nzcid

Policy Priorities for Advancing Economic Infrastructure Development in New Zealand

Discussion Paper

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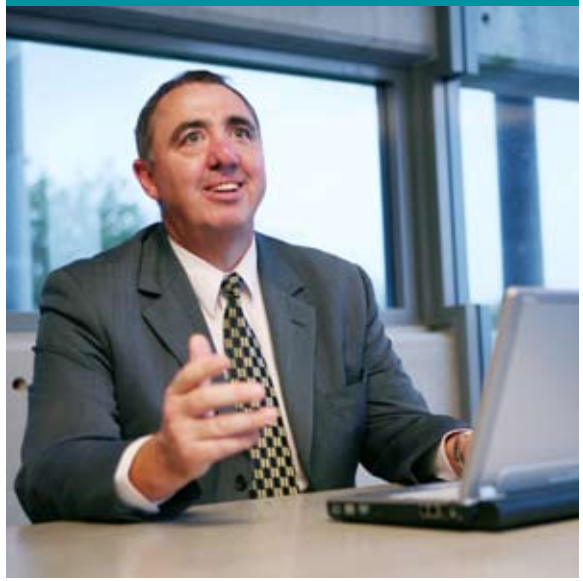
Otira Viaduct, Arthurs Pass, South Island



Stephen Selwood
Chief Executive NZCID

“Now is the time to invest for growth”

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Foreword by **Matthew Cockram**

Matthew Cockram
Chair NZCID

The quality of New Zealand's infrastructure is central to lifting national productivity, enhancing community services and enabling sustainable growth.

The New Zealand Council for Infrastructure Development undertakes various projects to stimulate debate and offer models for improvement in infrastructure provision for the nation. This paper is a continuation in a series of reports that respond to that challenge and has been developed as a policy advisory paper for the incoming government.[1]

It advances four priorities that need to be addressed to improve infrastructure delivery in New Zealand:

1. Provision of strong leadership and governance across and within the infrastructure sectors;
2. Provision of coordinated long-term and national infrastructure development strategies supported by detailed investment plans and programmes;
3. Reform of complex regulatory and environmental approval processes to recognise the importance of strategic infrastructure investment; and
4. Appropriate use of public and private sector debt as a means to finance the infrastructure development programme

The paper places New Zealand's economic infrastructure - electricity, transport, water and telecommunications - into context.[2] It advances a proposal for leadership at the highest level of government. It puts forward a model for partnership between the public and private sectors to oversee and advance best practice in national infrastructure provision and it discusses alternative approaches for legislative change in areas that will enhance New Zealand's development through improved public and private sector collaboration.

We hope that it will stimulate debate and encourage government action to address New Zealand's infrastructure needs.

[1] Previous NZCID discussion papers and reports are available at http://www.nzcid.org.nz/reports1.html. [2] Recommendations for enhancing the provision of social infrastructure and addressing the complexity of electricity governance and regulation in New Zealand will be addressed in subsequent papers.

Executive Summary

As the peak industry body in infrastructure, the New Zealand Council for Infrastructure Development has identified key areas to reform and improve infrastructure delivery in New Zealand. These recommendations include a suite of initiatives aimed at achieving a broader and deeper vision for New Zealand's infrastructure requirements that will underpin future productivity and growth.

NZCID analysis finds that provision of public infrastructure in New Zealand is well behind international best practise. Constrained infrastructure capacity is inhibiting New Zealand's growth potential.

While progress is being made to redress infrastructure constraints, the pace of change is slow relative to other OECD nations.

Lack of funding is often cited as a constraint but this does not need to be the case. New Zealand could and should make more effective use of debt financing to fund infrastructure that will lift productivity and enhance sustainable growth.

The real constraints surrounding effective delivery of national infrastructure are the lack of strategic direction at central government level; poor governance structures within central and local government; poor alignment between "vision" and implementation; lack of clear responsibility and accountabilities for implementation; and unnecessarily complex regulatory and legislative approval processes.

NZCID's recommendations include:

1. Recognition that provision of public infrastructure is an essential pillar of national development and productivity growth
2. Development of a prioritised twenty year New Zealand Infrastructure Strategy as a lead component of the government's overarching plans for social, economic and environmental development
3. Formation of an Infrastructure Cabinet under leadership of a Minister for Infrastructure to provide strategic oversight at the highest level of government
4. Appointment of a joint public and private sector infrastructure council "Infrastructure New Zealand" to:
    - advise Cabinet on a cohesive and integrated approach to policy reforms, project identification, prioritisation and delivery
    - develop a prioritised 20 year national infrastructure plan and programme,
    - provide on-going audit and review of the state of national infrastructure;
    - stimulate and advance best practise in the evaluation, funding and delivery of infrastructure
5. Review of local body governance structures and processes to ensure alignment between national, regional and local government accountabilities for infrastructure development
6. Leveraging social, economic and environmental development through prudent use of public and private sector debt to fund the infrastructure necessary for growth
7. The paper sets out a range of options for legislative reform of:
    - The Land Transport Management Act to provide for an integrated fully funded transport strategy as a component part of the New Zealand Infrastructure Strategy and to enable wider application of road tolling schemes and concessions to fund more timely delivery of transport infrastructure enhance value for money
    - The Resource Management Act to enable a consenting process for infrastructure projects of national significance, incorporating one dominant set of provisions governing essential infrastructure, to streamline consents by removing duplicity of process.
    - The Public Works Act to provide flexibility to pay a premium to an affected party reflecting disruption of settled use of their property
    - The Local Government Act and the Corrections Act to remove provisions which inhibit private sector partnerships for the provision of public infrastructure.

Building NZ's Future Success

World class infrastructure is central to New Zealand's standard of living. The supply of water, energy, transportation and communications underpin the quality of our people's health, education, personal safety and security and our agriculture, trade and commerce, culture and entertainment.

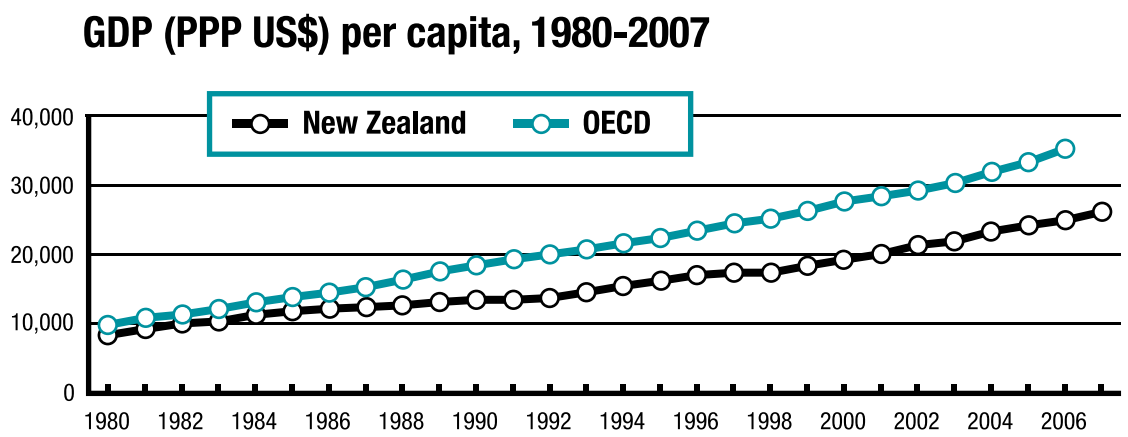
Lifting New Zealand's competitiveness at national, regional and local levels, in an open and globally integrated economy will drive the nation's future success. New Zealand's future prosperity will be determined by our ability to improve our overall level of productivity, trade successfully in international markets and to capture an adequate share of international investment.

In turn, New Zealand's ability to secure investment needed for productivity growth is dependent upon its perceived advantages of having significant urban areas with international connections, world class infrastructure, institutions, educational and research facilities, business services, cultural and entertainment facilities.

To the extent that we fail to deliver on these essential services, domestic and international investment will be lost to overseas markets. The gap between income per capita for New Zealand and competing OECD nations will continue to increase as it has over the last three decades.

The World Economic Forum's latest survey on global competitiveness shows the increasing gap between GDP per capita for New Zealand as compared with the OECD average

Figure 1: NZ vs. OECD GDP per Capita 1980 - 2007



Source World Economic Development Forum Global Competitiveness Report 2008 2009

Infrastructure is critical for sustainable development

Infrastructure is a central pillar of social, economic and environmental and cultural development. Lifting New Zealand's potential depends on enhancing capacity for the movement of people, goods, energy and information between different places domestically and internationally. Improvements in terms of time and cost can reduce the disadvantages of distance and have significant positive impacts on national productivity.

Physical networks of infrastructure such as roads, public transport, water, energy and communications are of particular relevance since they themselves have a spatial impact and also influence the location, timing and extent of development.

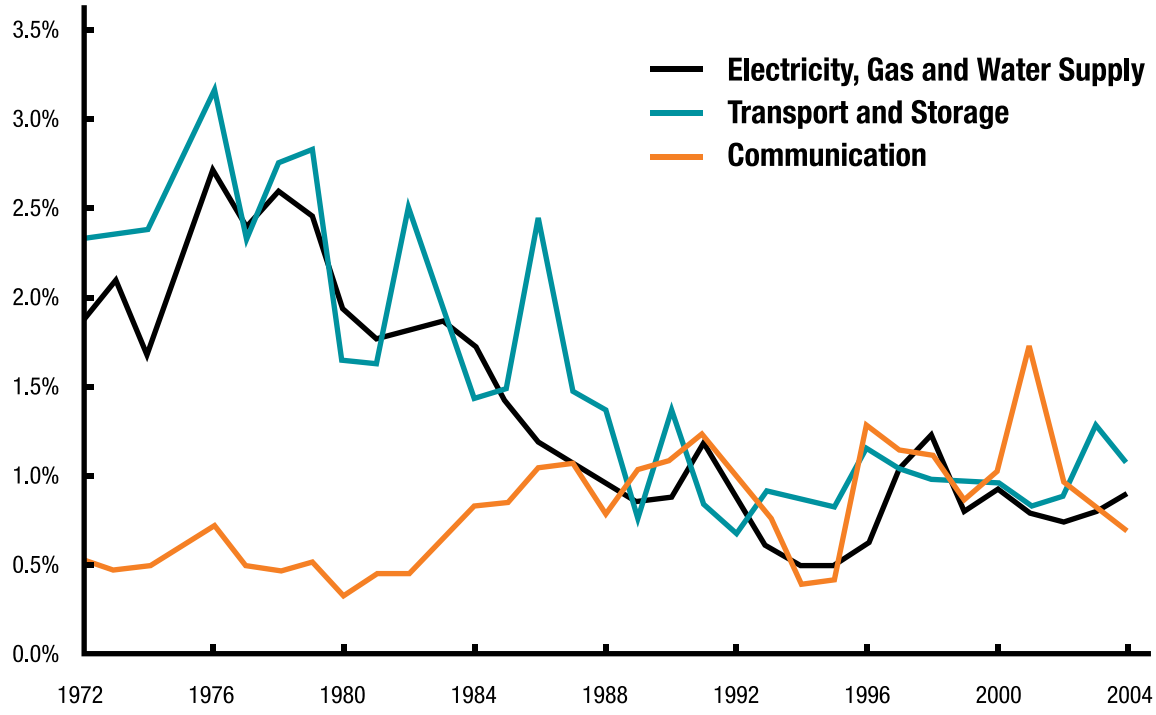
Social infrastructure, such as schools, hospitals, recreational, conference and tourism facilities relate to particular locations and are central to supporting regional development.[3]

But... New Zealand's Economic Infrastructure is lagging behind other OECD nations[4]

NZ Council for Infrastructure Development commissioned the NZ Institute for Economic Research to review the level of investment in economic infrastructure in New Zealand and compare our performance with other OECD nations.[5] The analysis indicates not only that New Zealand is falling behind other nations in redressing its infrastructure deficit, but also raises questions about the efficiency with which New Zealand is using its limited funds.

Figure 2 extracted from the report shows the decline in investment in electricity, gas, water, and transport and storage as a share of GDP since the seventies.

Figure 2: Gross fixed capital formation in NZ infrastructure industries 1972 – 2004 as a percentage of GDP



Sources NZIER, Dept Statistics, NZCID

[3] Recommendations for advancing social infrastructure in New Zealand will be addressed in a separate paper. [4] Economic infrastructure refers to transport, energy, water and telecommunications infrastructure and are the primary focus of this paper. [5] NZIER Summary Infrastructure Benchmarks, Report to New Zealand Council for Infrastructure Development, Sept 2005 updated Dec 2007 available at http://www.nzcid.org.nz/reports1.html.

While past investment has enabled us to get by in the short term, evidence of the inadequacy of our economic infrastructure to meet current and future societal needs is now apparent on a daily basis including:

- urban congestion (particularly Auckland where the average traffic delay per minute at peaks times is 40% worse than a comparative city like Brisbane)
- poor safety margins on rural roads (the latest 2008 KiwiRap statistics show that 40% of the State Highway network in Northland and Auckland regions and 36% of Waikato and Bay of Plenty regions fall into the medium high to high risk for fatal or serious injury crashes see http://www.kiwirap.org.nz/results.html),
- substandard public transport (particularly in Auckland and Wellington where there is a backlog on unfunded public transport projects and or capacity constraints;
- run down railways; ("Despite some improvements in the past few years, a significant investment is required just to keep some existing services running". Finance Minister Michael Cullen NZ Government Press Release 22/7/2008),
- insufficient dry year electricity supply margin (evidenced by risks to secure electricity supply in four out of the last 8 years, 2001, 2003, 2006,2008),
- inadequate water quality and services incompatible with New Zealand's clean green image (the last Ministry of Health survey in 2005 reported 980,000 (24%) New Zealanders drinking-water that failed to comply with the bacteriological Drinking Water Standards or were self-supplied: 102,000 monitored supplies had unacceptable levels of E. coli. 2007 summer - 40% of monitored swimming spots had questionable water quality; 10% had levels of high bacteria, indicating that they are generally unsuitable for swimming);
- below average broadband speeds inhibiting growth of a knowledge economy (New Zealand lies in the bottom third of OECD nations for broadband speeds);
- the lack of national facilities of sufficient scale to host international sporting and conference events ((such as the lack of capacity to host a Commonwealth Games or major international conference events)

The government has responded to the infrastructure deficit with increases in transport funding, increased regulatory control and influence in the energy sector, an investigative and consultative Water Programme of Action process, and most recently with telecommunications loop unbundling and operational split up of Telecoms operations.

