

The Resource Management Act: Interface issues

SEPTEMBER 2008



DISCLAIMER: While every effort has been made to ensure the accuracy of this report Enfocus Ltd accepts no liability whatsoever for any errors of fact or opinion expressed herein

Document reference: D:\Enfocus\Enfocus Project Files\MFE\RMA
interface report.DOC

Date of this version: 12/09/2008 4:35 p.m.

Report status: Final Draft

This report was prepared by: Gerard Willis

Enfocus Limited
GO4 Zone 23, Mt Eden Road
Private Bag MBE M251
Auckland

(Ph) 09 307 2301
(Mb) 021 630 310

Contents

1	Introduction.....	1
2	Local Government Act 2002.....	4
3	Conservation Act 1987	10
4	Historic Places Act 1993	13
5	Electricity Act 1992.....	16
6	Biosecurity Act 1993.....	19
7	Land Transport Management Act 2003.....	22
8	Sale of Liquor Act 1989.....	24
9	Prostitution Reform Act 2003	28
10	Public Works Act 1981	30
11	Conclusion.....	33

1 Introduction

1.1 Purpose

This report outlines areas where the Resource Management Act (“the RMA”) interfaces with other legislation, describes any overlaps, and identifies possible solutions to remove or reduce any unnecessary duplication.

The report is for internal Ministry for the Environment (MfE) use and aims to provide MfE with a better understanding of existing and potential RMA interface issues. A better understanding of these issues will enable further consideration of what if any *efficiency gains* might be achieved from either (a) absorbing matters within the existing RMA framework (where RMA processes provide an appropriate mechanism to resolve issues); or (b) removing matters from consideration under the RMA (where they are adequately or more appropriately dealt with by other legislative frameworks).

1.2 Background

The Resource Management Act 1991 (“the RMA”) was conceived as a statute that would integrate various related and overlapping laws and hence provide both consistency of purpose and process efficiency.

Relative to the situation that prevailed prior to 1991 it has been successful in that regard. The reduction in the sheer number of statutes related to the management natural resources and the opportunities for multiple matters to be considered within a single decision-making process provide a *prima facie* case in support of that assertion.

Nevertheless, all statutes must have boundaries either spatially, functionally and or in terms of their prescribed powers and purpose. In that respect the RMA, for all its relative holism, is no different.

It is at the margins of the RMA’s jurisdiction that issues often arise and that opportunities for further process rationalisation occur.

The sorts of issues that arise generally fall into one of *five categories*:

- (a) Regulation of the same activity (as that regulated under the RMA) for a different, *but closely related*, purpose. Examples would be the regulation of land use activities for purely social reasons such as the regulation of the sale of liquor, gambling (casinos) or prostitution. The regulation of disturbance of historic places is another example. These focus of social/moral and cultural issues that are “fringe” issues under the RMA
- (b) Regulation of the same activity (as that regulated under the RMA) for a different and *not directly related purpose*. An example would be the *Electricity Act* 1993 (and subsequent amendments and associated governance rules) which requires approval of transmission projects by the Electricity Commission but does so to ensure that such projects are commercially/economically sensible rather than to address environmental issues.
- (c) Regulation in pursuit of the same or similar purpose (as that targeted by the RMA) but using alternative *regulatory tools to those available within scope of the RMA*. An example would be the regulation of indigenous forestry under Part

3A of the Forests Act which ensures sustainability of harvest through the control of export licences and controls on milling of timber. Such regulation tends to focus on *licensing* a product rather than managing the impacts of an activity. Accordingly, there is little focus on the *spatial* dimension (e.g. where the product is made or used). This is clearly seen in the case of the regulation of hazardous substances and genetically modified organisms under the *Hazardous Substances and New Organisms Act 1996* (HSNO)¹.

- (d) Legislative frameworks that impose *parallel process requirements or administrative powers* that are the same or similar to those required by RMA. The notable example here is the Local Government Act's requirements for the identification of community outcomes – including environmental outcomes and the associated consultation and reporting obligations.
- (e) Legislative frameworks that abut, or overlap with, the RMA's spatial boundary issues. The boundary between the territorial sea (within the RMA's jurisdiction) and the Exclusive Economic Zone (outside the RMA's jurisdiction) is one obvious example.

There is also a growing list of ad hoc legislation recognising special interests. This includes the *Hauraki Gulf Marine Park Act 2000*, the *Waitakere Ranges Heritage Area Act 2008*, and current and pending Treaty settlement legislation (such as the recent Waikato River settlement) which impose additional process obligations and/or policy imperatives in respect of particular places or resources.

