

# Future Landscape for Resource Management Reform

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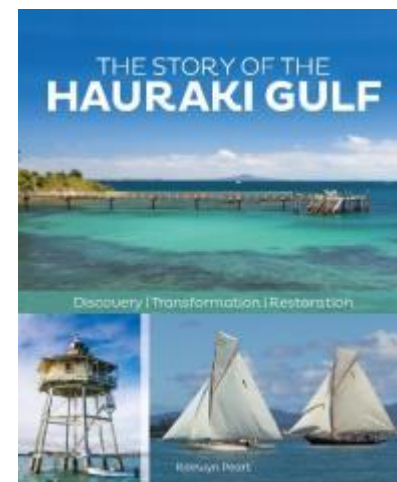
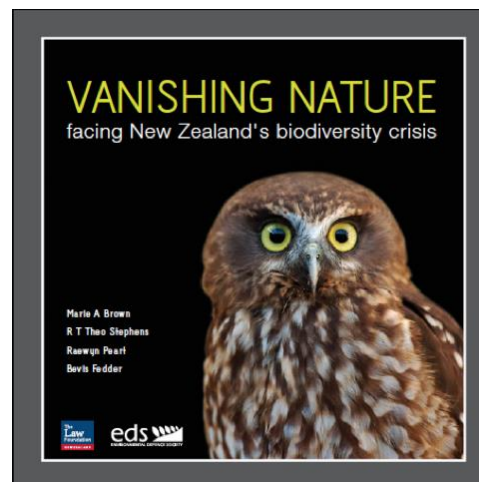
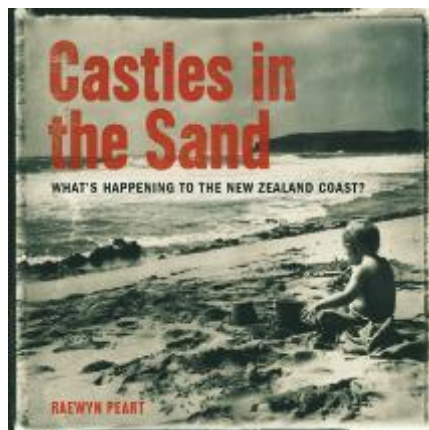
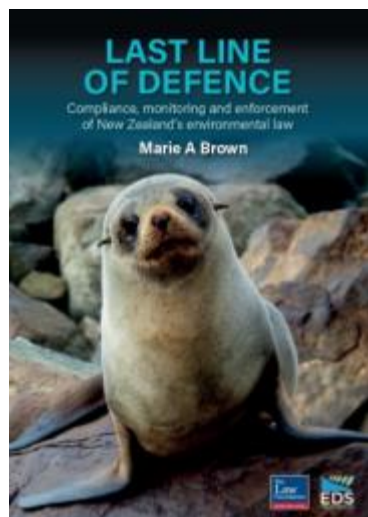
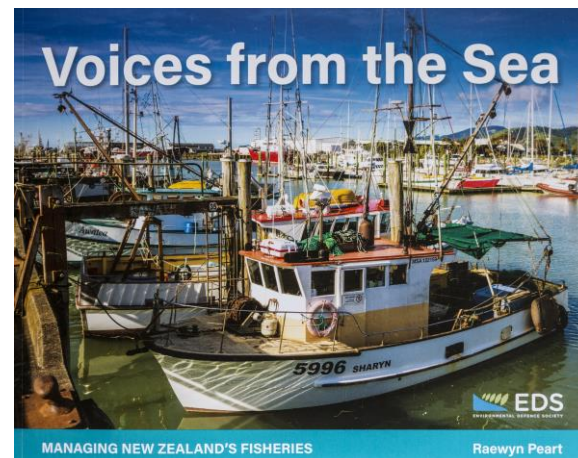
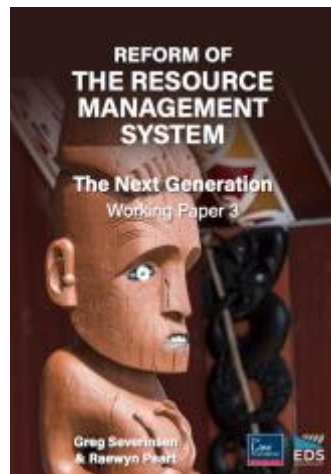
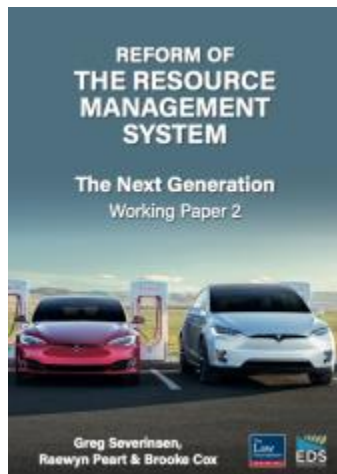
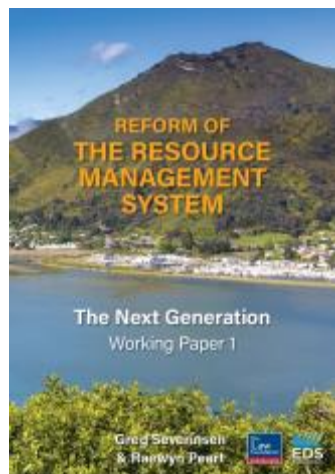
# The Environmental Defence Society

- Established in 1971
- Professionally based ENGO
- Not mass-membership
- Litigator and Think Tank
- Work within the system and with people





# Environmental Policy Think Tank





# Community Information

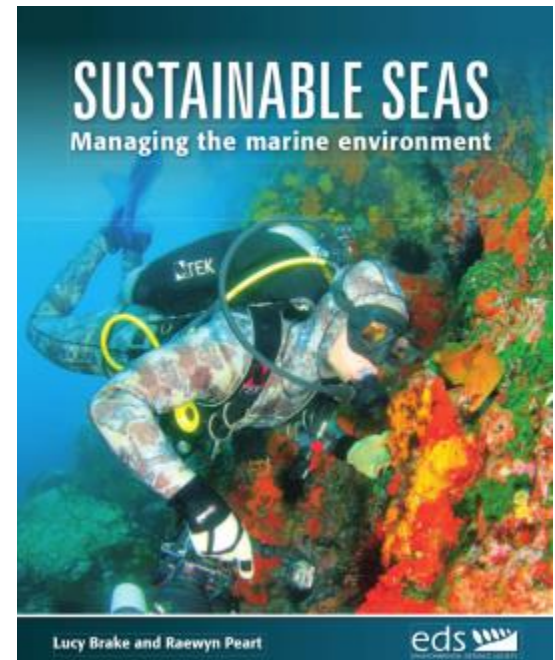
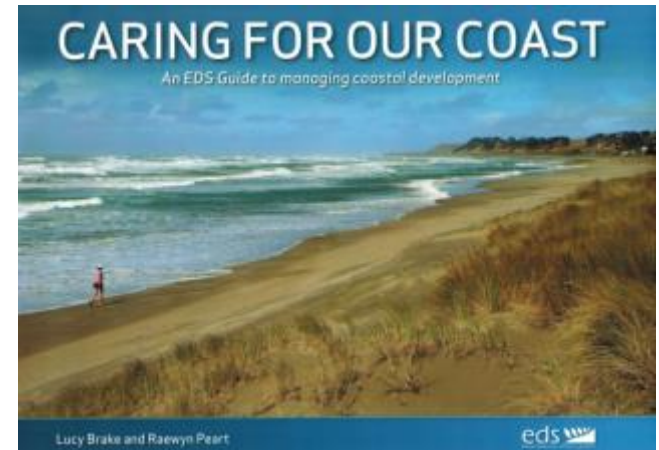