However, the pace of change is slow.

Regulatory uncertainties, including climate change policy, security of water rights, and uncertainty over the national transmission upgrade path continue to plague the electricity industry.

The transport sector is significantly under funded, with major road and public transport projects remaining unfunded.

The range of service provision across potable, waste water and storm water service delivery is extremely variable with widely differing levels in quality of service, procurement practice and supply chain management.

Despite sporadic investment in communications infrastructure over the last 10 years, investment has failed to keep pace with developing technology. New Zealand currently sits in the bottom quartile of the OECD in terms of its ICT infrastructure capacity. While investment in fibre to the node has been initiated by Telecom, it is clear that the existing copper loop and associated network access infrastructure has insufficient capacity to handle the increased demand into the future. A fundamental step change in the level of investment is required to roll out high speed broadband across the country.

As a consequence of these apparent deficiencies, **inadequate infrastructure is consistently ranked by the investment and business community as the single most problematic factor to doing business**.[6] While ranked 24th overall for its relative global competitiveness, the 2008 executive opinion survey undertaken as part of the World Economic Forum's Global Competitiveness Report ranked New Zealand 50th for the adequacy of its infrastructure. Transport and energy were seen as the key areas of concern. Other countries of similar size to New Zealand such as Finland and Denmark were ranked in the top 10, while Australia was ranked 25th for the quality of its infrastructure.

[6] As evidenced by World Economic Forum Global Competitiveness and IMD World Competitiveness reports, 2004, 2005, 2006, 2007 and 2008.

The Institute for Management Development World Competitiveness Yearbook puts New Zealand 33rd of the 51 countries surveyed (21st in the OECD) for the adequate planning and financing of infrastructure.

Comparison of New Zealand's infrastructure and rankings with nations of equivalent size (see Table 1) provides a clear reflection of New Zealand's relatively poor standing in infrastructure quality. Only Ireland has comparably poor rankings for infrastructure. However, given the rate of investment in infrastructure that is now underway in Ireland, it will quickly overtake New Zealand in its relative position for the quality of its national infrastructure (see inset on Ireland's infrastructure investment programme below).

Table 1: International Comparisons - NZ with other OECD Nations of Comparable Size

	NZ	Ireland	Finland	Norway	Denmark	Australia
Land Area (sq km)	268,680	70,289	304,473	307,442	42,394	7,617,930
Population (m) 2007 est.	4.2	4.2	5.2	4.6	5.5	21.0
GDP /Capita PPP $US 2007 est.	26,400	43,100	35,300	53,000	37,400	36,300
Railways (km)	4,128	3,237	5,749	4,114	2,644	38,550
Roads (km)	92,931	96,602	78,821	92,946	72,362	812,972
Expressways (km)	171	200	700	664	1,032	
OECD Ranking GDP per Capita 2005	22nd	9th	13th	2nd	7th	16th
Transport Ranking (IMD)	31st	35th	7th	23rd	4th	21st
Energy Ranking (IMD)	35th	34th	8th	11th	4th	27th
Broadband Ranking (Internet NZ)	22nd	24th	9th	3rd	15th	17th
Investment (gross fixed) as % GDP (CIA World Fact Book 2007)	23%	25%	20%	21%	23%	27%
Public debt as % GDP (2007)	21%	25%	31%	71%	26%	15.%

Sources NZCID extracted data from: OECD Fact book 2008 and 2007 IMD Executive Ranking of 36 nations with GDP> $US10,000 per capita and CIA World Fact Book

Step change in the level of investment in economic infrastructure required

Drawing on publicly available information and government agency forecasts NZCID estimates planned expenditure on water, electricity, transport and broadband infrastructure exceeds $70 billion over the next decade.[7]

Approximately $31 billion of this relates to territorial local authority plans. While these are all theoretically funded through the combination of increases in rates and user charges, the 2007 local body election raised serious questions about the affordability of the rates and price increases assumed within these "balanced" funding plans. Moreover, under current projections, local authority capital expenditure declines significantly over the 10 years. This seems an unrealistic scenario given ongoing growth demands, increasing environmental standards and pressures resulting from climate change. The decrease in capex if understated through the lack of accurate future predictions would require rate funding or price increases not anticipated in the LTCCPs which are already under rating increase pressure.

NZCID recently commissioned GHD and Pricewaterhouse Coopers to provide an objective assessment of the state of the New Zealand water industry in order to identify opportunities for improved public policy from an infrastructure development perspective. The overall state of the industry received a scorecard rating of "C", including a C+ for water supply, a "C" for waste water and a "C-" for storm water . Under the grading criteria, the infrastructure is considered "adequate" but major changes are required in one or more of: the infrastructure condition; committed investment; regulatory regime; and planning processes; to enable infrastructure to be fit for its anticipated purpose.[8]

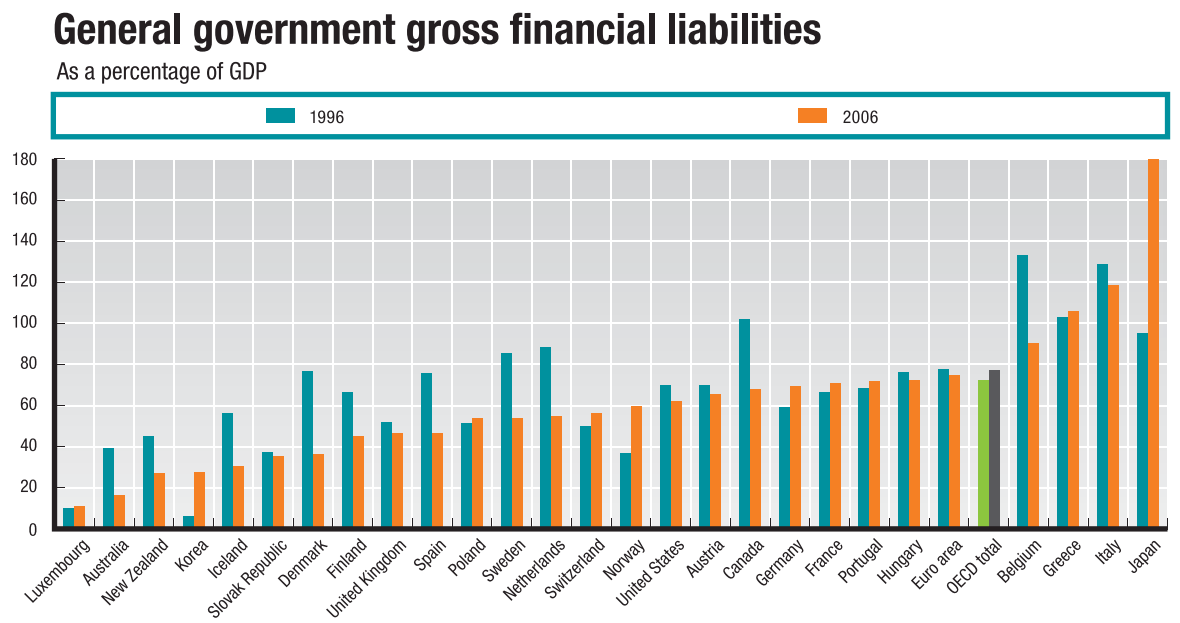
In addition to local authority funding pressures, there is at least $15 billion in major transport capital works that are not included in current forecasts, largely due to insufficient funding.

These funding gaps include:	**$ billion**
Waterview Connection in Auckland	2.0
Auckland Manukau Eastern Transport Initiative	1.5
Tauranga Strategic Roading Network	0.6
Waikato Expressway	1.0
Transmission Gully Wellington	0.6
Ngauranga to Airport Wellington	0.7
Waitemata Harbour Crossing Auckland	5.0
Other National State Highway upgrades	1.0
Auckland rail network	3.0
National rail network	1.0

[7] $31 billion in Long Term Council Community Plans (of which $22 billion is on water alone), $25 billion for Land Transport NZ, $5 billion on electricity generation, $5 billion in electricity transmission, and up to $5 billion on telecommunications. [8] NZCID Water Industry Report Card and Roadmap available at www.nzcid.org.nz.

Shortage of funding is not due to any national incapacity to finance these projects. As Figure 2 demonstrates New Zealand used to commit a much higher proportion of national income towards infrastructure investment. Insufficient funding is largely driven by the current practice of paying for infrastructure on a "pay as you go" basis. Notwithstanding current economic conditions, and projected budget deficits, New Zealand's public debt to GDP ratio is among the lowest in the OECD (refer Figure 3). There is little difficulty in New Zealand advancing its economic infrastructure through prudent combination of public and private sector debt. In fact doing so makes good economic sense where the returns exceed the cost.

Figure 3: Government Debt to GDP Ratio, OECD Fact Book 2008[9]



[9] Based on 2006 or latest data for each country listed. NZ is shown as at 2005

Given that New Zealand is already lagging behind other OECD nations in terms of the quality and provision of essential infrastructure, a substantial lift in investment is required. Investment in economic infrastructure from roads to railways, water treatment and services, telecommunications and broadband, energy supply are all pressing issues for New Zealand if we are to lift productivity and growth.

While sector based initiatives to redress immediate problems have been commenced and in some cases are under action, no national plan to address New Zealand's overarching infrastructure development needs currently exists.

The need for a national infrastructure strategy that provides a stable regulatory environment, that encourages public and private sector investment and innovation and which sets a clear direction for infrastructure development in the context of New Zealand's overall national development should be a priority for government.

Figure 4: KiwiRap Road Assessment Programme Collective Risk Map: Serious and Fatal accidents per kilometre

Source www.kiwirap.org.nz

Addressing the Infrastructure Deficit

Four priorities need to be addressed to provide for timely delivery of essential national and regional infrastructure development:

1. Provision of strong leadership and governance across and within the infrastructure sectors;
2. Provision of coordinated long-term and national infrastructure development strategies supported by detailed investment plans and programmes;
3. Reform of complex regulatory and environmental approval processes to recognise the importance of strategic infrastructure investment; and
4. Appropriate use of public and private sector debt as a means to finance infrastructure development.

Addressing these issues will provide a much needed boost to the New Zealand economy and provide an environment of certainty to stimulate private sector investment in the human and capital resources needed to lift productivity growth.

The balance of this discussion paper addresses each of these issues.

Part One proposes a model for reform of infrastructure leadership and governance at the national level.

Part Two discusses a range of possible reforms to existing legislation including: The Land Transport Management Act; The Resource Management Act; The Local Government Act; the Public Works Act and the Corrections Act.

Figure 5: Examples of Infrastructure Failure

Transmission Failure - Auckland

Congestion - Auckland

Railway Bridge Collapse - Gisborne

Storm Water Overflow - Auckland

Part 1: Infrastructure Leadership Planning and Governance

International Best Practice in Infrastructure Development

*"**Infrastructure and financial sector development.***
Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Effective financial sector policies facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment." **POLICY FRAMEWORK FOR INVESTMENT - OECD 2006 p21**

A feature of many successful economies is that they possess highly developed, well integrated planning, funding and implementation processes that both lead and support national development.

Ireland arguably provides the best example of such national development planning and implementation. The 2007 – 2013 National Development Plan (NDP) is the 5th in a series of plans developed since the 1950s. These seven year plans are set within the context an overall 20 year spatial development strategy for Ireland - the National Spatial Strategy - which seeks to ensure balanced national development. The NDP, having been jointly developed between government, business, employee representatives and the wider community, is a centrepiece for economic growth. It is promoted aggressively by government and has widespread public support and buy in.

In 2007 Canada developed its national infrastructure plan 'Building Canada' as a component of the Canadian government's long term economic plan. It provides a seven year funding plan to Canadian municipalities from 2007-2014.

Leading OECD nations such as Switzerland, the Netherlands, and Austria have integrated infrastructure ministries that provide national coordination of economic infrastructure.

In France, the Ministry for Transport, Infrastructure and the Sea maps infrastructure data against future needs in order to help the government prioritise and plan infrastructure investment.

Case Study: Ireland's National Development Plan

Ireland's latest National Development Plan - "Transforming Ireland – A better Quality of Life for All", was launched in January 2007. It provides investment of some €184 billion ($NZ360 billion) from 2007 to 2013 across Ireland's economic and social infrastructure, the enterprise, science and agriculture sectors, the education, training and skills base of the people, and environmental services.

The five Investment Priorities of the Plan are:	**€ billion**
Economic Infrastructure	54.7
Enterprise, Science and Innovation	20.0
Human Capital	25.8
Social Infrastructure	33.6
Social Inclusion	49.6
Total	**183.7**

The plan is designed to tackle Ireland's economic and social infrastructure deficits in areas such as Transport, Energy, Housing, Water, Education and Health to achieve balanced spatial development across the nation. This is funded by a 7-year Central Government Capital Envelope of almost €80 billion ($NZ160 billion approx).

In 2007 the UK Government released their "Planning for a Sustainable Future White Paper" which recommends significant improvements to the British planning system such that long term challenges like climate change can be met.

The State of California has enacted the California Infrastructure Planning Act requiring the Governor to submit to the legislature rolling 5 year infrastructure plans.

Most recently the newly elected Australian federal government announced a national approach to planning, funding and implementing future infrastructure needs. This now provides an overarching Australian federal government perspective to coordinate existing State Infrastructure Plans.

