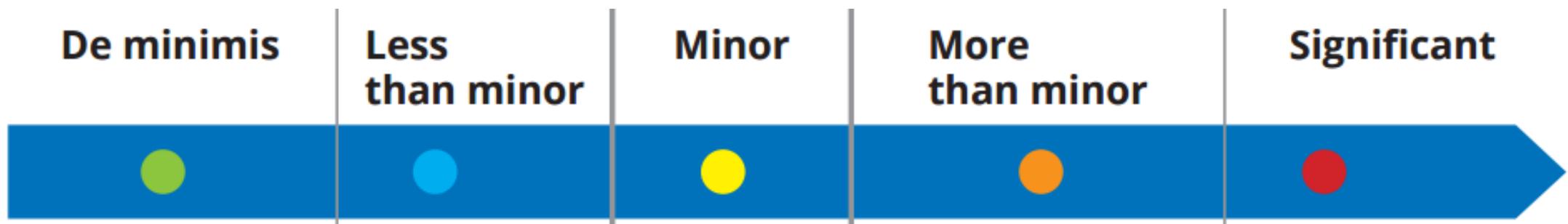
Resilience to climate change?

Source: NZ Herald



Environmental restoration?

Should we really ignore the small stuff?



Shift 2: Regulatory takings

- Cabinet has agreed that a new system will include protection against regulatory takings.
- The EAG's proposals are complex (compensation would apply to certain overlays).
 - Where national standards set a method for establishing overlays (eg criteria for identifying SNAs) and councils simply followed them, compensation wouldn't be *presumed*, but affected owners could still make a claim.
 - Compensation would be presumed where councils went beyond national standards.
 - Compensation would be determined based on 'significant impairment' to land value.

Shift 2: Regulatory takings

What do property rights include (and not include)?

While there is a reasonably longstanding acceptance that landowners are responsible for pests and weeds that can escape and damage the properties of neighbours, some landowners still regard prohibitions on the removal of indigenous vegetation or the drainage of wetlands as an illegitimate truncation of their rights to use land...

Rt Hon Simon Upton

Shift 2: Regulatory takings

What's the extent of the problem?

planning horror stories are cited as standard practice; there is no attempt at empirical inquiry...

Professor Barry Barton

Shift 2: Regulatory takings

- Existing safeguards
 - Section 32 reports
 - Appellate jurisdiction of Environment Court
 - Local democracy
 - Case law proportionality requirements
 - Section 85





A playground for lawyers?



\$700 million.

\$14 billion.

\$2 billion.

Shift 3: Splitting the RMA

Cabinet has agreed to have:

Two Acts that separate land-use planning and natural resource management – a Planning Act and a Natural Environment Act.

The EAG explores this further but the precise nature of a split, and interface, remains unclear.

Shift 3: Splitting the RMA

- A solution in search of a problem?
- Splitting the RMA would have several risks, no matter how it is done.
 - The natural environment, including land, is an interconnected whole.
 - Disruption of existing RMA instruments.
 - Disruption of existing case law and create uncertainty, complex points of interaction, litigation and additional cost.
 - Duplication of procedural provisions.

Part 3
Duties and restrictions under this Act

Land

- 9 Restrictions on use of land
- 10 Certain existing uses in relation to land protected
- 10A Certain existing activities allowed
- 10B Certain existing building works allowed
- 11 Restrictions on subdivision of land

Coastal marine area

- 12 Restrictions on use of coastal marine area
- 12A Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas *[Repealed]*
- 12B Continuation of coastal permit for aquaculture activities if aquaculture management area ceases to exist *[Repealed]*

River and lake beds

- 13 Restriction on certain uses of beds of lakes and rivers

Water

- 14 Restrictions relating to water

Discharges

- 15 Discharge of contaminants into environment
- 15A Restrictions on dumping and incineration of waste or other matter in coastal marine area
- 15B Discharge of harmful substances from ships or offshore installations
- 15C Prohibitions in relation to radioactive waste or other radioactive matter and other waste in coastal marine area

Noise

- 16 Duty to avoid unreasonable noise

Shift 3: Splitting the RMA

- A ‘functional’ split has most promise, but needs careful design.
- Many functions of regional and district councils overlap, and they would need to be distributed to the right statutory homes - including indigenous biodiversity protection.
- Overseas models are usually split, but *not* in the binary ‘enabling/protective’ way being presented in New Zealand.
- They have also generated some issues around complexity, as well as things falling between the cracks.

Shift 4: Purpose and principles

- Cabinet has said that a new system's principles should be enabling.
- The EAG has said a Planning Act would include a series of (1) goals, (2) decision-making principles, and (3) procedural principles.
- These would be premised on 'the need to protect a person's use and enjoyment of their land' and 'prevent unreasonable incursions from the use of land by other landowners'.
- A Natural Environment Act would have its own set of goals and decision-making principles, although some of these would be the same as the Planning Act.

Shift 4: Purpose and principles

- Part 2 will need to be ‘split up’.
- But the bigger picture question is the general relationship between use and protection of resources...
- The RMA has been a ‘handbrake’ on development and has been “interpreted as putting the environment first ... above development and other land use”.
- But *has* the RMA put the environment first? And to what extent?