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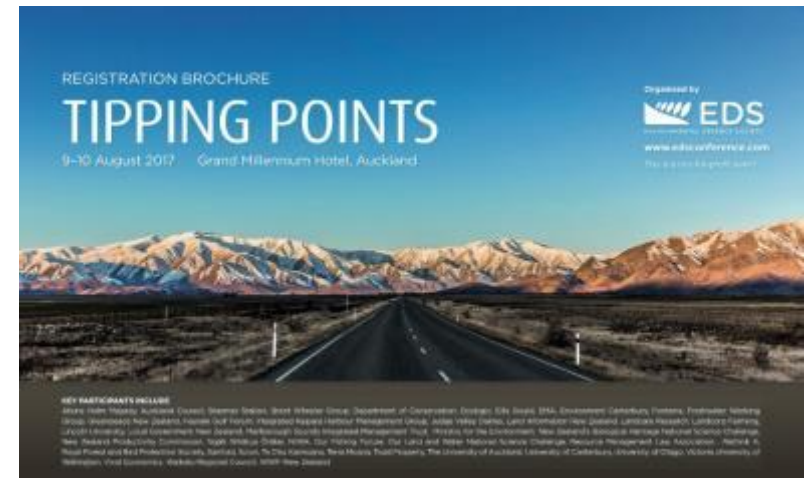


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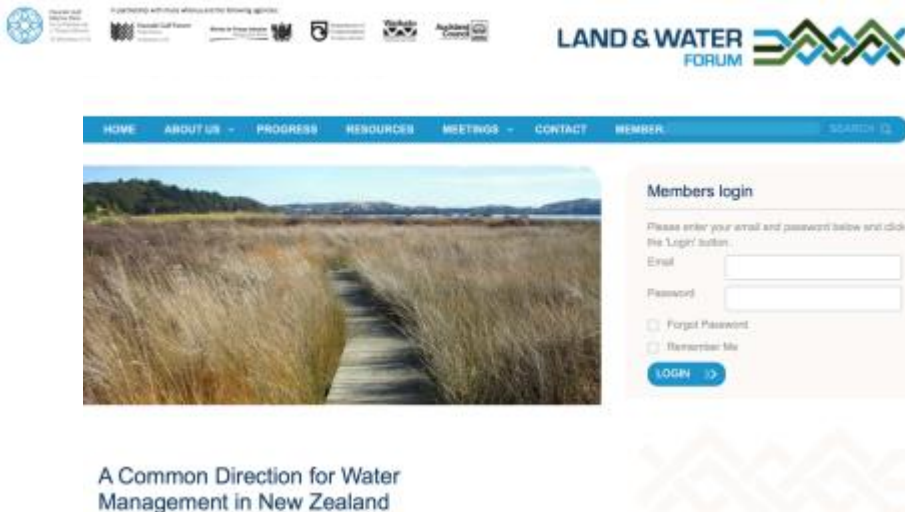
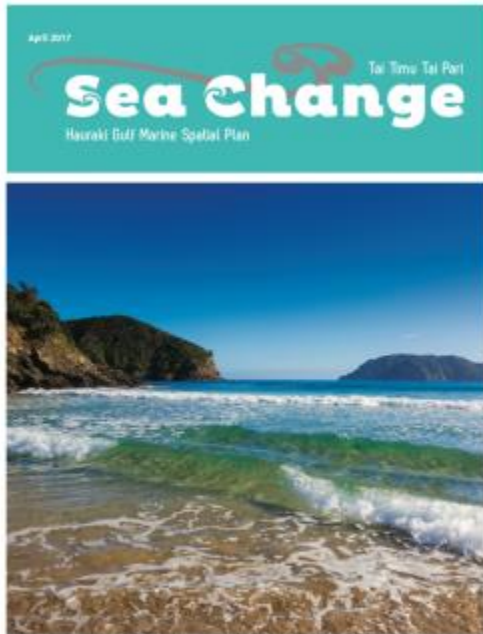
# Event Convener





# Facilitator & Litigator

- Established [Land and Water Forum](#) in 2008
- Established a collaborative process in [Mackenzie Basin](#) to protect landscapes in 2010
- Helped initiate the [first marine spatial plan](#) in NZ through collaborative process in 2013





# Resource Management System Reform

*Main author: EDS Senior Policy Researcher Dr Greg Severinsen*

Scope: wide definition of the “system” – much more than just the RMA

“the set of public interventions designed to influence how, when, where, why and by whom natural and physical resources are (or are not) used”



# Designing Resource Management System Reform

## 1. Context

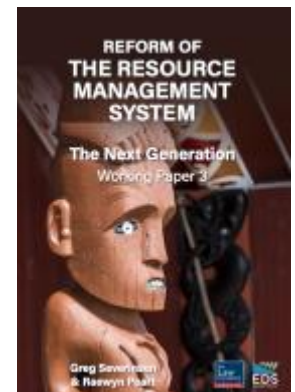
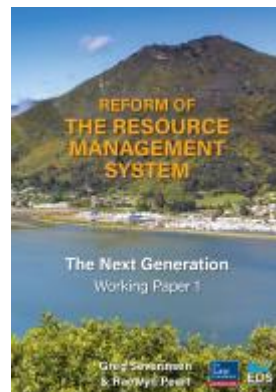
- Historical context
- Present challenges
- The future

## 2. Components

- Norms
- Functions
- Structures
- Tools

## 3. Options for reform

- 3 models





# Te Tiriti o Waitangi – Treaty of Waitangi

- Divergent views about sovereignty, rights and power
- Evolution of Treaty settlement legislation
- Māori principles and concepts incorporated into mainstream legislation
- Ongoing discussion about meaning of “active protection”





# Origins of the RMA

- Followed the demise of the National Development Act 1979
- During a time of ideologically driven change
- Growing environmental and Treaty consciousness
- Accompanied by fundamental institutional changes





# The RMA was ground-breaking:

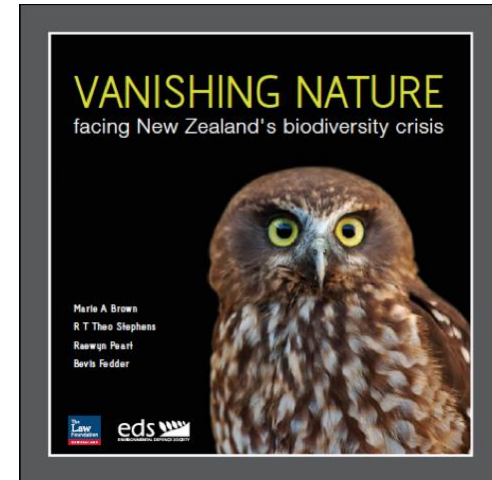
## Some key features

- Sustainable management
- Integrated management
- Effects-based management
- Simplicity and plain English
- Open government
- Māori values and involvement
- Public participation
- Devolution
- Independence and accountability
- Enabling and laissez-faire
- Environmental bottom lines