In such jurisdictions, national or state leadership takes a holistic long term approach and has strong "whole of government" direction and support. Long term infrastructure development programmes provide a foundation that leads social, economic and environmental development. Skills development is centred on providing the social and economic well being of the state. There is strong alignment between national aspirations, investment programmes in infrastructure, people and skills development. Investment programmes are supported financially by budget appropriation, typically over four or five year cycles to provide a climate of investment certainty and there is strong interaction between the public and private sectors in the provision and operation of physical infrastructure and community services.

There are a number of principles common to these jurisdictions that can be summarised as "best practise" in infrastructure development.

First, infrastructure is recognised as a fundamental platform for national development. It is given priority at the highest levels of government both because the level of capital investment required and because infrastructure has an impact across most government portfolios.

Case Study: NSW State Infrastructure Strategy 2008 – 2018

The New South Wales State Infrastructure Strategy has been produced as a whole–of–government process led by NSW Treasury with input from a range of NSW Government agencies and the Australian Rail Track Corporation. It is a rolling 10–year plan for infrastructure projects to support service delivery. First published in 2006, as a subset of the State Plan, the State Infrastructure Strategy is updated every two years. The latest update has just been released in June 2008.

Prior to the inception of the infrastructure strategy, the State's infrastructure spending had been mapped out portfolio–by–portfolio as part of the four year projections contained in each year's State Budget. The Strategy takes a different approach. Guided by Government agencies' asset management plans, the Strategy forms the link between the infrastructure plans detailed in the four forward years of each State budget, the 10–year State Plan, and the 25–year metropolitan and regional strategies. It is based on the principle of subsidiarity – the strategic choices of the higher level plan (NSW State) cannot be overridden by the planning and implementation authorities at a lower level.

The integrated nature of the Strategy is intended to allow the private sector, public sector agencies, local councils and the wider community to make decisions based on the Government's priorities and timing for major infrastructure projects. An important aspect is the broad funding requirement it maps out to finance the state's infrastructure goals. Over the next 10 years, the NSW Government's infrastructure investment will total about $140 billion, the largest capital expenditure in the State's history. That funding will rely principally on budget funding and increased borrowing. Public–private partnerships will be used where appropriate.

Secondly, effective infrastructure development is seen to require central government leadership and coordination. Development of national infrastructure strategies supported by development programmes is driven by recognition of the need to provide certainty for public and private sector investors to enable forward planning, capacity building, innovative project delivery and optimum use of capital.

While individual government ministries, State Owned Enterprises and government agencies in each jurisdiction are commonly responsible for investments within the overall plan, they are accountable to either the Departments of Finance and or Treasury for efficient use of funds and effective implementation.

Many jurisdictions also have a specialist infrastructure Ministry or a separate unit within their finance department or Treasury that is responsible for oversight and, in some cases delivery, of major infrastructure projects.

Thirdly, there is strong alignment between national, regional and local strategies. The activities of many organisations in the public and private sector whose policies, programmes and decisions significantly influence national development are integrated nationally in order to achieve balanced regional development.

These are all essential elements of national leadership.

Need for Enhanced Infrastructure Co-ordination and Implementation in New Zealand

In contrast to best practice, New Zealand has little coordination of its national or regional infrastructure planning. Generally speaking government departments (transport, education, health, justice, defence) and Crown agencies such as the NZ Transport Agency and OnTrack develop plans independently of one another and seek funding through the central government budget processes. Transport investment programmes continue to be dogged by "on again, off again" funding and planning processes. This is particularly the case with major national transport projects that continue to be plagued with uncertainties over funding.

Case Study: NZ Energy Strategy

The development of the New Zealand Energy Strategy is an example of providing leadership within the energy sector to guide public and private sector investment. The strategy seeks to provide "a reliable and resilient system delivering New Zealand sustainable low emissions energy" subject to maintaining security of supply at competitive prices. With its strong focus on renewable energy, the Strategy provides clear direction in terms of fuel choice. This is already guiding investment decisions by electricity generators.

While this is a very positive development, there remains a lack of specificity around the policy measures that are necessary to deliver on the vision..For example, a key challenge for the sector is the time it takes to gain regulatory approval and environmental consents for projects, particularly renewable energy projects which tend to have a larger environmental footprint than thermal generation alternatives.

Logical developments to enhance delivery of the NZES might include using the RMA processes to provide greater leadership and guidance on consenting "renewable" electricity generation, and rationalising regulatory processes.

As it stands, continuing uncertainties about the investment horizon persist caused by increasing pressures on land and water rights; a complex regulatory environment managed by a multiplicity of agencies; an uncertain transition path from thermal to renewable energy; together with uncertainties about gas discovery, gas prices and carbon pricing.

An effective strategy needs to set processes in place so that these issues can be resolved.

While central government agencies tend to work in silos, wider New Zealand is characterised by small scale, highly decentralised and, in some cases, extremely complex governance structures. Planning decisions are substantially delegated to the lowest level of local government with few national standards to guide decision making and little alignment between national, regional and local planning. Consequently, minority and competing interests at the local level tend to predominate over that which may be in the national interest.

A better balance needs to be struck between national, regional and local needs.
New Zealand's challenges and opportunities for infrastructure led growth lie in sectors such as energy, water, transport and telecommunications. By their very nature these involve significant cross boundary issues, yet are national in character and importance. In order for these opportunities to be realised, strong Government leadership and direction is essential.

Equally, it is critical that New Zealanders understand the importance of infrastructure development to lifting New Zealand's overall standard of living. This provides a context in which decisions about major infrastructure projects can be made. The New Zealand government is best placed to provide this leadership, and to inject a sense of national imperative and opportunity to the infrastructure task.

Providing this direction is about leadership, not central planning. It is about facilitation of infrastructure development that is in the national interest, not public ownership and control. It is about setting the overall context and strategic direction in which public and private planning and investment decisions are made.

The Need for a New Zealand Infrastructure Strategy

NZCID recommends there be central government focus and commitment to an overarching national infrastructure strategy for New Zealand known as the New Zealand Infrastructure Strategy (NZIS) that would sit within and support government's overall development plan for the economy. As with other jurisdictions, the purpose of a national infrastructure strategy would be to ensure that critical infrastructure sectors including transport, energy, water, and telecommunications infrastructure *are developed and maintained to raise*

South-East Queensland Infrastructure Plan and Programme 2007-2026

South East Queensland is experiencing the fastest growth rate of any urban region in Australia. By 2026 the population is expected to reach around 4 million people – an increase of more than one million. The South-East Queensland Infrastructure Plan and Programme 2007-2026 published in May 2007is targeted at ensuring the necessary infrastructure is provided in a timely fashion. It has three distinct phases:

- **First Phase** – first four years of the plan – provides forward estimates of the State Budget, and shows specific commitments to funding for nominated projects;
- **Second Phase** – years five to ten - commits budget provision for infrastructure investments for this period;
- **Third Phase** – year ten to twenty – includes infrastructure, which is likely to be required in the longer term, which will need to be considered in future infrastructure plans.

Notable features include:

- Recognition of the need to provide certainty on infrastructure development to enable forward planning, capacity building and innovative project delivery. Consequently a detailed 20-year program of infrastructure projects supported by a 10-year budget commitment is provided.
- Acknowledgement of the principle that strategically-focused infrastructure investment will help lead and support development and achieve key policy outcomes.
- Provision for alternative funding such as higher levels of borrowing together with private sector involvement through PPPs.
- Provision for annual updates and reviews including coordination of state and local government agencies

New Zealand's living standards as a whole – economically, socially, culturally and environmentally.

A central function of such an infrastructure strategy must be to ensure that the contribution of infrastructure development to the nation's social, economic and environmental development and growth is appropriately prioritised and is widely understood and supported.**The Strategy would spell out the basis on which sound infrastructure development will give all areas of the country the opportunity to develop to their potential.**

It would:

- identify key strategic dependencies between production, distribution, consumption or export of goods and services
- require relevant Government departments and agencies to formulate and implement long term national infrastructure development policies, programmes and public investment programmes
- provide for funding to follow strategy
- set a national context to inform regional planning guidelines and strategies and district and city development plans and strategies
- inform strategic investment, energy, transport, communications and other infrastructure policy decisions, for both the public and private sectors
- help to shape sector specific infrastructure programmes and other investment plans
- be documented by means of a 20 year infrastructure plan and programme consolidating major public sector investment plans of national significance into one document.

Emphasis on Balanced Regional Development

The New Zealand Infrastructure Strategy would recognise that the various regions of the country have different roles. It would seek to promote and co-ordinate these roles in a complementary, "win win" way. It would be about making regions competitive according to their strengths and not against one another; about ensuring a high quality urban environment, as well as vibrant rural areas.

Emphasis on Sustainable Development

Sustainable development would be an overriding imperative of the strategy by achieving balance between economic, social, cultural and environmental dimensions of a better quality of life.

Economic and Regulatory Context

The New Zealand Infrastructure Strategy would be developed and implemented within an integrated and financially sustainable economic and legal framework. Public investment in infrastructure would be governed both by reference to the overall budgetary situation and the priorities arising from the Strategy. However funding would follow strategy. Prudent use of public and private sector debt would ensure that the investment programme can be delivered according to plan. Value added private sector investment in public infrastructure would be both welcome and encouraged.

Enable New Zealand to Compete in an International Infrastructure Development Market

New Zealand is now competing in a global market for skills capital and expertise each of which are flocking to international markets (such as South East Queensland) which demonstrate political commitment and leadership. The NZIS would assert New Zealand's rightful place in the international market for skills and expertise and ensure that we both retain and attract the best and brightest talent in New Zealand.

Development of a New Zealand Infrastructure Strategy

Because of its significance to New Zealand's future, development of a New Zealand Infrastructure Strategy would require active engagement by organisations across all sectors of society.

These organisations include:

- Government, including government departments State Owned Enterprises and agencies of Government, particularly those involved with development promotion and physical or social infrastructure provision, e.g. ranging from the New Zealand Transport Agency, Housing, Education, Tertiary Education Commission, District Health Boards
- Regional and local authorities
- Union and employer organisations
- the private sector, including infrastructure providers in that sector, banks and financial institutions and the wider business community

Integrating the activities of the various organisations will require:

- the establishment of a clear leadership at the highest level to bring those involved together to develop oversee implementation of an agreed New Zealand Infrastructure Strategy
- improved central and local government organizational structures
- integration of the policy approach of the New Zealand Infrastructure Strategy into the plans and programmes of various public bodies, giving them clear objectives and responsibilities
- the development of reliable systems of monitoring, accountability, communication and support to underpin the implementation process
- early preparation of regional planning guidelines which will be crucial in ensuring alignment and effective implementation of the Strategy at the regional level.

These measures would reflect the strong commitment by Government to the development and implementation of the NZIS. This commitment, together with the greater certainty of direction provided, will establish the basis for the private sector to participate fully in achieving the objectives of the Strategy and to respond to it in bringing forward its own investment proposals.

Establishing a driving force behind the NZIS means:

- Government underpinning its status and mandating its full implementation,
- embedding it in the programmes of all relevant departments and agencies, and
- assigning clear responsibility for supporting its delivery
- using legislative capacity to achieve consistency and effective integration

Proposed Structure

Specifically, it is recommended that the development and implementation of the NZIS would require:

- An "infrastructure cabinet" chaired by the Prime Minister, Deputy Prime Minister or Minister for Infrastructure to oversee the development and implementation of the Strategy. Members would comprise the Ministers of Finance, Labour, Economic Development, Environment, State Owned Enterprises, Local Government, Transport, and Communications
- The Infrastructure Cabinet would ensure the necessary leadership, interaction, monitoring and accountability within their respective Ministries and provide budgetary support and consistency between the NZIS, and the relevant public policies and programmes.
- A New Zealand infrastructure council ("Infrastructure NZ") comprising leaders of the highest calibre from the public and private sectors. Infrastructure NZ would lead the development of the Strategy and oversee and monitor its implementation. It would also facilitate consultation with and participation of relevant interests in the development and implementation of the Strategy. Periodic reports to Government would be prepared in relation to progress being made in the implementation of the NZIS.
- The Department of Prime Minister and Cabinet and or Treasury would establish an Infrastructure Directorate to provide support to the Infrastructure NZ in the development of the Strategy, support its implementation, promote best practice in infrastructure development, and to monitor and report progress on implementation.[10]

[10] Options for an individual ministry such as MED to take on this responsibility were considered and discounted on the basis that infrastructure provision is more than just economic, it has significant environment, social cultural and therefore whole of government dimensions as well – hence the desire to have such responsibility vested in a whole of government agency such as the Department of Prime Minister and Cabinet and or Treasury. Another option would be to establish a Ministry for Infrastructure or extend the functions of the Ministry for Local Government into a Ministry for Infrastructure and Local Government (similar to the Australian Infrastructure, Transport, Regional Development and Local Government portfolio). While these may be options for the future, the development of a highly focused unit with direct linkage to a senior Cabinet committee was considered the better option at this time in order to provide the level of seniority and cross governmental support that would be necessary.

Infrastructure New Zealand

With the support of the Infrastructure Directorate, Infrastructure NZ would be **responsible to the Infrastructure Cabinet for developing the strategic blueprint for New Zealand's future infrastructure needs in the form of the NZ Infrastructure Strategy and - in partnership with local government and the private sector – recommend the policy environment to facilitate its implementation**. It will provide advice to government about infrastructure gaps and bottlenecks that hinder social economic growth and prosperity. It will also identify investment priorities and policy and regulatory reforms that will be necessary to enable timely and coordinated delivery of national infrastructure investment. Once the Strategy is agreed, relevant public sector policies and programmes would have to be aligned with the NZIS and be required to demonstrate such consistency.

In a similar manner to the South East Queensland Infrastructure Plan and Programme (described in the inset above), the Strategy would identify critical national infrastructure development projects to be undertaken over the next 20 year timeframe, including the expected date for construction programming and commissioning. It would comprise three broad phases:

- **First Phase** – first three years of the plan – provides forward estimates of the budget, and shows specific commitments to funding for nominated projects;
- **Second Phase** – years four to ten - forecasts budget provision for infrastructure investments for this period;
- **Third Phase** – year ten to twenty – includes infrastructure, which is likely to be required in the longer term, which will need to be considered in future budgets and infrastructure plans and to guide land planning and special development

Government departments and agencies would put structures and mechanisms in place to support the NZIS and ensure it is embedded in their policies and programmes. They would report to the Infrastructure Cabinet as required. The NI Directorate would establish a clearly identifiable contact point for other departments, agencies and the private sector to access information regarding the Strategy and to service the implementation process.