1.2.1 Definition of boundaries

In some instances the boundaries between these regulatory frameworks are made clear in legislation itself and duplication is avoided because one or other implementing authority is restricted from considering particular activities or aspects of an activity. The interface with the Fisheries Act and the RMA would be an example².

In other cases there are non statutory MoU's or guidelines that provide a similar level of clarification. The interface with the sustainable indigenous forestry provisions of Part 3A of the Forests Act would be an example.

In yet other instances there is little clarity and duplication can easily prevail. The interface with the HSNO Act is a good example.

1.2.2 Scope of this review

The bulk of this report reviews legislation in categories (a) to (d) by considering the purpose of legislation, the activities controlled, the means of control, the nature and extent of any duplication, and the means (if any) by which duplication is avoided. Legislation that falls into category (e) as described above is not reviewed here as these are mostly new pieces of legislation and the overlaps are intended to

¹ The category can be further divided into regulatory frameworks that include specific means to avoid duplication and those that do not.

² The interface is clarified in terms of (a) clarifying that regional councils cannot take account of the effects of fishing; and (b) including a specific link to the Fisheries Act to apply the Undue Adverse Effects test to ensure effects of marine farms do not unduly affect fishers' rights to access fish.

provide emphasis to certain areas and values in addition to that provided by the RMA. In other words, duplication is a deliberate policy choice intended to convey importance.

Also not considered in the fisheries Act/RMA interface as this has recently been extensively examined through the Aquaculture Reform.

2 Local Government Act 2002

	Development contributions	Corresponding RMA regulation
Intervention (What)	Requirement for development contribution in cash and/or land.	Requirement for financial contribution in cash and/or land.
Purpose (Why)	Provide ability for cost recovery of council provided reserves, network and community infrastructure.	For purposes specified in a plan. Usually to provide for cost recovery of council provided services and/or to allow for contributions to ensure positive effects on the environment to offset any adverse effect.
Means of control (How)	Council can withhold grant of resource or building consent or authorisation for a service connection until contribution paid. Requirement for payment of a development levy typically (though not always) included on resource consent as an "advisory note".	Financial contribution imposed as a condition of resource consent (which must be complied with before consent is able to be exercised).
Existing means of managing potential duplication	<p>Under section 106 of the LGA councils must develop a policy on development and financial contributions which summarises what contribution (of each type) is to be taken for what capital expenditure.</p> <p>Section 200 of the LGA states that a local authority cannot impose a development contribution if has imposed a financial contribution for the same purpose.</p>	
Nature and extent of duplication	<p>There is currently some confusion caused by having some matters subject to development contribution while others the subject of a financial contribution (and this varies between local authorities). However, this is likely to be a transitional issue as local authorities are favouring development contributions under the LGA due to administrative simplicity. Financial contributions are likely only to be used for matters outside the scope of development contributions.</p> <p>The one disadvantage of the current approach is that the requirements faced by developers no longer sit within a RMA plan (although the contributions payable should be comprehensively set out in the <i>development and financial contributions policy</i>).</p> <p><i>Possible improvement</i></p> <p>There may be benefit in having development levies become deemed plan provisions once through the LGA (LTCCP) process or otherwise require them to be attached as an appendix to the relevant plan.</p> <p>Possible rationalisation may be achieved by defining financial contributions within the RMA to exclude contributions in respect of matters addressed by development contributions under the LGA</p> <p><i>Significance of overlap to process inefficiency: Low</i></p>	

	LGA consultation, outcomes and reporting	Corresponding RMA regulation
Intervention (What)	<p>Requirement for community outcomes to be developed through <i>public consultation process</i> - every 6 years.</p> <p>Require councils to <i>monitor and report</i> on progress on community outcomes to every 3 years.</p> <p>Require councils to prepare annual reports to (a) report results of any measurement of progress towards achievement of community outcomes; and (b) describe identified effect that any <i>council activity</i> has had on social, economic, environmental and social well-being of the community.</p>	<p>Clause 3 of the First Schedule requires consultation during the preparation of the RMA plan or policy statement. This does not explicitly include community consultation although that is the practice (and the link to the decision-making principles of the LGA imply consultation with any one potentially affected).</p> <p>Policy statements and plans need to be publicly notified and submissions received.</p> <p>Process of developing a plan or policy statement and the involvement of the community – to be every 10 years.</p> <p>State of environment to be monitored and a <i>review</i> of results of the monitoring of the effectiveness and efficiency of plans is to be compiled and made available to the public every 5 years. (In practice many councils prepare state of environment reports even though that is not strictly required³)</p>
Purpose (Why)	<p>Develop <i>community outcomes</i> (including environmental outcomes) to guide local authorities' priority setting, and provide a better basis for (i) measuring progress and (ii) coordination and alignment of local authority activity and the activities of other organisations.</p>	<p>Requirement for plans to contain <i>objectives</i> and <i>environmental results expected</i> provides a basis for subsequent resource consent decision-making and a basis for measuring progress.</p> <p>Monitoring and reporting requirements are feedback and accountability mechanisms ensuring interventions are well targeted and effective (or amended to be so).</p>
Means of control (How)	NA – administrative provisions	NA – administrative provisions
Existing means of managing potential duplication	<p>Clause 3A of the RMA provides for local authorities to agree a process for the preparation of the plans and policies statement in the triennial agreement prepared under the LGA.</p> <p>Clause 3C states that a council does not have to undertake clause 3 consultation to the extent that it has consulted in the relevant matters</p>	