# Present challenges

- Poor environmental outcomes (with the exception of air)
- Poor urban outcomes (eg housing unaffordability and traffic congestion)
- Questionable allocative outcomes (eg irrigation, water bottling, aquaculture)
- Growing complexity and fragmentation of the law (RMA now around 800 pages)





# New political landscape: change on the agenda

- Reverse RLAA 2017 RMA amendments (early 2019)
- Many other initiatives – urban, freshwater, tax, funding, infrastructure, climate change
- More comprehensive review of the RM system later in 2019





# NZ's Future Landscape?





# NZ's Future Landscape?

## Population

### Trends

- A lot more people (5.8 mill by 2038)
- Concentrated in the northern North Island
- Older and more ethnically diverse

### Implications

- Pressure on urban areas and infrastructure
- Pressures on urban and peri-urban natural resources
- Changing expectations
- Population policy?





# NZ's Future Landscape?

## Economy

### Trends

- Average of 2% growth p.a.
- Primary sector exports increase
- Large and growing Māori economy
- Increasing visitor arrivals (4.9 mill by 2023)



### Implications

- Pressure on rural land, freshwater and marine
- Pressure on conservation estate
- Opportunities to apply Te Ao Māori





# NZ's Future Landscape?

## Climate change mitigation

### Trends

- De-carbonising the economy
- Move from agriculture to forestry
- Electrification of transport fleet
- Increased renewable energy

### Implications

- Wide-scale rural land use change
- Pressures from forestry harvesting
- Impacts from renewable energy generation (eg landscape impacts of wind farms)





# NZ's Future Landscape?

## Climate change impacts

### Trends

- Increasing temps, more drought and stronger storms
- Sea level warming, acidification and rise
- Varied impacts around country

### Implications

- Greater biodiversity loss
- Greater pressure on freshwater
- Less productive fisheries (and aquaculture) and reduced crop yield
- More biosecurity risks
- Erosion and flooding risk to people and infrastructure
- Pressure to harden the coastline





# NZ's Future Landscape?

## Technological change

### Trends

- Mobile, intelligent technology
- Improved energy storage (batteries)
- Driverless vehicles
- Gene technologies
- New forms of food production



### Implications

- Greater efficiency in agriculture (ie monitoring nutrients, virtual fences)
- Better environmental monitoring and surveillance
- New methods for pest control
- Reduction in parking freeing up urban land
- Economic risk (eg if agriculture is out-competed by synthetic foods)





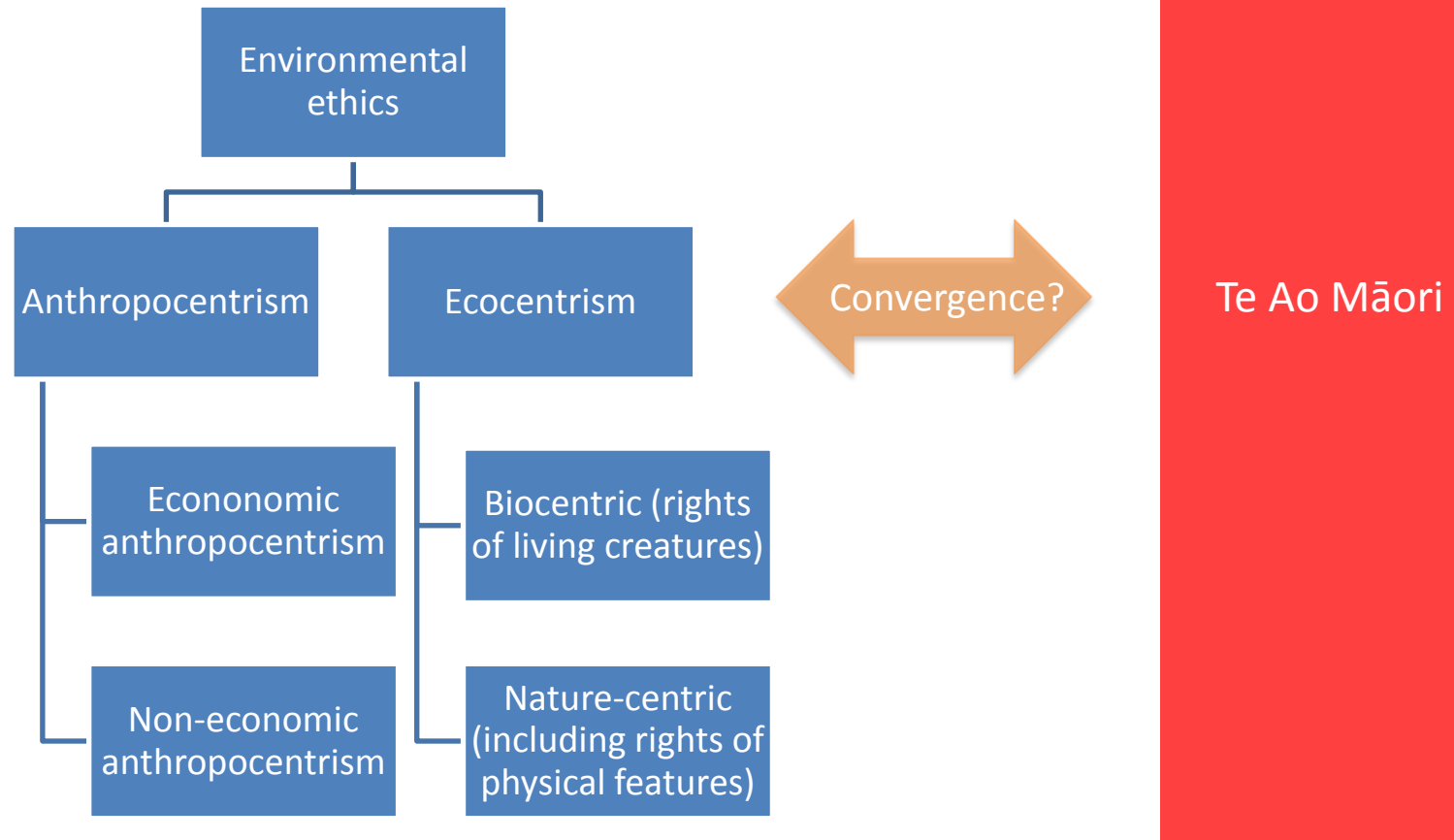
# Implications for Resource Management Reform

- Need to manage fast growing urban areas
- Need to manage strong and increasing pressures on natural resources
- Things will need to move (people, infrastructure and habitat/species)
- Need to be proactive in seeking positive outcomes
- Need to be future focused and agile
- Need to invest significant resources (new funding sources)





# Then underpinnings of a system: World views and ethics





# Marine Mammals Protection Act

## 1978: Dolphin bycatch

- Illegal to hunt dolphins (and whales) in NZ irrespective of conservation status
- Reflects a broad public view that this activity is morally wrong
- But killing dolphins while fishing is legal (around 100 common dolphins die a year)
- So the law adopts an ecocentric approach unless inconvenient to do so?