A communications strategy to promote support for the NZIS, provide information on progress in its implementation and promote participation by public bodies, the private sector, interest groups and the general public in achieving the objectives of the NZIS would be developed and implemented by the NI directorate under the direction of the Infrastructure NZ.

Infrastructure NZ would need to be given the statutory support it requires. The Infrastructure Cabinet would, therefore, consider the need for legislative provisions to support its creation, to require consistency between the NZIS and other relevant plans and programmes, and to supplement current provisions in planning legislation.[11]

[11] The Infrastructure Australia Act 2008 provides a useful template (see http://www.frli.gov.au/ComLaw/Legislation/Act1.nsf/0/8D482E840B59D9DACA257427000C1FBB/$file/0172008.pdf).

Case Study: Infrastructure Australia

In 2008 the newly elected Australian federal government announced a new, national approach to planning, funding and implementing future infrastructure needs.

The Infrastructure Australia Act 2008 came into effect on 9 April 2008 paving the way to establish Infrastructure Australia.

Infrastructure Australia is tasked with developing a strategic blueprint for Australia's future infrastructure needs and in partnership with the states, territories, local government and the private sector - facilitate its implementation.

It will provide advice to Australian governments about infrastructure gaps and bottlenecks that hinder economic growth and prosperity. It will also identify investment priorities and policy and regulatory reforms that will be necessary to enable timely and coordinated delivery of national infrastructure investment.

In the 2008-09 Budget the Government announced the establishment of a Building Australia Fund. Allocations from the Fund will be guided by Infrastructure Australia's national audit and infrastructure priority list.

Infrastructure Australia will be supported by an Infrastructure Coordinator, who will lead a small professional Office of Infrastructure Coordination within the Infrastructure, Transport, Regional Development and Local Government portfolio.

As a first step, the Resource Management Act, Public Works Act, Local Government Act, the Land Transport Management Act and other legislation would require reform to ensure statutory process gives due recognition to the NZIS. The objective would be to ensure a consolidated planning and approval process for critical infrastructure projects whilst retaining robust and extensive opportunities for community input. The provisions of the Local Government Act would require amendment to ensure that regional and local authority development plans be consistent with the NZIS.[12]

Improving Local and Regional Governance

A significant proportion of national infrastructure (including water, storm water, roads, public transport, footpaths, and street lighting) and most of the planning approvals for both national and local projects come under the responsibility of one or more of 73 City and District Councils and 12 Regional Councils.

Despite reform in 1989, local government structures are still extremely complex. Within each of the regions there is significant duplication of function across Regional, City and District Council jurisdictions. These include:

- Democracy and associated support costs
- Governance activities in addition to the democratic role
- Strategic planning, policy, research, and economic development
- District Plan processes
- Policy and planning in service provision
- Contract management of devolved activities and projects, and corporate contract systems administration
- Corporate support functions such as HR, IT, finance, insurance, risk and audit

These issues confront all local authority areas to some degree, regardless of size. While current structures provide for strong local representation there are fundamental weaknesses in the local authority governance structures that must be resolved. These generally include:

Inadequate Funding

Councils are funded by a combination of rates and central government funding (primarily in the form of local roading and public transport subsidies). However, local authorities are facing difficulties funding increasing infrastructure needs on a limited rate payer funding base. Many local authorities are very small scale entities. Local funding mechanisms lack economies of scale.

Within the transport sector Central government funding is skewed by subsidy rates that favour state highway solutions (funded at 100%) over local roads (which require 50% local funding). Failure to meet local share funding requirements reduces funding for local roads in favour of state highways. The net result is insufficient funding to do the job. New, more effective funding mechanisms are required.

National and Regional needs subordinated to local interests

Regional Councils responsibilities include regional planning, environmental management, flood protection, provision of regional parks, planning and funding of public transport. However, Regional Councils have limited funding mechanisms available to them. The real power lies at the local City and District Council level since they collectively possess the bulk of the funding and control the key infrastructure assets.

Within that context, decisions are made by locally elected lay people whose political accountability is local rather than regional or national. This creates an environment where political leaders compete at the local level rather than contribute to regional or national good.

While most elected representatives are well qualified to represent local interests they lack professional training in the wider issues before them. Some fail to understand implications of decisions in a complex environment and are unable to think and plan strategically, or be discerning of good advice. There can be consequential lack of scrutiny of activities of officials.

[12] Such amendments are discussed in Part 2.

Dilution of Expertise

High quality political and staff resources are wasted in duplicated functions across the 84 regional and local authorities. Similarly, a considerable amount of highly skilled management time is taken in transactions and consultation among and between parallel organizations. A greater concentration of qualified staff in fewer councils would provide opportunity to give greater professional support to elected lay people on Councils.

Complex decision making processes and poor accountability

Planning, decision making, funding and implementation processes are unnecessarily complex with consequential lack of responsibility and accountability. Vague national level policy frameworks means local body politicians may not be held to account for decisions that affect regional or national outcomes. Elected members can and do divert funding away from needed infrastructure into favourite pet projects or postpone hard decisions.

Principles for Enhancing Local Government Structures

As the previous discussion argues, the current governance structure has strengths in enabling democratic local decision making but has substantial weaknesses in other areas. A better balance needs to be found between keeping the "local in local government" whilst ensuring better value for money and that national and regional priority needs are addressed.

A better understanding of regional systems is required, including of resources (energy, water, and materials), people (migration, travel to work patterns), investment, and governance. Some decisions are better made at the local level, where community engagement is strongest. Others benefit from a regional and national approach. Connections between decision-making made at different levels need to be acknowledged and planned.

Any change in local government should satisfy a set of fundamental guiding principles including:

(a) alignment between national regional and local strategies

(b) ensuring that decisions are taken at the level of governance best informed and best placed to deal with consequences, and coordinated between the different spheres of government.

(c) ensuring subsidiarity so that decisions taken at the higher level plan cannot be overridden by the planning and implementation authorities at the lower level.

(d) enabling democratic local decision-making and action by, and on behalf of, communities; and promote the social, economic, environmental, and cultural well-being of communities in the present and for the future

(e) delivering equitable impacts across the regions

(f) providing for clear accountability to the public for outcomes, use of public funds and stewardship of public assets

(g) being cost efficient and effective.

(h) being resilient into the future, and be able to deal with increasing uncertainty, complexity, diversity and change.

(i) enable community involvement and influence at the most appropriate local level i.e. at a level where people feel they can influence decisions that impact on their lives.

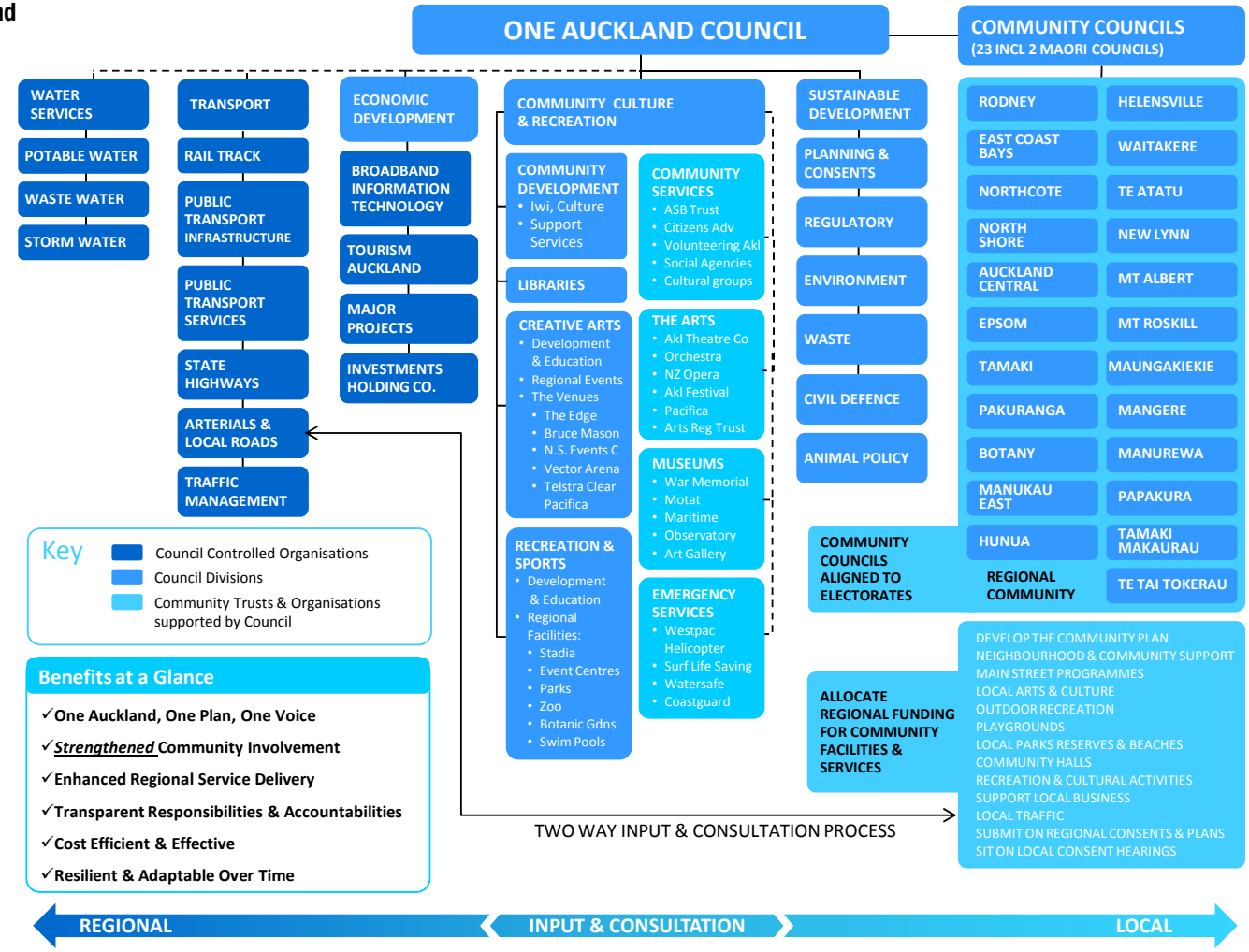
(j) encourage more active citizenship with more people taking responsibility to their communities.

The current Royal Commission into Auckland Local Governance may well set a precedent for wider reform of local government structures. It is recommended that a substantial review of local government structures be undertaken following completion of the Auckland governance inquiry.[13]

It is anticipated that one of the first tasks of the Infrastructure Cabinet would be to direct a review of the suitability of local government structures to achieve the step change in leadership and direction that would be required.

[13] The New Zealand Council for Infrastructure advocates for reform of Auckland governance to establish one unitary authority for the Auckland region. A copy of the NZCID submission entitled "One Auckland" is available at http://www.nzcid.org.nz/submissions1.html.

Figure 6: One Auckland



Part 2: Options for Legislative Change

Land Transport Management Act and amendments

The Next Steps review[14] of the transport sector undertaken by the State Service Commission, the Ministry of Transport, the Treasury and Department of Prime Minister and Cabinet in 2007 identified a series of systemic shortcomings in land transport planning and implementation in New Zealand. These included:

- a 'strategic gap' between the vision and the broad objectives in the NZ Transport Strategy (NZTS) and their implementation through the National Land Transport Programme.
- lack of clarity regarding the inter-relationship between the NZTS objectives and whether and how they may need to be weighted or traded-off against each other
- fragmented decision-making at the regional level and tensions between local and regional interests that are not always managed well through current processes resulting in a lack of effective prioritisation across regions
- lack of balance between national and regional priorities exacerbated by a lack of top-down strategic direction resulting in planning decisions frequently being driven from the bottom-up
- the need to both rationalise and streamline the planning process and redress the annual planning "churn"
- lack of robust evaluation including focus on value for money
- less integrated decision-making across modes and activity classes and blurred accountabilities for Land Transport NZ having resulted from recent Crown funding injections
- capability gaps, specifically in the Ministry of Transport
- serious lack of sector collaboration and integration underpinning many of the issues present in the sector.
- lack of role clarity, sector leadership, and common expectations about how the sector should engage that was seen to be perpetuating a fragmented sector culture.
- mistrust and 'competition' amongst the agencies.
- agencies that are individualistic and act independently.

The Land Transport Management Amendment Act passed on 2 July, 2008 is focused on addressing these critical issues by:

- introducing a Government Policy Statement setting out government's high level priorities for land transport
- introducing three-yearly Regional Land Transport Programmes that will identify all land transport activities in a region
- changing the constitution of Regional Land Transport Committees
- making the National Land Transport Programme three-yearly
- introducing an accountability framework for the new transport Crown entity the NZ Transport Agency formed by combining the functions of Land Transport New Zealand and Transit New Zealand
- introducing additional transport funding including full hypothecation (dedication) of fuel excise duties to the National Land Transport Fund and introducing a mechanism for regional fuel taxes.

Need for a consolidated transport infrastructure plan

Following introduction of the Act there remains a range of planning documents that apply to land transport management in New Zealand. These include the updated NZ Transport Strategy (NZTS) and associated Government Policy Statement (GPS) recently launched;

[14] A copy of the review is available at http://www.ssc.govt.nz/display/document.asp?DocID=5917.

the Implementation Plan for the NZTS (INZTS) currently under development; the National State Highway Strategy launched in 2007; the National Rail Strategy 2005; the Sea Change Coastal Shipping Strategy, 2008; the Getting There on Cycle and Foot, National Walking and Cycling Strategy 2005; and the respective National Land Transport Programme, Regional Transport Strategies, and the Regional Transport Programmes currently under review.

In addition there are a number of national documents such as the national Energy Strategy and the National Energy and Efficiency and Conservation strategy, together with the whole range of central and local government statutory requirements, all of which have direct relevance for land transport planning.