³ This appears to be changing with many councils moving to more continuous web-based reporting of key indicators.

	<p>(with the relevant group) in accordance with other legislation within 12 months and it was made clear that the consultation applied in respect of the RMA.</p> <p>Schedule 10 of the LGA states that the LTCCP must state how the community outcomes relate “to other key strategic planning documents or processes”. It is not clear, however, whether this is intended to refer to RMA planning documents and processes.</p>
<p>Nature and extent of duplication</p>	<p>Notwithstanding Clause 3C there is little integration of the LGA consultation processes and those required under the RMA. In practice the exercises are undertaken by different parts of the council organisation. The lack of synchronisation in the timing (and required time scales) of LGA and RMA planning processes is also an obstacle.</p> <p>There is little, if any, explicit or deliberate relationship between outcomes set by the LGA process and the objectives set by RMA policy statements and plans. While it is important that the RMA objectives do not bow to the community outcomes (given the there is a separate statutory purpose), some relationship between what the community expects the environmental outcomes to be under the LGA and what it expects them to be under the RMA would seem to be rational and desirable.</p> <p>Reality of reporting is that, again, LGA and RMA reporting tends to be undertaken by different parts of council organisations. Often the same information is used in both LGA and RMA monitoring reports. There have been some efforts to develop integrated monitoring strategies which yield information that satisfies both the LGA and RMA reporting needs. However the reporting processes run down very separate tracks.</p> <p>The ARC for example, is in the process of preparing two separate reports: one on the state of the environment; the other on the progress against community outcomes. There will be considerable duplication in the information reported.</p> <p>The reasons for this duplicative process include:</p> <ul style="list-style-type: none"> ▪ LGA itself confused. It requires reporting again community outcomes (which are not all council outcomes) as well as reporting of the effect of council <i>activities</i> of the “four well-beings”. The relationship between these is not clear. ▪ There is probably different levels of detail required to fulfil the RMA purpose to that required for the LGA (with the LGA typically less detailed). ▪ The relationship between community outcomes, RMA objectives, effects of council activities on the four well-beings, effectiveness and efficiency of plan and other matters is unclear. How these fit together and what contributes to what is not clearly articulated in law or in existing guidance. ▪ There are different tracks in terms of timing, meaning that the need to report to satisfy the RMA seldom coincides with the requirement to report to satisfy the LGA (and visa versa). <p>In summary, there are a number of related overlap issues:</p> <ul style="list-style-type: none"> ▪ First there are dual community consultation processes. ▪ As a result of the above, there is little coincidence between community outcomes, outcomes sought by councils (a subset of the

	<p>former) and RMA plan/policy objectives</p> <ul style="list-style-type: none"> Because there is no alignment of outcomes/objectives there is a perceived (if not legal) need for separate reporting obligations which duplicates effort (and repeats information). <p>Note, in the Auckland context there has been an attempt to overcome these issues through the development the Auckland sustainability Framework which transcends both the LTCCP and the RPS.</p> <p><i>Possible improvement</i></p> <p>The solution to this overlap requires intensive analysis. It is a complex relationship.</p> <p>However, resolution would begin by ensuring there is a clear and direct relationship between relevant community outcomes and RMA policy/plan objectives. A requirement in the LGA for outcomes to be written cognisant of RMA objectives and for LTCCPs to include a description of the relationship would seem like a key starting point.</p> <p>It may be that some or all of the monitoring requirements of section 35 of the RMA could be removed with monitoring and reporting expectations transferred to the LGA. The monitoring of environmental outcomes and effects of all four well beings (from council activities) would seem to cover all relevant bases.</p> <p><i>Significance of overlap to process inefficiency:</i> High - particularly at regional level (but difficult to untangle).</p>	
	Administrative charges	Corresponding RMA regulation
Intervention (What)	<p>Section 150 provides for local authorities to prescribe fees either by bylaw or using the special consultative procedure.</p> <p>The LGA also has a general power under section 12 – enabling charging in respect of goods and services or amenities provided. (Such as information provision)</p>	<p>Section 36 provides authority for councils to impose administrative charges on:</p> <ul style="list-style-type: none"> Applicants for consideration of resource consent (and other types of RMA authorisation) applications Consent holders for administration, monitoring and supervision of consents (and for the review of conditions in certain circumstances) Persons requesting information from the local authority
Purpose (Why)	<p>Enable a council to recover the reasonable costs associated with a <i>certificate, authority, approval, permit, consent or inspection</i> issued by that council.</p>	<p>Enable a council to recover the reasonable costs from associated with undertaking specific RMA administrative functions.</p>
Means of control (How)	<p>Fees charged and debt collected through normal debt collection methods.</p>	<p>Fees charged. Service need not be started until any fixed charge is paid. If an additional fees is charged normal debt collection methods apply.</p>
Existing means	<p>Under section 150 of the LGA a council can only charge for an authority</p>	