Source: Whale and Dolphin Conservation



# Te Awa Tupua (Whanganui River Claims Settlement ) Act 2017

- Te Awa Tupua recognised as “An indivisible and living whole ... incorporating all its physical and metaphysical elements”
- Has the rights of a legal person
- Te Pou Tupua acts in the name of the river
- Has an obligation “to promote and protect the health and well-being of Te Awa Tupua”



# Roles of the system

- Impose environmental bottom lines
- Manage trade-offs above bottom lines
- Fund and ensure delivery of public goods (including infrastructure)
- Pursue “good” outcomes (not just prevent or manage “bad” outcomes)
- Protect and promote Māori interests
- Resolve disputes
- Allocate rights to use non-private resources



# Bottom lines: current situation under the RMA

- *King Salmon* reinstated bottom lines
- But did it go far enough?
- Bottom lines rely on provisions in policies and plans
- They are not mandatory
- There is no certainty they will be set
- They are not necessarily durable





# Bottom lines in Europe: Natura 2000

- All EU countries must identify a network of habitats based on scientific criteria
- **Must be managed to avoid deterioration**
- Must be maintained or restored to “favourable conservation status”
- **Activities which could adversely effect the site cannot be authorised** (unless overriding public interest and then offsetting required)





# Pursuing good outcomes: Wellbeing of Future Generations (Wales) Act 2015

- Sets out 7 wellbeing goals
- Include “enhancing a biodiverse environment”, “healthy functioning ecosystems” and “resilience and capacity to adapt to change”
- Public bodies “must” carry out sustainable development not just “promote” it – includes “improving” not just “enabling” wellbeing
- Public bodies must set objectives to achieve the goals and take “all reasonable steps” to meet them



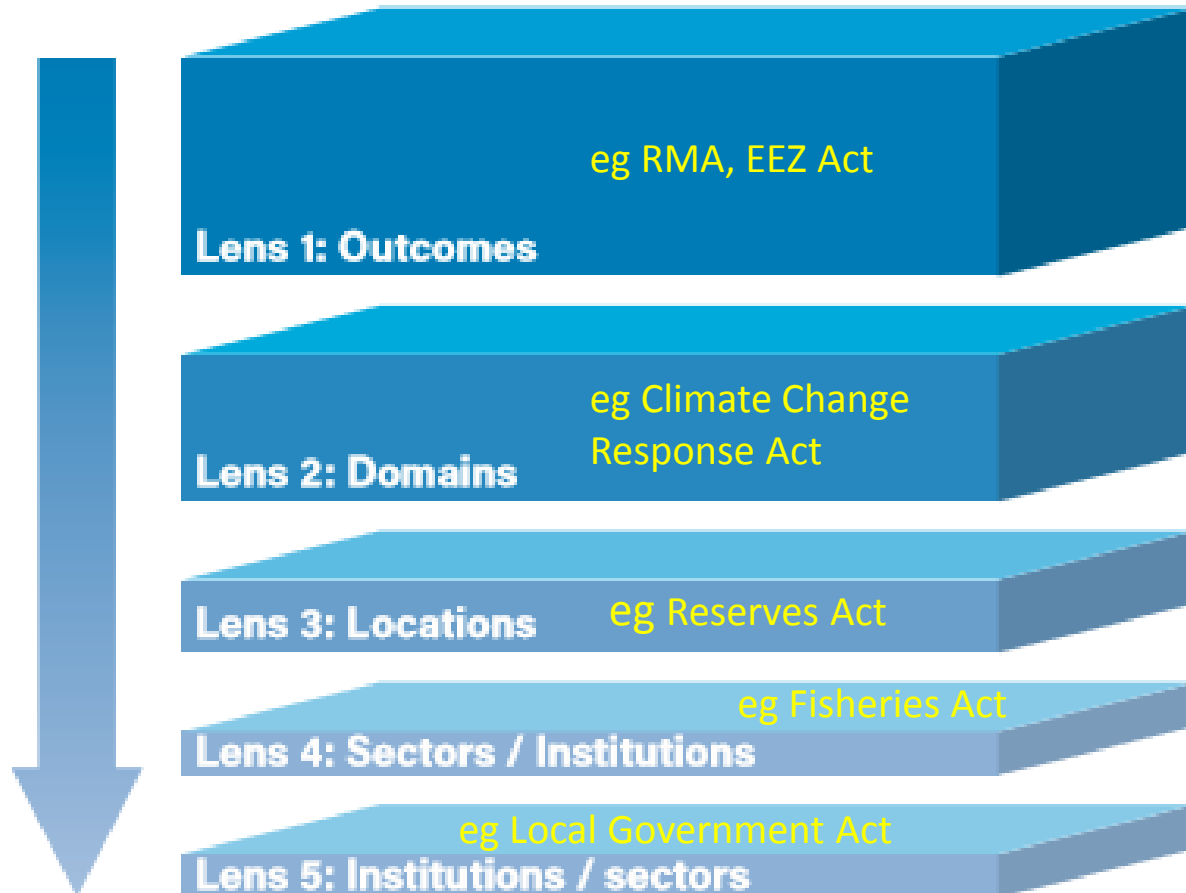




Legislative  
design:  
current  
landscape



# There is order amongst seeming chaos!





makes conceptual sense and  
is therefore readily  
accessible to lay persons

is consistent across the  
whole system

is normatively aligned (the  
purposes of individual  
statutes add up to support  
the overall objectives of the  
system)

is durable and apolitical

can accommodate extensive  
future change without  
needing to enact additional  
statutes or create extensive  
exceptions to general  
frameworks

makes the relationships  
between them clear and  
precise

does not allow different  
statutes to do the same  
things for the same reasons

is not more complex than is  
necessary to achieve the  
system's objectives

recognises the connections  
between them and  
promotes the effective  
management of those  
connections

lets people know clearly  
what is expected of them  
under any given statute

supports appropriate and  
transparent checks and  
balances on the exercise of  
public power

is not inconsistent with  
Treaty settlement legislation

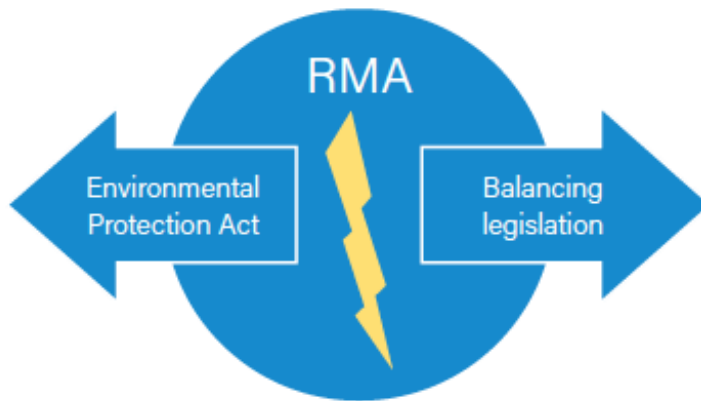
respects New Zealand's  
constitutional principles and  
the principles of the Treaty  
of Waitangi