While the move to three year planning cycles as provided in the Act reduces the level of churn associated with yearly planning cycles, the Act still **does not fully integrate these various planning documents into one coherent national land transport plan and programme**. While three year and six year planning cycles are an improvement on ten year plans that are revised annually (as was the case previously), there remains a significant gap between the short term 3 yearly NLTP and GPS processes provided in the Act, the ten year forecast, which may or may not be funded, and the 30 year NZTS "vision" document.

Reform of Transport Planning in New Zealand

NZCID considers further reform of planning processes is required. The following national land transport planning structure is recommended:

The NZ Transport Strategy would have a twenty year planning horizon, consistent with the NZ Infrastructure Strategy described above.

The strategy would set out the national transport quality and capacity standards that the Crown considers will be necessary to meet the nation's mobility requirements over that time frame (including estimates of the impact of enhanced travel demand management and transfer to mixed mode transport).

Unlike the current NZTS, the revised strategy would contain an integrated implementation plan and programme as to how the goals and objectives of the strategy are to be delivered to meet national economic, sustainability, and safety goals and set out responsibility and accountability for implementation.

The Strategy would be an integrated multimodal transport strategy. It would be given effect by incorporation of the following component strategies, as subsections of the overall Strategy, each with a consistent twenty year time horizon:

- The national freight strategy – road, rail, sea and air
- The national state highway strategy
- The national rail network strategy
- The national coastal freight strategy
- The national public transport strategy
- The national walking and cycling strategy
- The national safety strategy

The development of national strategies would be coordinated by the Ministry of Transport and the detailed work undertaken by the NZ Transport Agency and Ontrack and with input from regional councils, industry and community stakeholders through normal consultation processes. The strategy sub sections of the NZTS would set the national direction for each major transport mode and their interrelationships and include national transport mode share goals and targets, standards of compliance and ongoing audit and monitoring processes.

The strategies would include prioritisation of nationally significant transport connections – state highways, regional arterial roads, rail corridors – to sea and air ports, and provide a listing of major capital works programmes in detail for the first 10 years of the plan, and in less detail for the second 10 year period.

Within the national context, each Regional Land Transport Committee (or ARTA as currently the case in Auckland) would be required to develop a Regional Transport Plan to give effect to national strategies at regional level and to ensure appropriate integration of land use and transport planning across the region. There would be a requirement upon regions to ensure that the RTSs deliver compliance

with all national standards in the provision of a national rail and state highway network. As with the NZTS, Regional Transport Plans would include prioritisation of major transport connections and associated capital works –state highways, regional arterial roads, walking and cycling corridors, rail corridors, sea and air ports, – in detail for the first ten years of the plan, and in less detail for the second ten year period.

Funding of the National and Regional Transport Strategies

Rather than having "pay as you go" funding constrain delivery of the overall transport strategy, as has been the norm over the last three decades, **funding would follow strategy**. The NZTS would provide projections of anticipated levels of funding into the National land Transport Fund, including appropriate use of debt finance to bridge funding gaps for major capital works and would include indicative allocation forecasts to activity classes for maintenance, public transport services, transport safety and support for alternative transport modes. This information would be broken down by region into capital works, maintenance and renewals and public transport service payments. The first 10 year planning cycle would be supported by National Transport Programmes updated at three yearly intervals.

The regional transport plans would be required to be supported by a viable funding plan that balances transport infrastructure development and service provision with available funding, including appropriate mix of private and public finance. Prudent use of debt funding of major capital works would be encouraged subject to normal fiscal due diligence.

Plans would also be required to demonstrate consistency with the NZTS and would be audited for compliance. It would be the responsibility of the Ministry of Transport to oversee the integration of the regional plans with the NZTS, with the NZ Transport Agency providing the appropriate technical support to ensure this can be achieved.

The responsibility of the NZ Transport Agency will be to oversee the implementation of the plan, allocate funds, let and manage contracts for state highway contracts, and monitor and report on achievement of both regional and national strategies.

The NZTS and RTPs would be revised on a six yearly cycle, with provision for updates at three yearly intervals as currently provided in the Act.

Timing for Implementation

Once adopted, this planning cycle could commence from July 2010. Given that processes are already in train to develop an INZTS and most of the other planning documents already exist, it should be possible to coordinate these plans into one national document by this date. In the meantime, the existing national transport programme would be maintained thereby ensuring certainty of the existing programme to 2010.

Key Benefits

Adoption of such planning structures would have the following key benefits:

- A sufficiently long planning horizon of up to 20 years as is appropriate for investment programming but supported at the detailed level by rolling three year national and regional land transport programmes
- Integration of the component parts of the national transport system into one coherent national plan, supported by detailed implementation programmes that give effect to the strategy at both the national and regional level
- Alignment between national and regional planning and implementation processes for all modes of transport including integration of ports and freight logistic industries as part of the overall transport mix
- Appropriate top down bottom up feedback loops
- Direct linkage between long term aspirations, plans and available funding
- Clear responsibility and accountability for oversight and implementation.
- Providing certainty to the private sector of a national pipeline of work that is both planned and supported by a viable funding plan thereby encouraging necessary investment in productive capacity

Road Tolling Schemes & Concession Agreements

One of the stated purposes of the LTMA when passed was to "improve the flexibility of land transport funding, including provisions enabling new roads to be built on a tolled or concession basis".

During consultation on the Bill, submitters to the select committee hearings expressed serious concerns about double jeopardy resulting from the iterative consultation and approval processes required. It was argued that there were too many unnecessary restrictions surrounding tolling and concession agreements. These would severely limit the intended application of the Act, namely to speed up the development of transport infrastructure in New Zealand through toll funding of roads and by opening opportunities for private sector involvement.

These concerns have proven to be correct. Since the passing of the Act in 2003, only one public toll road has proceeded to Order in Council, the Albany Puhoi motorway extension currently under construction. It is due to open in 2009, some six years after the passing of the Act. The only other proposal considered – Transit's Western Ring Route toll proposal for Auckland - failed under the consultation processes required by the Act and was withdrawn by Transit in 2007.[15] Following the government's decision to approve a regional fuel tax to fund the Penlink project in Rodney District, the Waterview project in Auckland remains the only project in contention for tolling and or development as a public private partnership. The Eastern Motorway in Tauranga, the Transmission Gully project in Wellington and components of the Auckland Manukau Eastern Transport Initiative are among possible toll projects in the future. As yet, no public private partnerships have come to market. Key issues under provisions of the Act as currently worded include:

- Restricting tolls to new roads prevents road users from potential benefits of using revenues from tolls on existing roads to fund increased capacity, provide an overall improved level of service and balance traffic demand to best effect.
- The 35 year maximum term permissible under the Act may limit value for money for the public sector by reducing the extent of risk transfer that might otherwise be possible and may require the government to provide additional subsidies that might not otherwise be necessary
- The unnecessarily complex criteria and doubling up of approvals for toll roads and concession agreements
- The predominance of local interests over national and regional interests in decisions about toll roads and concessions.

The following sections discuss a number of possible amendments to the Act that have potential for addressing these deficiencies. The discussion is set out by means of reference to the specific sections of the Act in the order that they appear in the Act.

1. Section 5: Interpretation...

Affected Community

The current wording defines an affected community as "…a group of people who are affected by the proposed activity because of living, studying or working in close geographical proximity to the proposed activity."

It doesn't include people who might use the road as part of a long distance trip or to access regional and inter regional facilities (such as commuter and freight operators, tourists and other users of state highway corridors for example) but who don't live or work in close proximity. It also doesn't address the impacts on users of other roads within a region who might benefit from the new facility being available because of improved traffic flow. The views of the wider regional community and users of the proposed road are relevant and should be considered in balance alongside those of the local community who live, work and study in close proximity to the road (whose interests are otherwise substantially protected under RMA processes).

A possible amendment to the Act might provide for a more balanced assessment of the impact of tolling on users of the road and the impact of tolls on a wider regional community such as:

"**affected community**, in relation to a proposed activity, means those who are affected either as transport users of the proposed activity or because of living, studying, or working within the regional council area in which the proposal activity is located."

[15] In this case "consultation" was more akin to a de facto binding referendum.

2. Provide the option for tolls on existing roads

The Act currently restricts tolls to new roads only. This was considered desirable at the time the Act was passed because it was felt that it would be unfair to expect to road users to pay tolls on roads for which they had "already paid" by means of excise duty on fuel. This was especially relevant when fuel excise was being diverted to the Crown account and used to fund wider government expenditure, as was the case at the time the Act was passed. In this situation tolls on existing roads were seen by road users as being iniquitous.

However, the situation has changed significantly since that time. Since the passing of the Land Transport Management Amendment Act 2008, all petrol excise duty is now allocated fully to land transport funding. Despite this, there remains a significant funding shortfall. Major projects of national significance continue to be deferred for want of funding. Those that are proceeding are constraining funds for other regionally important projects and ongoing operations and maintenance. Moreover, limiting tolls to new roads only prevents road users from potential benefits of using revenues from tolls on existing roads to fund further increased capacity, and which might provide an overall improved level of service through balancing traffic demand to best effect.

Limiting tolls to new roads raise equity issues or "winners and loser" between those communities who have to pay a toll and those who don't.

It also unduly restricts the development of appropriate tolling schemes, which might otherwise meet all requirements (including community support). An example might be the expansion of the Auckland Harbour Bridge by a larger "clip-on", or the building of an additional bridge or tunnel in the same general location. Using a toll to part or fully fund a new crossing would be problematic where the old route remained untolled but the "new" route was tolled. Outcomes for the public and private sector could potentially be substantially enhanced by allowing tolling on both old and new infrastructure. This would ensure an equitable outcome for users of both the old and new infrastructure, and achieve overall lower costs for all.

Using the same example, users of the existing Auckland Harbour Bridge will gain significant benefits if any traffic shifts to a new second crossing. However if only one route was to be tolled this would limit the number of users likely to move to the new route, meaning that tolling would not deliver efficient solution for overall network.

Secondly, the inability to toll existing infrastructure is a particular problem given that the strategic roading network has been constructed on a piecemeal basis as and when funding and regulatory approvals became available. This means that there are very few places where it is possible to develop a new piece of contiguous infrastructure. Instead, it is often linking into another piece that was built several years (or decades) ago or needs to link into a future stage as funding becomes available. (A good example of this is SH20 which has been constructed a few kilometers at a time.) Arguably, the whole strategic route should be operated and tolled as a whole. This will not only optimize revenue but will also ensure consistency of operation and demand management.

As currently worded the Act does provide for the tolling of an existing road that is located near and is physically and operationally integral to the new road (section 48(2)). However, it is hard to imagine that this section would be interpreted to allow major sections of existing road to be tolled. Indeed this was the very issue upon which Transit New Zealand's proposal to toll the Western Ring Route foundered. It is more likely to apply to short linking sections at either end of the new infrastructure. Section 48 (2) effectively prohibits the development of tolled strategic routes even though such corridors that may well provide significant improved level of service both to users of the new facility as well as to road users across the whole network.

There are two possible amendments to the Act that could deal with these issues. The first option is to delete reference to "new" toll roads in the act… e.g.

46 (1) (a) delete "new" so that the clause reads "or operation of a road; and

Replace section 46 (2) (a) (i) and (ii) with… "An order under subsection (1) must describe the road, or part of it, in respect of which the toll revenue may be applied; and…"

These changes delete reference to the tolling of new roads and therefore permit tolling existing roads to allow for tolling schemes to fund refurbishment, renewals, and improvements of existing infrastructure.[16]

However, such a proposition once again raises issues around the fairness of charging a toll on a road that has already been "paid for" by road users and would be likely to be strongly opposed by road user groups and local communities affected by the imposition of tolls of an existing route upon which they are dependent.

An alternative approach would be to add an additional section to the Act which leaves tolling of new roads as the default position but which provides for tolling of existing roads under certain circumstances and subject to a range of preconditions being met.

Such preconditions could include, for example, the Minister being satisfied that tolling of any existing road contributes to the purpose of the Act; that imposition of the toll on an existing route:

- assists economic development; and
- assists safety and personal security; and
- improves access and mobility; and
- protects and promotes public health; and
- ensures environmental sustainability;

that it fits with relevant national and regional transport planning and expenditure priorities; and that it has a majority of support of the affected community (as redefined above).

The inclusion of such a provision would require a higher threshold for approval for tolls on existing roads than is currently required for a toll on a new road as the Minister must be satisfied as opposed to taking account of how any proposed toll fits with the objectives of the Act. The provision requires an assessment of the fit with overall transport planning and provides both road users and affected communities the opportunity to weigh up the relative merits of imposing a toll in terms of overall transport benefits in balance against the direct costs of the imposition of the toll.

3. Consultation: Section 48 Procedure for recommending making of order under section 46

Understandably the Act provides a number of rigorous tests to be applied before the Minister is able to recommend the making of an Order in Council to toll a road. Among these is the requirement under 48 (1) (c) (v) to take into account the outcome of any consultation undertaken by the public road controlling authority.