<p>of managing potential duplication</p>	<p>granted under another Act when that Act does not itself authorise the local authority to charge. This effectively ensures there is no “double dipping”.</p> <p>Furthermore, under section 36 of the RMA fixed charges must be set using the processes of section 150 the LGA and the special consultative procedure under the LGA.</p>
<p>Nature and extent of duplication</p>	<p><i>Monitoring and inspection</i></p> <p>There are reported instances of local authorities imposing charges in respect of monitoring compliance with permitted activity rules under LGA while imposing other administrative charges the RMA. (This practice has arisen because the RMA does not provide for such charges to be imposed).</p> <p>The legality of that practice is uncertain. But if valid means that some of the limits and constraints imposed by section 36 of the RMA can be circumvented by using section 150 of the LGA. While there is not “double dipping” there certainly are instances when both the LGA and RMA are used by councils to recover costs of RMA monitoring and inspection services.</p> <p><i>Consent processing costs</i></p> <p>For the most part the LGA charging powers are not used in the RMA consent processing context because section 36 of the RMA provides specific funding powers (and therefore LGA powers are not available).</p> <p>In that sense, there is not so much an overlap but rather <i>parallel</i> provisions addressing cost recovery.</p> <p><i>Information provision</i></p> <p>Councils can charge for services (other than processing certificates, authorities, approvals, permits, consents inspections) under their general powers of section 12. The RMA also provides powers to charge for information provision and the supply of documents. Unlike section 150, section 12 of the LGA does not limit the ability to charge to instances when another Act does not provide for charging – hence it would seem possible for charges to be levied under both Acts (although whether this has occurred in reality is not known).</p> <p><i>Overview</i></p> <p>The key question is whether the RMA needs it own administrative charging powers at all. If section 36 of the RMA did not exist, local authorities would have recourse to section 150 and section 12 of the LGA. Other statutes apparently rely on those sections.</p> <p>The RMA and LGA charging powers are not, however, identical. The RMA powers are more specific. They are also limiting in some respects – more so perhaps than the seemingly broad charging powers of section 150 of the LGA. Section 36 of the RMA also provides a right of objection to certain (additional) charges levied under that section. No such right exists in the LGA.</p> <p>Both section 150 of the LGA and section 36 of the RMA limit the administrative charging powers to the recovery of “reasonable costs”. However only the RMA requires consideration of other charging principles aimed at securing a balance between the <i>beneficiary pays</i> and <i>user pays</i> principles. Section 12 of the LGA (used to levied charges that are not related to authorisations and inspections) is not linked to the</p>

“reasonable cost” principle.

All this causes some complexity in the system with different rights and expectations depending on which powers local authorities use to impose a charge.

Possible improvement

Simplicity of the system would be improved by having all local government administrative charging dealt with under the LGA and according to the same set of principles.

However, it is unlikely to be as simple as deleting section 36 of the RMA. That would represent a significant policy change and potentially allow a broadening of charging applied to RMA-related services which may not be desirable. A wider policy review of what is reasonable to charge for and what charging principles ought to apply to the setting of any charge would need to precede a change in the location of charging powers.

Significance of overlap to process inefficiency: Moderate - not a question of overlap in practice but an area of inconsistency and an opportunity for simplification.