avoids unnecessary  
legislation and encourages  
efficiency

# Legislative design principles

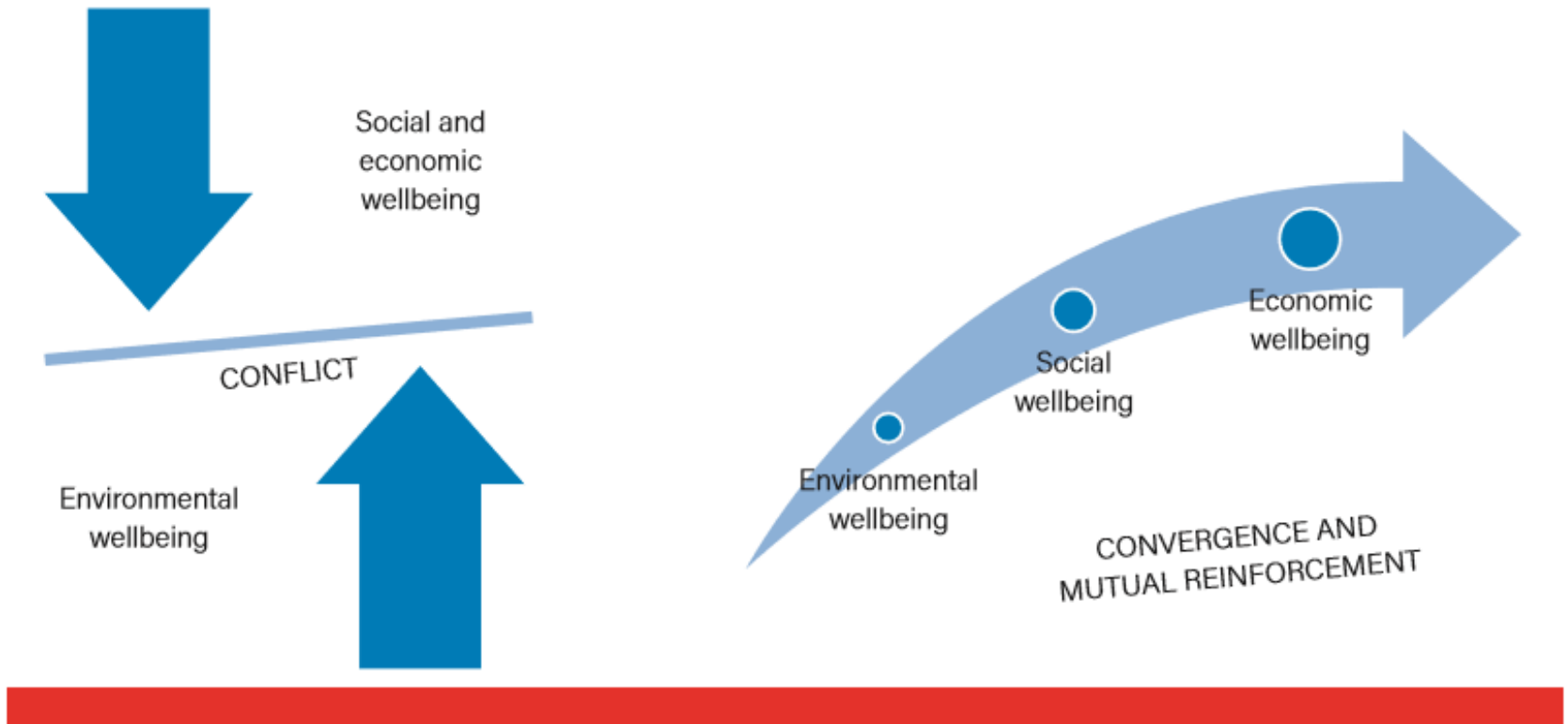


# New legislative arrangements?





# Balancing Act: Conflict or convergence?





# Institutional design: Key characteristics

The degree of an institution's independence



The degree of an institution's centralisation



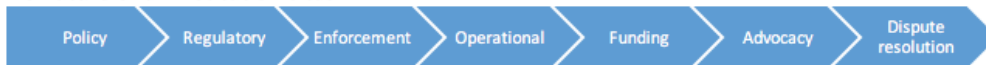
The extent of an institution's subject focus



The extent of an institution's geographical focus



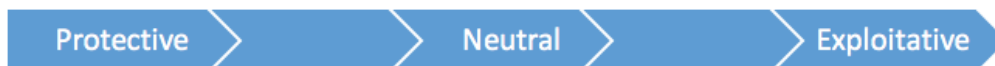
The nature of an institution's task



The formality of an institution's creation



The nature of an institution's mandate



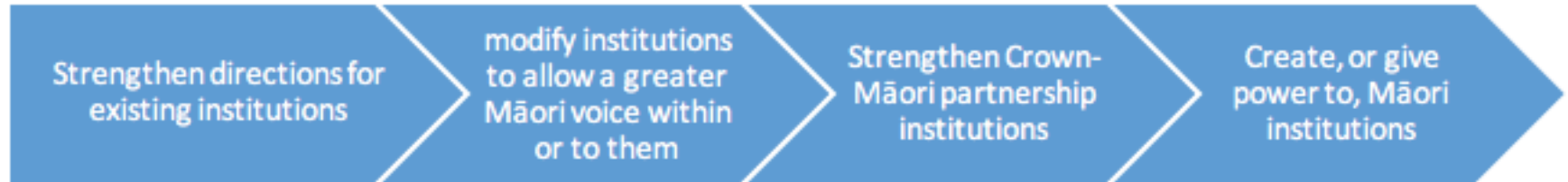
The extent of an institution's power



*Figure X: Spectra of institutional characteristics*



# Institutional design options for Māori



*Figure X: Options for institutional design to protect and promote Māori interests*





# Innovative models: California Coastal Commission

- Dedicated to managing the coastal zone in California (land and sea)
- Works with local government on coastal planning
- Approves local plans after which local councils can determine coastal development permits
- Retains appeal authority and decides applications in coastal marine area
- Makes decisions that are locally unpopular but in the broader public interest





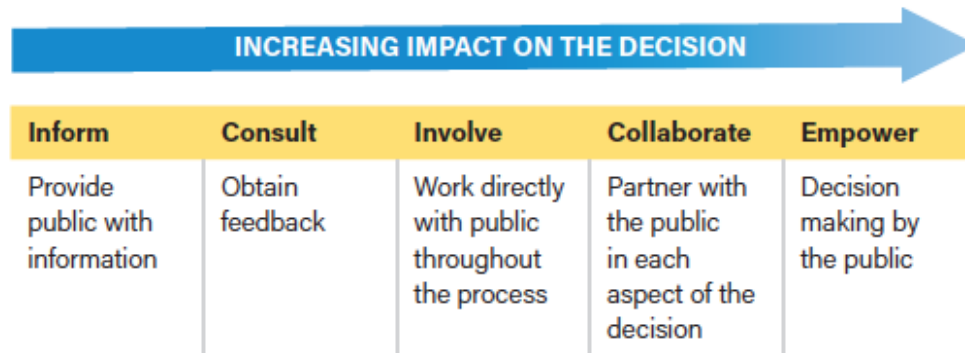
# Innovative models: Waikato River Authority

- Co-governance body with power and funding
- Develops Vision and Strategy for the River
- Deemed part of RPS
- Can request call ins and appoint hearings commissioners
- Also provides advice, monitors and reports on progress
- Trustee of Waikato River Clean-up Trust