However, Section 48 (1) (d) (ii) requires a high degree of support for a toll road from those living, studying or working in close geographical proximity to the proposed activity. This potentially sets a very high threshold for approval of toll roads for the following reasons:

- It seems very unlikely that affected communities (as currently defined in the Act) will prefer to have a toll road if there is any prospect of it being funded by other means, even if that meant some other transport priority might have to be deferred. The provision enables local interests to supersede regional or national interest. It is also arguably inconsistent with earlier provisions of this section 48 (1) (a) to (c) which require a much broader and balanced consideration of the merits of the case.
- It is difficult to assess what represents "high degree of support". Is majority support intended, say 51%, or does high degree of support mean 60%, 75% or 90% support?
- The current wording defines an affected community as those living, studying or working in close geographical proximity to the proposed activity. It is difficult to identify what is meant by close "geographical proximity". In any case it presumably doesn't take account the views of people who will use the road to access recreational facilities or people who travel along the road for work (such as commuter and freight operators, tourists and other users of state highway corridors for example) who don't live or work in close geographical proximity. Nor does it provide for views of users of other roads across the wider region that might benefit from the new facility being available because of improved overall traffic flow.
- Section 48 (1) (a) – (c) already sets a sufficiently high threshold for the Minister to recommend the making of an Order in Council including how the activity contributes to achieving the purpose and

[16] It should be noted that whether or not tolls are imposed on existing roads, Section 48 (1) (e) (ii) of the Act, as it stands, requires that there must be available to road users a feasible, untolled, alternative route. This provides road users the option of not paying a toll if they so choose.

objectives of the Act and having given due consideration to relevant national and regional strategies. These are adequate tests in themselves to ensure that a new toll road is appropriate in the context of the overall transport network

- As noted above, Section 48 (1) (c) (v) requires the Minister to take into account the outcome of consultation undertaken by the public road controlling authority. This provides the opportunity for those directly affected to have their say. If the Minister were concerned that imposition of a toll would have an adverse affect on communities living and working in close proximity to the toll road, he or she has the ability under 46 (2) (b) (i) and (ii) to impose conditions that must be met before a toll can be imposed (such as, for example, providing dispensation for local users from paying a toll)

For each of these reasons consideration should be given to Section 48 (1) (d) (ii) being removed from the Act and that 48 (1) (d) (i) be renumbered 48 (1) (d) and "either" be deleted accordingly.

4. Concession agreements

Reconsider the need for wording in section (58) (1) (a) to (g) and whether such provisions would be better placed under section 56 (3) (a) and renumber remaining sections under 56 (3) accordingly.

In granting an approval in principal to allow a public roading authority to enter into a concession agreement, the Minister would first want to be satisfied that the proposed activity meets the purpose of the Act. He she may also want to take into account the outcome of consultation undertaken by the public roading authority before setting any conditions the Minister thinks fit. It is therefore logical for such consideration to be given at the "in principle" approval stage (i.e. under section56) rather than at the time of granting approval by which time the concession agreement will have largely been determined.

Moreover section **56 (3) (a)** as currently worded clearly contemplates concession agreements would only apply to a "new" road. This limits the possible application of a concession agreement being implemented to upgrade, improve or maintain an existing road whether tolled or untolled. For example, it is not unusual for concession agreements to include provision for upgrade and operation of adjacent roads. The provision as currently worded unnecessarily restricts such innovative approaches that would otherwise be of benefit to the public.

5. Allow for terms other than 35 years under 56(5)

The Act prescribes a 35 year maximum term with the possibility of up to ten year extension once the concession agreement has been in effect for a least two thirds of its term. It is recommended that this be reviewed to allow greater discretion on the length of the concession on a case by case basis. This would then allow provision for longer terms when initial toll revenues are insufficient to recover capital costs or when public sector subsidies would otherwise be necessary. The lengthening of toll concessions generally represents a better lower cost solution for the public sector to introduce additional flexibility rather than an outright payment.
In addition, extensions are useful in situations where the public sector wants the concessionaire to make a change to the infrastructure at a later date e.g.; lengthen or widen the road or introduce new ramps etc. It is desirable to retain flexibility around these issues, rather than having a maximum term or maximum extension fixed by legislation.

Terms in other jurisdictions are not limited by statute. The term of a PPP project is often likely to vary depending on the financial parameters for that project. Any limit may hinder innovative funding solutions (which have been a hallmark of successful foreign PPP projects) and increase short term funding costs, with flow on effects for pricing, and, if applicable, tolling of the PPP project.

Depending on the assessed risk of the project, concessionaires may be able to assign significant value to the revenues beyond year 35, which will have the effect of lowering the initial revenue requirements. This will be of direct benefit to the current generation of infrastructure users, and will assist in achieving inter-generational equity. Short concession terms mean that today's users are paying more so that tomorrows users have free use of the infrastructure. This is particularly pertinent for roading infrastructure that can have an economic life well in excess of 35 years.

Allowing flexibility over the length of concessions provides the opportunity for better value to be obtained and should be allowed under the Act.

6. Consider the need for 56 (6)

Explanation; Section 58 (1) (a) to (g) requires the Minister to take into account the fit of the proposed activity with the relevant national and regional land transport strategies and National Energy Efficiency and Conservation Strategies and to take into account the availability of alternative land transport options and the impact of the activity on those options. These provisions therefore require a balanced consideration of the impacts of the proposed activity in the context of the wider transport planning situation. In this context, section 56(6) is unnecessarily restrictive.

This provision requires the private sector to assume a risk for elements that remain within the public sector's control. It also provides a mixed message: we want your money to develop roading infrastructure that we can't afford, but we want the ability to able to ignore sunk costs and retain the right to develop competing services that might adversely impact demand on the toll road. Such provisions result in increased transfer of risk to the private sector are likely to reduce public sector value for money as at least some of the risk adjustment will be factored into the amount tendered for a project.
While the public sector may wish to retain the option to develop other competing services within the transport corridor (such as public transport alternatives to the car), it would be better to consider and provide for such issues on a case by case basis and include any desired conditions into a concession document, rather than in the legislation.

7. Approval Process

Delete section 58 (1) which has now been inserted into 56 (3) (a) as discussed under 4 above.

Consider replacing section 58 (1) and (2) (a) and associated section 58 (5) with a new section as follows:

"In considering whether to grant approval under section 56, the Minister must be satisfied that a concession agreement can provide value for money in comparison to alternative procurement options".

Explanation

Value for money must be the primary driver for consideration of a concession agreement. Although specifically referred to in section 25 in relation to payments made by Transfund (now NZ Transport Agency) it is not explicitly stated in the sections dealing with concession agreements.

58 (2) (a) (i) and (ii) prevents the Minister from approving a concession agreement unless it is included in the current national land transport programme or the Minister is satisfied that the activity has a high degree of support from affected communities.

Such issues relate to whether or not the activity is worth having overall, not as to whether or not it is appropriate to procure it by way of a concession agreement. Whether or not to proceed with a concession agreement should be determined on the basis of value for money, not whether or not it is in the NLTP or has a high degree of support from affected communities. One of the reasons for advancing a project under a concession agreement is to enable projects to proceed that might not otherwise be priority projects under the current national land transport programme. Making it a requirement that such projects must be included in the current NLTP or have a high degree of support from affected communities might preclude otherwise valuable projects. It is also an unnecessary additional requirement as other sections of the Act already require the Minister to:

a. be satisfied that a concession agreement will meet the objectives of the Act

b. take into account relevant national and regional priorities, the availability of alternative transport options, whether the activity is consistent with current priorities for land transport expenditure

c. take into account the outcome of consultation undertaken by the public road controlling authority

Resource Management Act

Institutional best practice shows that with good long term asset management planning, and with extensive and robust consultation processes, well developed infrastructure proposals can and do proceed successfully through the RMA process. But the costs are often extremely high, and, in some cases, projects can take up to a decade, or more, before they are finally approved. The cost of delay is often the most significant component of variances in final outturn costs.

The RMA was enacted at a time in New Zealand's infrastructure life cycle when there was a comparatively low level of investment in infrastructure across the country. As illustrated in Figure 2, New Zealand made substantial investment in during the 1970s. This declined significantly during the 1980s and has been at a relatively low level since that time. By 1991 when the RMA was enacted New Zealand was focused on reduction of its national debt and the level of infrastructure investment was at an historically low level. Investment in critical infrastructure is now a pressing issue. The key question is whether existing processes are adequate to deal with the level of national infrastructure investment now required.

Problems with the RMA

The RMA is often cited as a major impediment to infrastructure delivery in New Zealand. The following factors contribute to this view:

- Lack of specificity in terms of its purpose, principles and language
- Lack of express recognition of the national significance of essential infrastructure and/or the importance providing critical infrastructure supporting community needs within the RMA purpose and principles section (particularly under Section 140 – Decisions on Matters of National Significance);
- While the provision exists, until recently Ministers have been reluctant to 'call in' major projects. The inclusion of Boards of Inquiry in addition to Ministerial call in provides for a more extensive range of consenting processes with the 2005 Amendment Act (although this provision was seldom used in the past and has only just been applied to four projects in 2008);
- The emphasis in the Act on adverse environmental effects needs to be better balanced with the positive wider economic, social and environmental effects of improved infrastructure provision. This is largely a matter of interpretation, particularly in Regional Policy Statements.
- Lack of sufficient leadership at the national and regional levels to promote infrastructure development. Regional Policy Statements generally reference the importance of infrastructure but concentrate on avoiding adverse effects rather than giving specific direction to address trade-offs between the economic, social and environmental outcomes. The 2005 Amendment Act now enables Regional Councils to take greater responsibility for the integration of essential infrastructure with land use. This is an important step, but it remains to be seen how this function will be translated through second generation Regional Policy Statements (RPS) currently under development
- The lack of national guidance or standards (NPS and NES) on issues such as noise, storm water, run off, erosion and sediment control, construction-dust controls or vibration. The Ministries of Economic Development, Transport and the Ministry for the Environment are aware of these matters and are working on improvements, especially in relation to noise and storm water quality, but progress has been tortuously slow. It is most unfortunate that these policies are unlikely to be ready in time for incorporation into the second generation of RPS. A policy statement for electricity transmission has recently been approved and an environmental standard is currently under development.
- The need for RMA consents to be approved by both regional and territorial authorities for most major infrastructure projects, and the consequent inevitable overlapping of the effects considered by each authority. In addition, regional resource consents must be considered against the adverse effects criteria, instead of being counterbalanced by consideration of the broader objectives of the public work;
- Inconsistencies in approach and interpretation across different local authorities. There remains insufficient resourcing and experience within some territorial and

regional authorities to enable effective management and development of major infrastructure;

- Lack of knowledge, experience and consistency of hearing commissioners (especially councillor commissioners) and concerns about of conflicts of interest
- Carrying out consultation in relation to preparation of applications and assessments of environmental effects can be costly. While it is important to ensure that a project proponent meets its wider environmental responsibilities, often, complex issues need to be assessed, reported on, and resolved before environmental approvals can be gained. In addition, a two-stage process involving consideration by Council following by a Court process can add large costs as well as delays;
- The role of often-vociferous public interest groups and "nimbys" using environmental concerns as a proxy for self interest;
- Time delays. An urban project such as the Wellington Inner City Bypass took more than a decade to progress from inception (in 1993) through to construction in 2004. A significant proportion of the time was expended in the two-stage RMA process involving consideration by Council followed by a Court process can add large costs as well as delays;
- Lack of monitoring of RMA effectiveness (particularly for major projects).

Being aware of frustrations with process and potential issues with consenting major infrastructure under the RMA the Government responded with amendments to the Act in 2005. However, to date major infrastructure providers have been somewhat risk averse in using the new processes at their disposal, largely because of their unfamiliarity with them. The new provisions have yet to be tested in any substantive way. It remains to be seen whether the changes will be adequate for critical infrastructure projects.

It's not just the RMA that's the problem

Moreover, resolving issues with the RMA is not the only matter that affects timely delivery of key infrastructure projects, so is the volume of other legislation that affects infrastructure development. Unlike other jurisdictions that have implemented one stop shop approval processes for critical infrastructure, New Zealand has a number of laws in addition to the RMA that often must be traversed. These include:

- **The Historic Places Act 1989 (HPA)**. Archaeological Authorities are required under the HPA for a number of projects. These are normally sought after RMA approvals. The Wellington Inner City Bypass for example required two Environment Court processes, one under the RMA and one under the HPA.
- **The Reserves Act 1981**. Where a project requires land from a Reserve under the Reserves Act, the specific approval of the Minister of Conservation is required. This effectively could prevent implementation of a project, even though consents may have been gained through the RMA;
- **Local Government Act 2002**. Often a road needs to be stopped in order to implement another transport solution. Where the road to be stopped lies outside of the designation, a road-stopping process under the Local Government Act is required. This process has an appeal right to the Environment Court;
- the LGA also places a constraint on private sector partnerships for water infrastructure and limits service contracts to a maximum of 15 year terms,
- **The Public Works Act 1981**. Often one of the causes of project delay is land assembly. With the relevant Minister's consent, certain authorities have the ability to compulsorily acquire land. Even though the designation may be in place, there is still appeals rights as to the level of compensation;
- **Foreshore and Seabed Act 2004**. Where foreshore or seabed is required, there may be specific approvals required;
- **Reserves and Other Land Disposal and Public Bodies Empowering Act 1915**, In the case of the SH20 Mount Roskill extension currently under construction it was found that this historical Act was relevant to implementation. Further cost and delay was added to the project in order to resolve this anomaly;

- **The Land Transport Management Act 2003**. In the case of recent major projects, further assessment had to be carried out after other approvals were in place, to ensure that projects contributed to the purposes and principles of this Act. Theoretically a project can be further delayed by judicial review if this process is not carried out.

As the preceding list clearly demonstrates, the RMA is but one of the statutes that affect project delivery. **Consideration of a single consenting process, incorporating one dominant set of provisions governing essential infrastructure, would streamline the consent process and remove duplicity of process.**

Lessons from International Experience

The length of time projects take to go though the planning and consenting process, the complexity of the process, and the impact delays can have on infrastructure projects are not unique to New Zealand. Comparative nations such as Ireland and Australia have adopted a number of methods to address these challenges that provide useful lessons for New Zealand.

Ireland

In Ireland the Environmental Protection Agency (EPA) is responsible for protecting the environment. It is a statutory body funded by the Department of the Environment. Its mission is to protect and improve the environment taking into account the environmental, social and economic principles of sustainable development. It licenses and controls large scale waste and industrial activities; oversees local authority environmental protection responsibilities; is responsible for compliance; and assesses the impact of proposed major developments on Ireland's environment. The Irish counties themselves have responsibility for the environmental services in their particular areas. These are primarily community services, certain waste and water services, and planning. If building or construction is required an application is made to the relevant local authority, with there being a right of appeal to An Bord Plenala (the National Appeal Board in Ireland for planning applications). There are also appeal rights to the Irish Courts, but only on procedural matters. The Irish also have to address the complex issue of old Viking archaeological sites, which may be historically important, but which have the potential to hold up projects for significant periods of time.