The legal position

Outcomes on the ground

A user's perspective



Environment Act 2021

www.eda.org.nz



Nature Restoration Law
approved in the
EU Environment Council

#NatureRestorationLaw



Ríaltas na hÉireann
Government of Ireland

Shift 5: Environmental limits

- Cabinet has said the new system will “strengthen and clarify the role of environmental limits and how they are to be developed”.
 - Where needed to protect human health, they’d be set nationally.
 - Where needed to protect the ‘natural environment’ they would be set by regional councils using a nationally set methodology.
 - There would be mandatory domains for which limits must be set, potentially including air, water, soil and ecosystems.
 - Human use of resources would be capped to ensure no limits were breached, and there would be a process for some over allocated resources to achieve limits over time.
- The EAG provides more detail.

Shift 5: Environmental limits

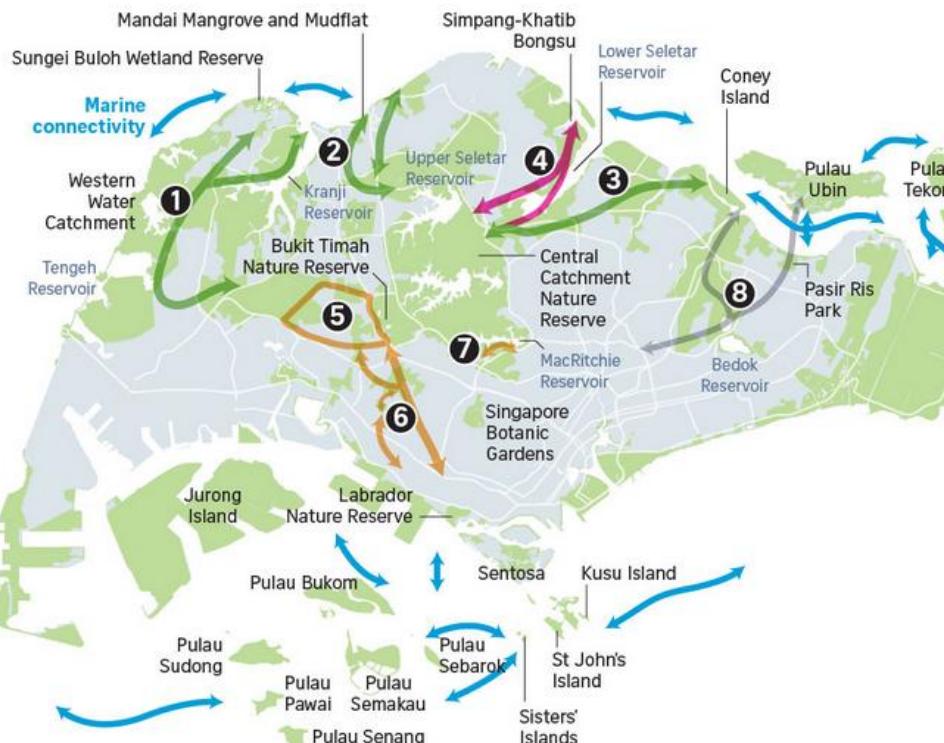
1. Clarity about what an environmental limit means.
2. Clarity about the purpose of limits.
3. Mandatory domains (complete coverage) – including biodiversity.
4. The right geographical scale.
5. Targets and a pathway to improvement.
6. Strong legal consequences.
7. Institutional independence.
8. Accountability.

Shift 6: Statutory spatial planning

A Planning Act will require long-term, strategic spatial plans. The idea is that these will enable development within environmental constraints, and “lower the cost of future infrastructure”.

Shift 6: Statutory spatial planning

- As recognised by the EAG, spatial planning is about more than just infrastructure.
- Environmental constraints
 - Protecting particular features
 - Bigger picture constraints (strategic land uses)
 - Where things are *already* in the wrong place and we need transition.
- Environmental improvement and synergistic outcomes.



Source: NPARKS
STRAITS TIMES GRAPHICS

Shift 7: Standardisation

The government has pointed to “the absurd bespokism of navigating new consents and conditions for things we’ve done many times before”

and proposed

“greater use of national standards, setting minimum requirements for developments, infrastructure and other processes that are currently regulated via consents.”

Shift 7: Standardisation

- Two distinct issues: consistency generally, and permitted activity status.
- Procedural consistency makes a lot of sense.
- Substantive consistency is good in principle too, but proceed with caution - different environments will respond differently to the same activities. Model plans and default consent conditions could help.
- Expansion of permitted activities has significant risks.

Risks/opportunities for the natural environment

	Opportunity if done well	Risk if done poorly
Scope – only managing externalities	LOW	HIGH
Scope – raising effects threshold	LOW	HIGH
Regulatory takes	LOW	HIGH
Splitting the RMA	LOW TO MODERATE	HIGH
New purpose/principles	MODERATE	HIGH
Environmental limits	HIGH	HIGH
Spatial planning	HIGH	HIGH
Standardisation (general)	MODERATE	HIGH
Standardisation (permitted status)	LOW TO MODERATE	HIGH

Thank you!



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