# Public participation: When are the weaknesses > strengths



**Figure 34** The IAP2's public participation spectrum

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• More information is made available to decision-makers</li> <li>• Decisions are easier to implement and more durable</li> <li>• Decisions will better meet the needs of the community and provide a sense of ownership, especially in relation to plans</li> <li>• Decisions are seen as more legitimate; the process is more likely to be seen as fair</li> <li>• Provides more equality in the ability of parties to influence a decision</li> <li>• Improves relationships amongst parties</li> <li>• Fosters an element of trust</li> <li>• Promotes social learning</li> </ul>	<ul style="list-style-type: none"> <li>• Requires significant investment of resources and time</li> <li>• May reduce decision quality if the public are poorly informed</li> <li>• Can enhance conflict if not well managed</li> <li>• Can produce ambiguity and prevent decisive action</li> <li>• Can delay decisions being made</li> <li>• It is difficult to provide a fair process in practice</li> <li>• There is usually a strong disparity between the resources of individuals and organised interest groups</li> <li>• Can result in consultative fatigue</li> </ul>



# When to have more or less participation?

More public participation	Less public participation
Formulation of values-based policy	Application of values-based policy
Regional and local level matters	National level and very local matters
Regulations which directly affect property rights	Matters that do not directly affect property rights
Weaker policy and planning provisions	Stronger policy and planning provisions
Balancing range of interests	Applying technical criteria
Environmental quality	Allocation



# Auckland Unitary Plan process: wider application?

- Council replaced by Hearings Panel appointed by Ministers of Environment and Conservation
- **Full public hearing**
- Submitters "burned off" due to tight timeframe and formality of process
- **Panel recommendations only appealable on merits where council departed from them**
- Plan became operative in just over 3 years





# Collaborative processes

- Collaboration is increasingly popular
- Land and Water Forum paved the way (along with Canterbury Management Water Strategy)
- 2017 RMA amendments provide collaborative track – clunky
- Key issues – how members of collaborative body selected and status of outputs
- Has great potential and many benefits





# Resource management tools





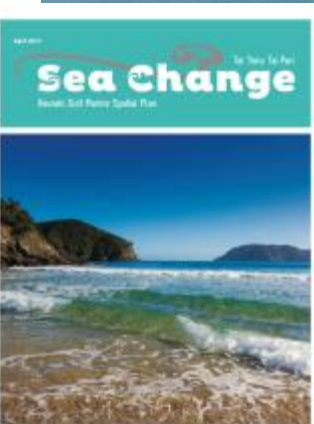
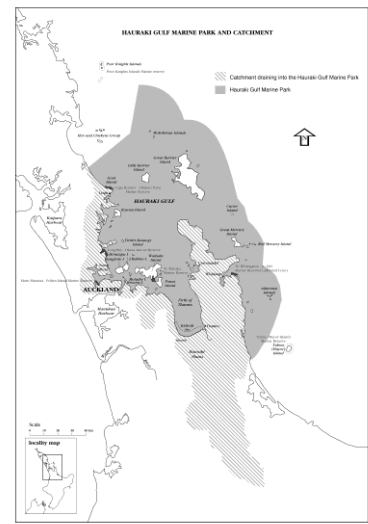
# Setting targets: Zero Carbon Bill

- **Target:** Legislation will set a 2050 emissions reduction target (of zero)
- **Stepping stones:** Sequential emissions budgets (quantity of allowable emissions over specified time period) in order to meet budget
- **Keeping the government honest:** Independent Climate Change Commission





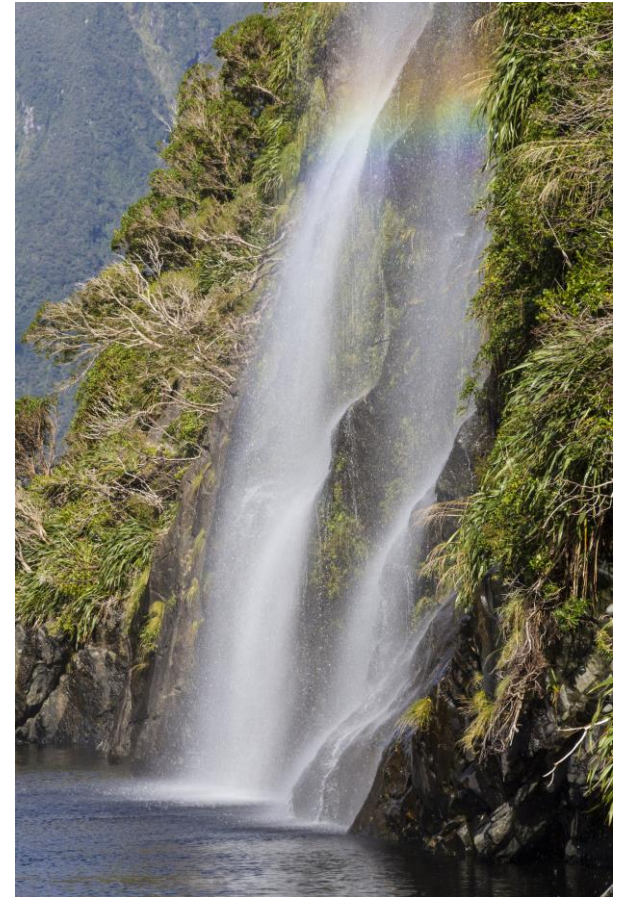
# Spatial planning: Sea Change Tai Timu Tai Pari