Streamlining approvals for strategic infrastructure

To overcome the delays being encountered for obtaining planning approval and to streamline the consent framework for infrastructure of public importance (defined as projects of strategic, economic or social importance, which contribute to national or regional strategies) the Irish Government introduced the Planning and Development Strategic Infrastructure Act 2006.[17]

The Act provides for the establishment of a new Strategic Infrastructure Division of An Bord Plenala which provides a one-step consent process (with provision for consultation with the decision makers) for energy, transport, waste and water infrastructure projects. This allows projects to go straight to the Planning Board, rather than first having to obtain local authority approval, thus reducing the length of time it takes to get development consent planning permission. The process for judicial review applications and appeals has also been reviewed to try and reduce the time delays associated with judicial review challenges. To improve the process a designated Planning Judicial Review Division in the High Court, or at least a designated Judge is used to hear such cases. Other amendments to the process include such matters as leave being required before an application can be brought, a "substantial" ground having to be relied on, the possibility of an undertaking as to damages being required, the outcome of the application being final (unless there is a matter of exceptional public importance), and the requirement to deal with matters expeditiously.

[17] A copy of the Act can be downloaded at http://www.oireachtas.ie/documents/bills28/acts/2006/a2706.pdf.

New South Wales

In New South Wales planning reforms (the Major Projects State Environmental Planning Policy (SEPP)) have been passed to improve the assessment of major projects. The purpose of the reforms, which were passed in 2005, is to remove unnecessary red tape and clarify the assessment of major or significant projects. A project's significance may be due to its economic importance to the State, its potential environmental impact, strategic location or because it will provide essential infrastructure. The legislation also replaces approvals under eight Acts with a single integrated assessment and approval process. Planning and assessment responsibilities are dealt with by local authorities in areas where the State planning objectives have been achieved. However, this was not deemed as appropriate for major projects. Previously the NSW Planning Minister had the power to "call-in" development applications from local authorities. One of the major aims of the Major Projects SEPP is to consolidate major projects under one instrument and make the Minister the determining authority. The intention is to make it easier for proponents, the community, and interest groups to understand the regime for these projects and to facilitate the speedy and effective delivery of infrastructure.In addition to major projects the legislation provides the Minister with the power to declare a project as "critical infrastructure" if it is essential to the State for economic, environmental or social reasons. Special provisions apply in respect of such critical infrastructure.[18]

Procedures for the declaration of a critical infrastructure project

The amendments to the Environmental Planning and Assessment Act provide for any project to which the new Part 3A applies to be declared a critical infrastructure project. An application to declare a project to be critical infrastructure will be evaluated on a case-by-case basis. A guideline will be gazetted by the Minister setting out the procedures and the preliminary assessment required before a project can be declared to be a critical infrastructure project. The preliminary assessment will need to include a justification for the project being declared critical infrastructure taking into consideration social, economic and environmental factors, infrastructure and land use planning considerations, and the likely risks and benefits of the project proceeding, including:

- financial risks to the Government and the likely economic costs or benefits to the region or the State of delivering or not delivering the project in a timely manner
- community implications of delivering or not delivering the project in a timely manner, including the extent of social dislocation, benefits in terms of significantly improved services, or hardship or cost to the community if the project is not delivered quickly
- environmental risks of streamlining the project's delivery, for example:
  - How will the environment benefit from the timely delivery of the project?
  - What are the risks, and are any adverse changes likely to be reversible?

The Planning Minister will consult with the relevant portfolio Minister prior to declaring a project to be critical infrastructure.

Approval for critical infrastructure projects

Before a critical infrastructure project can proceed, an application must be lodged for an approval under Part 3A of the Environmental Planning and Assessment Act. The emphasis of the assessment will be on how the project can be delivered in an environmentally sound manner. It may include the consideration of alternative solutions to achieve the required outcome. The assessment process will ensure that a focused, integrated assessment and consultation regime is undertaken prior to recommendations being made to the Minister for determination.

In most circumstances, a concept approval will be obtained to establish the environmental performance requirements for the implementation of the subsequent stages of the project(s), and consultation requirements. The project will be carried out in accordance with that approval. As with other approvals under Part 3A, the need for additional approvals under eight other Acts has been replaced by a single integrated assessment and approval. Where a licence however is required under the Protection of the Environment Operations Act, such a licence will still be required. The decision is not able to be appealed except if the appeal is initiated or approved by the Minister.

[18] An excellent guide on the situation in NSW is set out in the NSW Government, Department of Planning Community Guide on NSW Major Projects Assessment, March 2006. See also the website at www.planning.nsw.gov.au. SEPP can be found at www.legislation.nsw.gov.au.

These provisions provide for a streamlined assessment and approval process without compromising environmental outcomes.

These reforms:

- ensure timely and efficient delivery of critical infrastructure projects when required
- provide certainty in the delivery of key infrastructure projects
- provide for adequate environmental scrutiny with provisions to ensure environmental outcomes are appropriate
- focus on outcomes rather than process.

Major Projects

There are two ways that a major project can be undertaken in New South Wales. One is to lodge a project application that contains detailed information about the project. Another is to submit a concept plan which provides a broader overview of what is proposed. Approval of the concept plan establishes the framework for a more detailed development of the proposal, which may include the need for further approvals.With regard to the project application, the proponent must prepare an environmental assessment of the proposal. Under the new regime the Department of Planning in New South Wales prepares and makes available the key issues that the proponent must address. State agencies, local authorities and other relevant authorities are consulted in developing these requirements.

The proponent is also encouraged to consult with the community. Usually there must be a written statement of commitments outlining how the projects likely environmental impacts will be minimised or managed. Once the proponent prepares the environmental assessment it is checked that it addresses the necessary requirements and, if satisfactory, the Department will arrange for it to go for public comment for a minimum of 30 days. Under the new laws, the proponent can be required to respond in writing to any issues raised and outline any proposed changes to minimize its environmental impact. The matter then goes to the Minister.

As part of the planning reforms, provisions have also been made for the use of Independent Hearings and Assessment Panels (IHAPs) to strengthen (and shorten) the assessment process. The Minister can decide to convene an IHAP and appoint panel members to assess a project at any stage in the assessment process to provide advice on issues of concern. Public hearings may also be undertaken to provide input into the panel's assessment if the IHAP considers it appropriate. The IHAP then produces a report outlining the issues and making recommendations.

Both proponents and objectors can appeal the Minister's decisions in certain *limited* circumstances. A proponent of a major project who is dissatisfied with the determination of the Minister can within 3 months appeal to the Land and Environment Court. Objectors may also have appeal rights. Any appeal by them must be commenced within 28 days of the notice of determination being issued.

Objectors do not have a right of appeal where a concept plan has been approved. Proponent and objector appeals cannot be pursued where projects have been subject of a report prepared by a panel of experts, or where the project has been declared critical infrastructure.

Victoria

In Victoria, the Environmental Protection Agency (EPA) is the regulatory agency. The EPA has identified the need to get involved in projects as early as possible during the planning phase and to identify requirements that need to be addressed up front. Environmental effects statements are prepared by proponents for projects under the Victorian Environmental Effects Act.

Community consultation occurs during the preparation of the statement. Local government and the EPA are also heavily involved in the environmental effects process. The environmental effects statement is assessed by an independent panel. A report is prepared which goes to the Minister for the Environment who either accepts or rejects the proposal. There are limited rights of appeal.

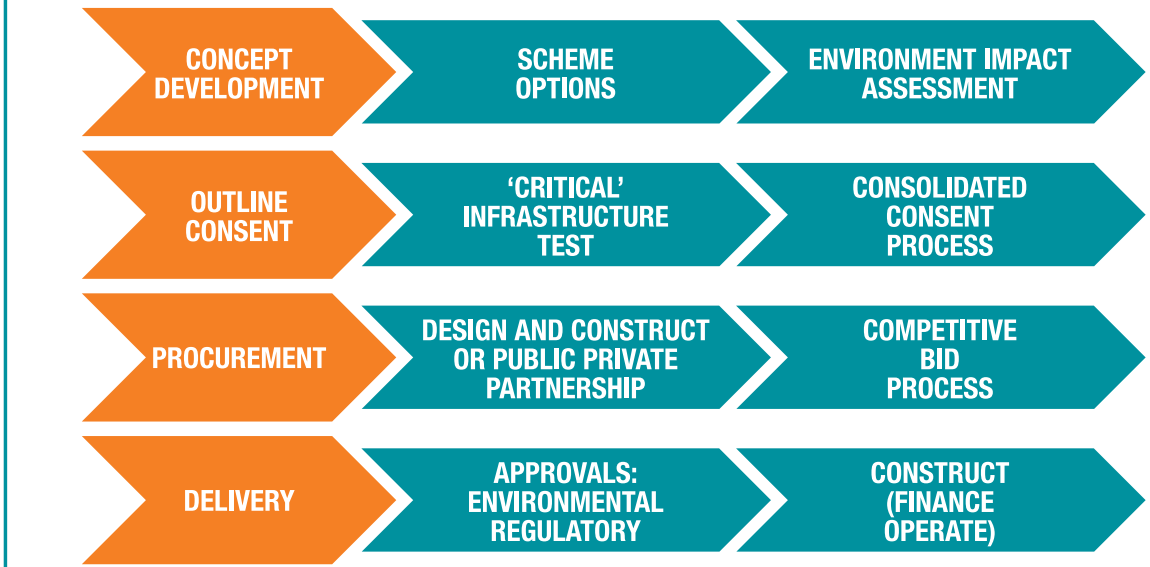
The Victorian Government has also identified the need for specific legislation. Such legislation was used for Citilink (the link between Melbourne Airport and the City). It was also used for the Eastlink Project in Melbourne. The legislation for the project is aimed at streamlining the planning process rather than overriding it. One of its aims is to provide the best tailored mechanism for managing risks. Specific legislation is also proposed for the Channel Deepening Project with the Port of Melbourne.

Beyond the RMA - Measures to Enhance Implementation and Effectiveness of the Act

Based on lessons learned from overseas jurisdictions, and input from infrastructure providers in the New Zealand context, consideration needs to be given to a series of initiatives to strengthen current processes. Options include:

- **The development of new legislation specific to projects of national importance or amendments to the Resource Management Act (RMA) to allow for it.** This would include changes to Section 140 of the Act to provide recognition of importance of essential infrastructure in achieving the sustainable management purpose of the Act. This change would provide a similar level of recognition provided for in Section 6 and 7 for outstanding landscapes, natural character, and amenity, etc. If nationally significant infrastructure was also included as a matter of national importance, this would significantly strengthen the case for infrastructure through designation and consent processes. Amendments would ideally be structured in a way which assists with balancing these often competing matters of national significance;
- **Better use being made of the call in process** under the RMA in the context of the above
- **Improvements in the designation process, including direct reference to the Environmental Court or planning board for major projects**
- **Provide institutional focus to advancing National Policy Statements and National Environmental Standards** for utility corridors and critical infrastructure
- **Ensure that the provisions of current National Strategies, Regional Growth Strategies and Regional Land Transport Strategies are expressly considered** in the decision-making process.
- **Further streamlining the Environment Court process** along the lines set out in the Irish Planning and Development (Strategic Infrastructure) Bill – i.e. a specific planning board for major infrastructure projects of national or regional significance.
- **Consolidation of approval processes where multiple statutes apply** as with the New South Wales model.
- **Adoption of outline or concept planning approvals** which specify the environmental outcomes required of a project, rather than requiring detailed design (see Figure 7). Such a process would encourage innovative design approaches unconstrained by strict design parameters, potentially enhancing environmental outcomes,

Figure 7: Streamlined Consents Process for Critical Infrastructure Projects



- **Designation equivalent for resource consent processes** - The RMA makes specific provision for a Requiring Authority to designate land in the District Plan in a similar manner to an outline consent process described above. This avoids the need to apply for numerous land use consents, and once designated, the specific rules of the District Plan do not apply. Having established a designation, the detailed consideration of the work is considered under the Outline Plan of Works (OPW) process. Public notification is not required for the OPW; and specific procedures and timeframes apply. While this works reasonably well for infrastructure projects requiring designations for land use, there is no equivalent process for consents. Some current projects require multiples of consents from multiple agencies. These are sometimes in conflict, and are often not subject to agreed timeframes for processing. An option to address this would be to introduce a new consent process through the regional councils which is similar to the designation process i.e. a 'designation equivalent' or 'outline consent' process for resource consents. This would minimise the detail to be included in the initial application, avoid the need for multiple resource consents, and would establish a statutory process and timetable for the regional council to consider the later detail of the proposed work. A further advantage is that the assessment and evaluation process would focus on effects of the work rather than the details of the various regional plan and the specific rules, as is currently the case.
- **Project consolidation** - especially for contiguous transport projects (eg: electricity transmission, Waikato Expressway and Auckland's Western Ring Route). Funding constraints often result in major projects being staged over time and consents applied consecutively as funds for each project becomes available. This requires multiple consents - and consequently multiple delays. Consolidation of project consents and or outline consents for contiguous project s could avoid the need to re-litigate contiguous projects stage by stage.
- **Guidelines for Iwi consultation** - Section 6(e), 7 (a) and (aa) and Section 8 of the RMA relate to the relationship of Maori and their culture and traditions with their ancestral lands; water; sites; waahi tapu; and other taonga; kaitiatanga; stewardship; and Treaty of Waitangi principles. However there are no current guidelines on how to give effect to these provisions. Rather than legislative change, the situation could be improved with some clear and current guidelines from the Ministry for the Environment (MfE) on consultation processes, including reasonable timeframes.
- **Better provide for infrastructure through Regional Policy Statements**. In this regard, Section 30 of the RMA "Functions of regional councils under this Act" already includes "the strategic integration of infrastructure with land use through objectives, policies and methods" Section 30 (1) (gb). Regrettably this received little attention in the first round of RPS. It needs to be a focus of the second generation RPS currently under development.
- **Review of Local Government RMA responsibilities.** Local authority amalgamation may or may not be appropriate in terms of all council functions, but it would be beneficial for RMA jurisdiction. Fewer RMA authorities will reduce the number of consent agencies for applicants to deal with for individual projects, and will therefore reduce potential inconsistency with its application. The conversion of authorities into unitary authorities throughout New Zealand and/or the transferring of RMA functions to a single agency within a region/location could result in considerable streamlining of processing of applications for infrastructure projects. This could benefit both minor and major projects. For example, a major project of national importance, or where there is a dispute over jurisdiction, would re automatically referred to the national planning board. A minor project involving the structural strengthening of a bridge over a river creates uncertainty as to whether regional or district/city council resource consents are needed for the project. Both authorities often have jurisdiction and both may attempt to assess the same issues (e.g. impact of new structures on flood flows). Consolidation of process into a single unitary authority would address such problems.
- **Clarifying the role of third parties in the consent process**. It is important to consider the definition of who has status to be involved. Parties with specific roles relevant to the project would generally be preferable to the current involvement of all organisations and individuals that can participate. The current provisions in the RMA enable any and all

interest groups and unaffected individuals to participate at a council hearing and again at the Environment Court. This system encourages delays in decision making, particularly for major projects, as those parties who anticipate that the case will end up at the Environment Court do not engage in the first hearing to the level they intend to be involved in at the second hearing. The frustrations faced by applicants in dealing with objectors who present limited cases at council hearings - and then more detailed cases at the Environment Court, are, to a certain extent, caused by the funding available from MfE for community groups to participate in RMA processes. This funding is only available to those involved in Environment Court proceedings;

- **Monitoring the Effectiveness of the RMA**. Establishing a national monitoring programme by the Ministry for the Environment (MFE) to determine at the effectiveness of the RMA in considering major infrastructure projects will enable an accurate and independent assessment of the situation, and provide a basis for future changes and funding for improvements;

Public Works Act 1981

The Public Works Act provides the Crown with the statutory authority to acquire land for a public work. The Crown has the power to acquire or take land for a wide variety of purposes and may negotiate for the land in the same way as a private purchaser. The Crown can only acquire land whether by negotiation or compulsorily, in accordance with the Act. The acquisition process generally takes place after all required consents have been granted, or a designation has been provided for by the territorial local authority.

In the past only the Crown and local authorities had access to the acquisition provisions of the Public Works Act. In the 1980s and 1990s many of the activities previously carried out by the Crown and local authorities became the responsibility of statutory organisations such as State-Owned Enterprises (SOEs), local authority trading enterprises (LATEs), and other Crown entities. These organisations are neither government departments nor local authorities, and unless they are a "requiring authority", do not have the power to compulsorily acquire land in the same way as the Crown or local authorities. They must therefore buy land on the open market. The exception is network utility operators, called a "requiring authority" under the Resource Management Act. A requiring authority is an operator of an essential service to the public that includes electricity distribution, roads, water supply, drainage and sewerage. A requiring authority for a project or work is able to use special provisions in the Resource Management Act to seek the agreement of the Minister for Land Information representing the Crown to acquire or take land on the authority's behalf.

Easement

If a utility operator requires use of part of any land for the purpose of drainage or water supply, to operate electricity services or other utility services an easement must be entered into. The easement is first negotiated with the owner, seeking agreement on the terms including conditions that allow the utility operator access to its works for maintenance or operational purposes. Once agreement is reached it is submitted to Land Information NZ for approval and acceptance together with a grant of easement from the owner that is registered against the land title.

Land Acquired by Agreement

Landowners may agree to sell their land to the Crown. In such a case both parties must negotiate and agree on appropriate terms and conditions including the amount of compensation payable under the Public Works Act.

Compulsory Acquisition

Where voluntary agreement cannot be reached on the purchase of land for a public work, the Public Works Act provides for compulsory acquisition by the Crown through the Minister of Lands. This power will be exercised only after an Acquiring Authority (through an accredited supplier) has made all reasonable endeavours to negotiate in good faith the sale and purchase of the land, without reaching an agreement.

Compensation

The Public Works Act provides for the payment of compensation for losses arising from the acquisition of land by the Crown. Entitlement to compensation is set out in Part V of the Act. Section 60(1) provides that affected

landowners are entitled to "full compensation" so that they are left in a no better or worse position afterwards, than they were before the public work commenced. This means that landowners will not be deprived of their land without fair compensation but will not be compensated so as to make a profit from the public work.

Only persons who have an interest in the land are entitled to compensation. Owners of interests that are less than freehold (e.g. a lessee's interest) are also entitled to compensation if their interests are acquired. An interest in chattels or personal rights does not give a right to compensation.

Basic Entitlements to Compensation

Compensation is not limited to the value of the land acquired or taken. In addition to the value of the land taken, the Public Works Act entitles owners to be fairly compensated for losses that may include permanent depreciation in the value of any retained land (which the Act calls "injurious affection"); damage to any land; disturbance resulting from the acquisition, reimbursement of reasonable costs incurred. The Courts have ruled that there is an obligation on landowners to take all reasonable steps to ensure that their losses are kept to a minimum

Market Value

The value of land is based upon the amount the land would be expected to sell for if sold on the open market by a willing seller to a willing buyer on a specified date. This is distinct from the personal value to the landowner or value to an Acquiring Authority that wants to purchase land. The intention of the legislation is that a person whose land is taken receives neither more nor less than would have been obtained if the landowner had sold to a private person in an open market sale. No increase in compensation is paid due to the fact that land is to be taken for a public work.

Solatium Payment for Homeowners

If the land to be acquired contains a persons home that they live in, and the Crown takes the initiative to purchase it as subject to its requirement or designation for a public work and requires vacant possession, land owners are entitled to be paid a "solatium". (or home-loss payment) of $2000 (an amount which has not been increased since 1975). Payment of the solatium is conditional on the ownership of the land not having changed since it was made subject to a requirement or designated for a public work.

Discussion

Up until the 1981 Act was amended in 1987, agencies were able to purchase land by agreement, without using the Act's compensation provisions, where the work was not an essential work. In 1987, the 1981 Act was amended removing the reference to essential works. The current Act no longer specifically provides for consideration to be paid that is outside the compensation provisions of the 1981 Act. Where both parties agree to an acquisition, an open market transaction is often not possible because of the 1981 Act's strict compensation requirements. These requirements do not allow the Crown or local authority to pay more for the land than the value determined by a registered valuer. Consequently, payment over and above a prescribed amount is unable to be traded off against time and administrative cost even if the overall cost to the Crown or the local authority is less than with the cost of a compulsory acquisition.

The compensation provisions of the Act can lead to undesirable outcomes. For example, if the acquiring agency is not a Crown agency there may be an incentive for those affected by a public works to "hold out", using whatever powers available to them under legislation to hold up a project, strengthen their negotiating position, and maximise their return on eventual sale of the property. On the other hand, if the acquiring agency is the Crown or a local authority, who are limited to paying market value only, an affected party arguably has no advantage in selling out early to a market offer and may better to fight to the bitter end in the hope that the public agency might desist or seek an alternative location or route for the public work.

It is possible that both situations might be averted, if there additional flexibility provided within the Act to pay a premium to an affected party reflecting disruption of settled use of their property. Options include paying a percentage over and above market value, or making and adjustment to the solatium.

For example, Australian States have different compensation legislation. One allows for payments to

be made for intangible disadvantages resulting from the acquisition. There are no limits to possible compensation. Others allow for a discretionary solatium payment of up to 10% of the value of the property being acquired. In Canada, if the costs and losses arising out of or incidental to the owner's disturbance cannot practically be estimated or determined, an allowance of up to 15% of the property value can be paid. Where a principal residence is being taken, some provincial statutes provide for an additional 5% to compensate for the inconvenience and cost of finding another residence.

The desire for flexibility must be balanced against the principle that a land owner should not be placed in a better or worse position because their property was acquired for a public work. There also needs to be a control on how public agencies spend public money, and the boundaries within which they operate. The Public Finance Act 1989 encourages effective and efficient use of financial resources in departments and Crown entities. However, on its own this may not be sufficient to prevent inflated compensation being paid. Consequently, any new regime to calculate and pay compensation should ensure that public money is not misspent; and an individual land owner does not unfairly and significantly benefit from land being acquired for a work that is in the overall public good.

In the circumstances, a solatium payment of up to 10% of the market value of the property, consistent with the Australian model, would seem not unfair to affected property owners or overly generous compensation on behalf of the Crown.

Accordingly Section 70 (1) of the Public Works Act 1981 could be amended to read as follows:

"Subject to the provisions of this section, where any land that has been notified and that contains a dwelling used as a private residence is taken or acquired for the public work for which it was notified there shall be paid to the owner of the land an additional amount of 10% of the agreed market value as assessed under section 62 by way of solatium."

Other Legislative Restrictions Affecting Partnering Relationships

Generally speaking, the Crown has executive power to enter into partnering arrangements. Statutory bodies (including Crown entities) and local authorities can enter partnering arrangements to the extent that their enabling legislation permits. Crown-owned companies (including Crown entity companies and State-owned enterprises) are limited only by their constitutions and any restrictions lawfully imposed by their shareholding Ministers. In each case, the power of a public entity to enter a partnering arrangement is subject to any procedural or substantive limits imposed by statute.

Three examples of procedural limits are:

- the duty of a Crown entity to give written notice to its responsible Minister of its intention to acquire an interest in a partnership or joint venture, and to act consistently with its statement of intent (see section 100 of the Crown Entities Act 2004);
- the need for a local authority to adopt, and act in accordance with, a policy on partnerships with the private sector (see section 107 of the Local Government Act 2002); and
- the need for Ministerial approval of any concession agreement for roading activities or for tolling roads, and for Land Transport New Zealand's approval of the procurement procedure for any transport project which it is to fund (see discussion under the previous section).

There are currently two statutory limits on partnering arrangements. They concern water and wastewater services, and prisons management:

- A local authority or council-controlled organisation cannot use assets of its water services as security, and cannot vest ownership in, or lose control of, water services assets. Contracts and partnerships are permitted for any aspect of the operation of a water service, for a term of up to 15 years, but the local authority must keep control of all matters relating to pricing, managing, and setting policy on the delivery of water services (see sections 130 and 136 of the Local Government Act 2002).
- The Corrections Act 2004 prohibits the Crown from entering into any contract to manage any prison. Even if the ongoing service provision aspect of a partnering arrangement were for other services, the Crown's retention of control over management may make this difficult in practice.

Discussion

A recent analysis of Long Term Council Community Plans undertaken by GHD and Pricewaterhouse Coopers on behalf of NZCID revealed that over $22 billion is required to be spent on water infrastructure over the next decade. This includes investment in major new reticulation systems to take communities off septic tanks within development areas, addressing the issues associated with climate change, as well as renewal of ageing infrastructure. Infrastructure renewal includes both treatment plants and reticulation plus sewer separation to change combined wastewater and storm water drainage systems to dedicated pipes to minimise hazardous spillages into our harbours and waterways.

Many Councils are struggling to fund the levels of investment required. They face significant infrastructure renewal in both roading transport and water while at the same time are under constant pressure to reduce increases in the rates and levies they charge. While Government subsidy schemes exist, primarily for small/rural communities to fund upgrades required by legislation, these are greatly oversubscribed and insufficient.

Lack of funding means there is a significant risk that much of the planned or future projected construction activity will not proceed to plan. Lack of certainty has a direct effect on industry capacity, construction costs, and ultimately project bankability. The market is extremely fragmented with limited resources spread thinly across the ground. All local authorities operate differently, some being very progressive while others struggle to keep pace. International best practise has shown there are opportunities for marked improvement in infrastructure development and renewal and services and standards through consolidation of projects leading to economies of scale and through the application of modern technologies and advanced contract management and financing techniques, including franchising and PPPs. But these opportunities are not well developed in the New Zealand and much can be done to proactively advance water infrastructure development and renewal across the country.

Local Government Act 2002

Although espousing to give local authorities "full capacity", the Local Government Act 2002 restricts this capacity by imposing restrictions on what councils can do that might be efficient and good business practice. These restrictions reduce efficiency and impose compliance costs on councils.

The Solution: amend these sections of the Local Government Act 2002 to remove these restrictions and allow councils greater freedom to enter into long term concession agreements for the provision of infrastructure services. Specifically this includes:

- Review of section 130 of the Local Government Act to remove wording that restricts application of concession agreements for the provision of water infrastructure
- Review of section 136 restriction of 15 years for operation of a water service.

The Corrections Act 2004

Public Private Partnerships are commonly used in overseas jurisdictions. One of the benefits of the PPP model as distinct from full privatisation is that it allows public sector control of private sector service provision of essential public services such as prisons. However, sections 197 and 198 of the Corrections Act specifically prohibit the application of contract management of prisons (and effectively therefore PPPs) in New Zealand. Recent contracts for the provision of new prison facilities have experienced considerable cost overruns suggesting that removal of this legislative constraint is timely. Accordingly, it is recommended that the following clauses be deleted from the Corrections Act thereby enabling the possible provision of prison services by the private sector:

198 No new management contracts may be entered into

- No person may, on behalf of the Crown, enter into any contract with any person for the management, by that person instead of the Crown, of any prison.

199 Who may manage prison

- No prison may be managed by any person except -
  - (a) the Crown; or
  - (b) a person who, under a management contract entered into under section 4A of the Penal Institutions Act 1954 before the commencement of this section, is required to manage a prison.

[19] The two new prisons built at Spring Hill in the Waikato and Milburn in Otago were constructed under a form of open ended contracting. The $458m budget blew out by $140m while under construction. Significant cost drivers included: market conditions (57%), the impact of consent and regulatory requirements (6%) and the impact of finalising design. See http://www.ssc.govt.nz/display/document.asp?docid=5485&pagetype=content&pageno=2 for a discussion of this.

A geo-thermal power station in the central North Island of New Zealand.

Coal train paused at Arthurs Pass, New Zealand on it's way to the west coast.