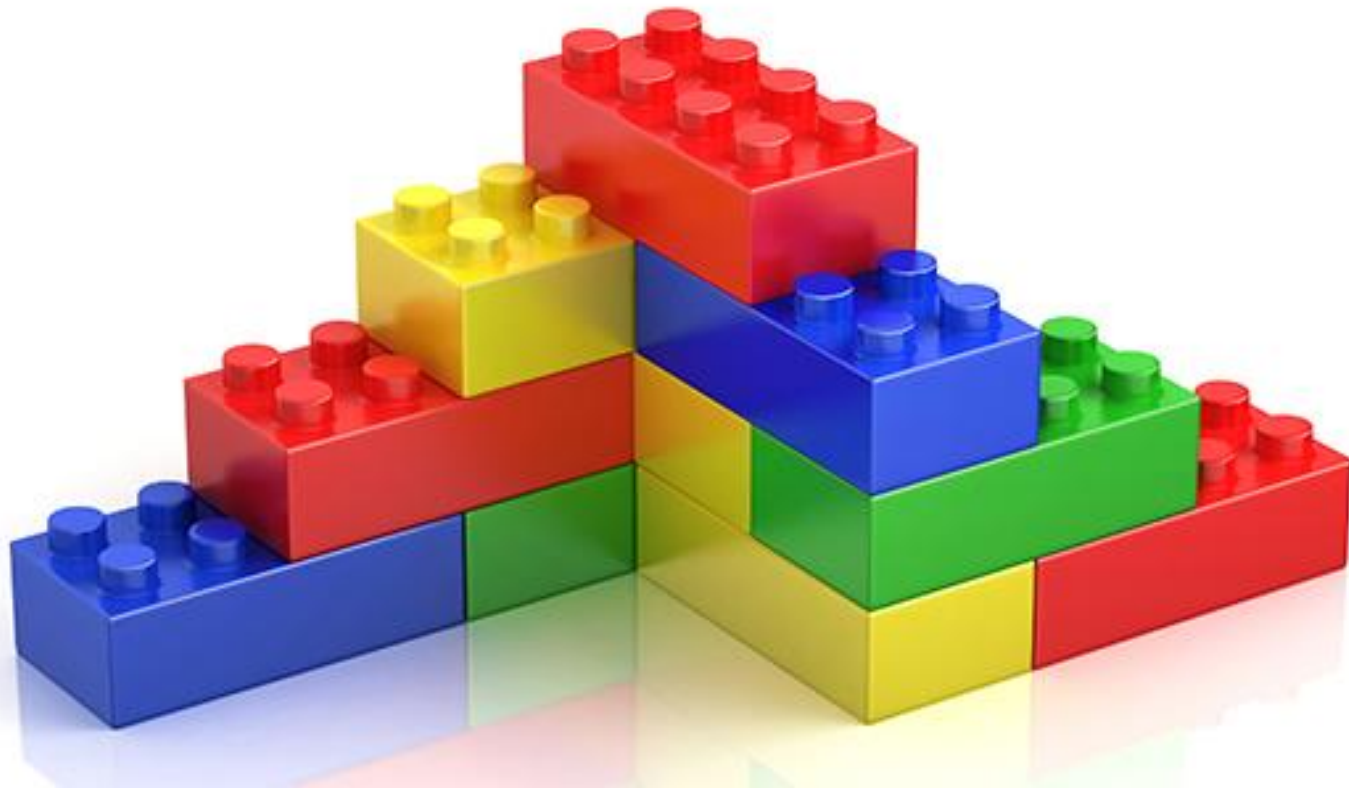
# Protective mechanisms: Water Conservation Orders

- Aimed at protecting outstanding amenity and intrinsic values of waterways through maintaining flow
- **Anyone can apply**
- Once in place they “trump” Part 2, policies, plans and consents
- **Establish clear environmental bottom lines**
- But provide only partial protection
- **Should we apply “Conservation Orders” more broadly?**

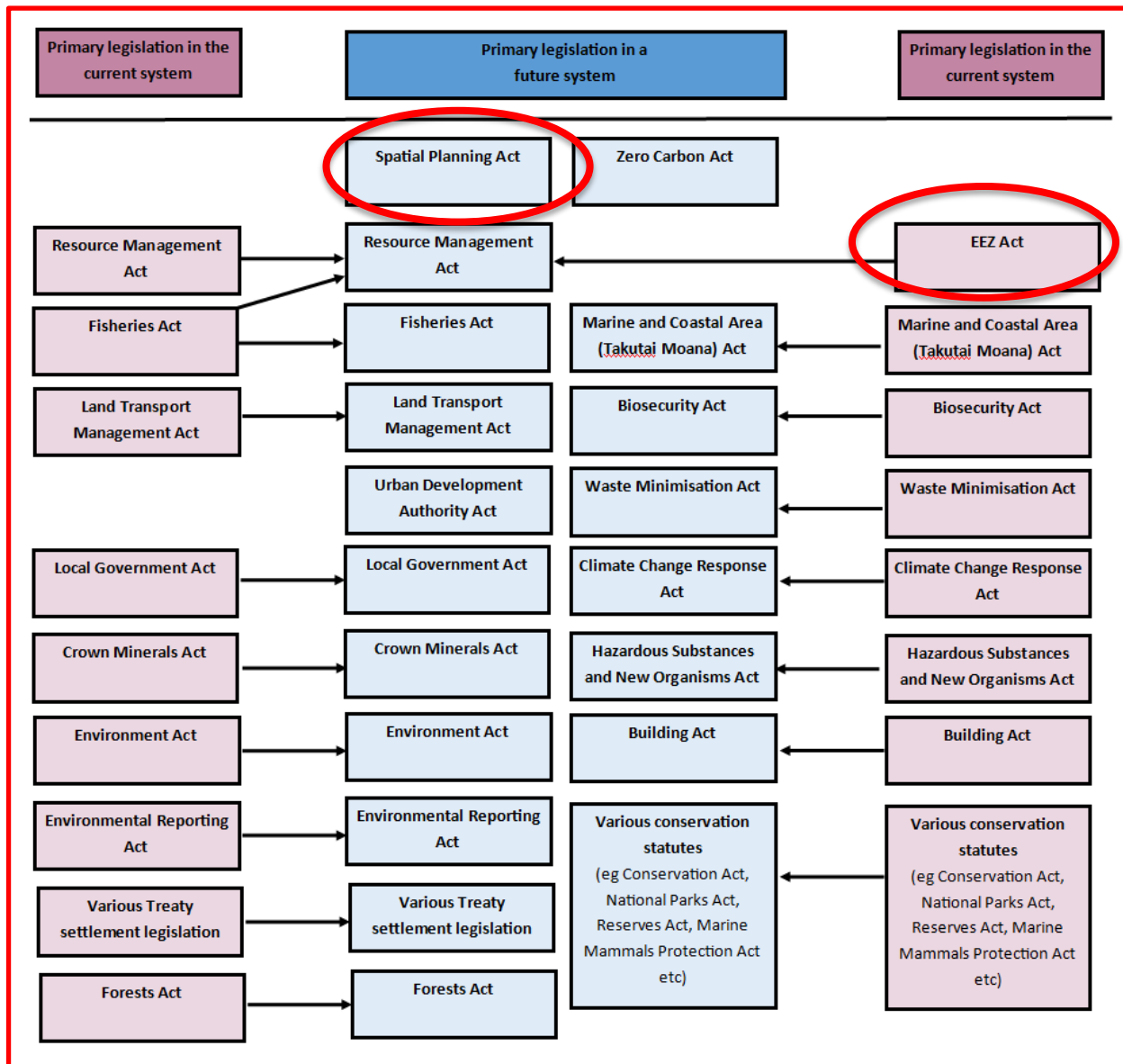




# Developing options: A bit like lego

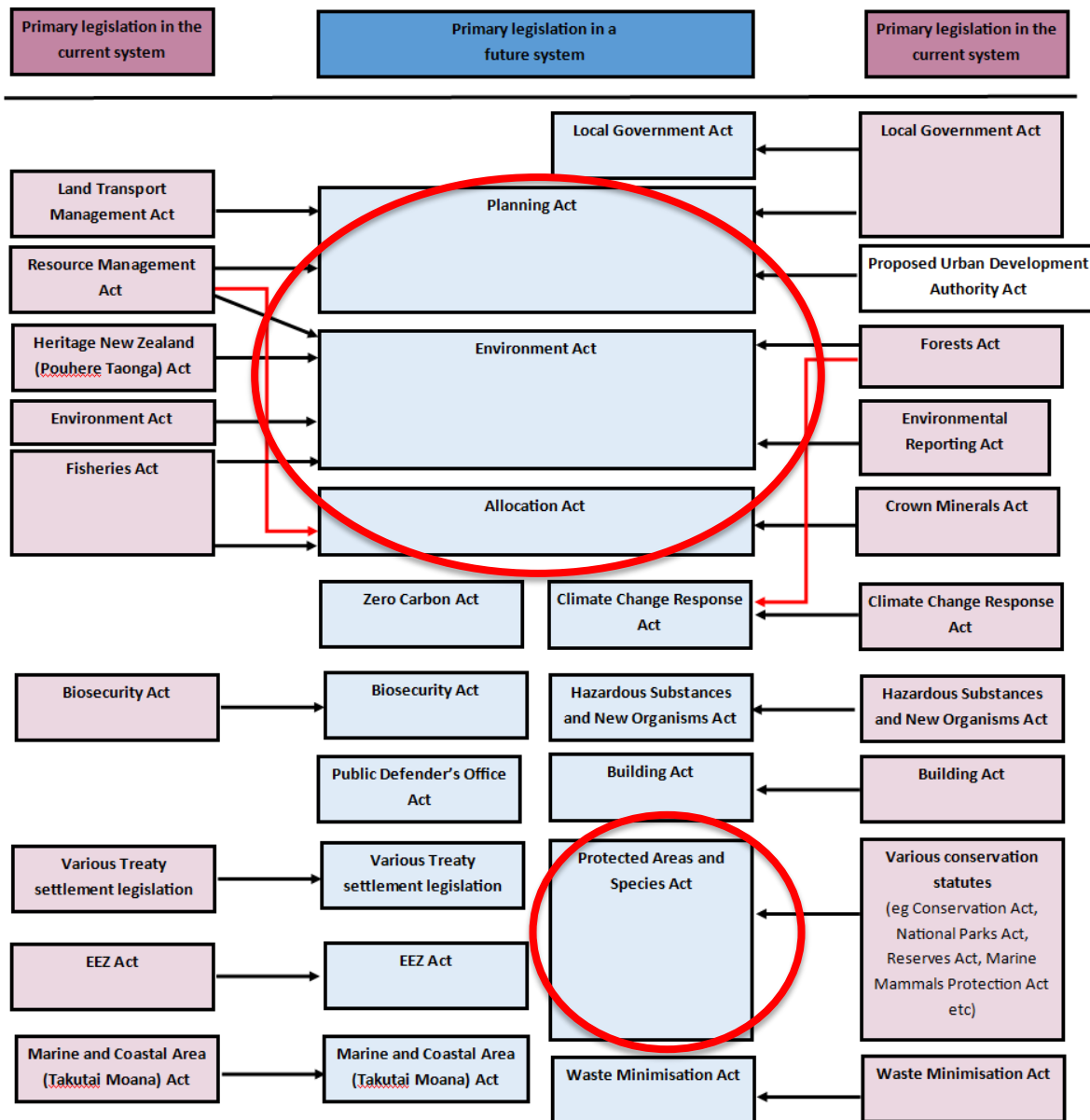






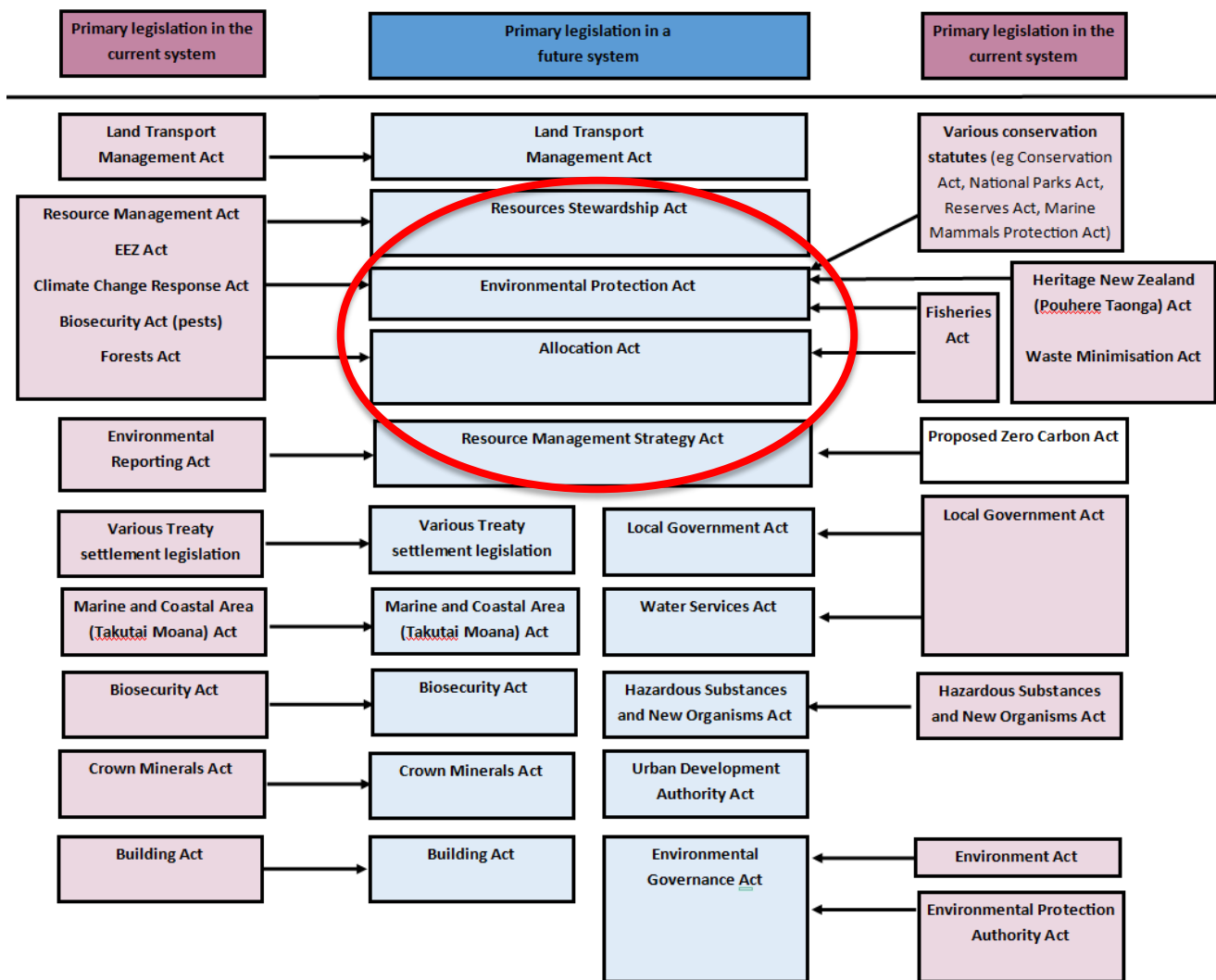
# Model 1





Model 2





# Model 3



# Next steps

- Synthesis Report completed December 2018
- Launch 12 February 2019 (Wellington)
- Phase 2 starts January 2019
- Developing criteria for selection of preferred model
- Selection of model and further development of it
- Mapping transition pathway
- 2 working papers and final report during 2019





# Conclusions

- It is exciting times
- There is opportunity to significantly improve the RM system
- EDS's work is designed to contribute to constructive debate
- We welcome feedback
- Stay in touch with the project by going on our email database – [office@eds.org.nz](mailto:office@eds.org.nz)