3 Conservation Act 1987

	Concessions to use conservation land	Corresponding RMA regulation
Intervention/activity controlled (What)	The occupation/use of conservation land. (Temporary uses, grazing, buildings, infrastructure, filming, sports events etc).	The use of conservation land (when user not the Crown and when not in accordance with conservation management strategy, conservation management plan, or management plan).
Purpose (Why)	Formal purpose is to conserve NZ's natural and historic heritage. Nature of control implies purpose related to: <ul style="list-style-type: none"> ▪ Landowner consent ▪ Ensure activity does not compromise: <ul style="list-style-type: none"> - conservation objectives - rights of public access and enjoyment. - public safety. 	Manage adverse effects on environment
Means of control (How)	No activity can be carried out in a conservation area unless authorised by a <i>concession</i> (section 17O). (Some exceptions apply - emergencies, DoC work etc). Concessions can be classed as: <ul style="list-style-type: none"> ▪ <i>Licences</i> – for an activity longer than 5 years or generally high impact, notification is required ▪ <i>Leases</i> – for exclusive occupation, notification required) ▪ <i>Easements</i> – right of way, notification may be required) ▪ <i>Permits</i> – for an activity 5 years or less (including temporary activities, notification depends on the activity and its effects). 	Activity must comply with a district plan (or have resource consent in accordance with district plan).
Existing means of managing potential duplication	The <i>Crown</i> is excluded from the requirement for resource consent provided the activity is consistent with the relevant conservation management planning document. However, for parties other than the Crown there is complete overlap in requirements. This duplication is deliberate. Section 17P of the	

	<p>Conservation Act 1987 states that:</p> <p><i>“Except as provided in subsection (2) of this section, this Part of this Act does not relieve any person from any obligation to obtain a resource consent under the Resource Management Act 1991.</i></p> <p>(Subsection 2 relates to grazing leases not to be treated as subdivisions for the purpose of section 11 of the RMA)</p> <p>As part of the concession granting process, DoC requires advice on the RMA consents required. If such consents have not been secured prior to the application for the concession the requirement for consent is included as a condition of the concession.</p>
<p>Nature and extent of duplication</p>	<p>Unless you are the Crown, to use conservation land you need a concession from DoC under the Conservation Act and, (depending on the district plan) a land use consent under the RMA (and possibly other regional consents).</p> <p>The question is, do these approval processes consider different matters or is there genuine duplication?</p> <p>The matters for the Minister of Conservation to consider are set out in section 17U of the Conservation Act (note this is within Part IIIB of the Conservation Act which was added to the Act in 1996). The matters are comparable to the matters set out in 104 of the RMA in that they focus on effects of the activity and the environmental impact assessment.</p> <p>“Effect” is defined to have the <i>same definition as the RMA</i>.</p> <p>There, however, some matters considered, which are (arguably) in addition to those required under the RMA:</p> <ul style="list-style-type: none"> ▪ The Minister shall not grant approval if the use is contrary to the Act or the purpose for which the land is held ▪ Where the application relates to the building of a structure the Minister needs to be satisfied that the activity could not go in an alternative location or not use an existing structure. ▪ Provisions relating to leases and licenses granting an interest in land (which would seem to be more about the Crown’s ownership interest). These matters relate to whether there is a demonstrated <i>need</i> for the interest or exclusive occupation. <p>Concession application forms confirm that there is significant overlap in the information requirements and matters considered.</p> <p>DoC has prepared a guideline on EIA in relation to concessions which can be found at: http://www.doc.govt.nz/upload/documents/about-doc/concessions-and-permits/concessions/guide-to-environmental-impact-assessments.pdf</p> <p>The Guide includes advice for applicants and for Departmental processing staff. The DoC guide acknowledges the similarities between the EIA and the RMA’s AEE but asserts there are fundamental reasons why the AEE approach as represented by MfE’s AEE guidelines is not appropriate for its own purposes. It states:</p> <p><i>“These reasons relate to the context of the issues and proposed activities. The MfE guidelines (on AEE) are targeted at sustainable use of land, air and water and are quite specialised and operate in a different context to the Department’s work of</i></p>

conservation and preservation”.

While that may be true for the guidelines, it is not clear that the nature of the AEE and consent process itself is “fundamentally different” (although some of the expected content of effects assessments under the two Acts will be different).

The Conservation Act process itself is not dissimilar to the RMA in that there is an assessment of environmental effects and there may be public notification (under section 49 of the Conservation Act) depending on the scale of the potential impact of the activity.

Submissions may be made on a notified application and a hearing may be held. This applies to *high impact activities* (including any structure, large scale filming, telecom sites, large annual sporting events and any low impact activity in a sensitive location - and all leases and licences).

The Minister for Conservation may grant or refuse consent and if granted may impose conditions.

Overview

The need for (effectively) two land use approvals is difficult to rationalise. In theory, the provisions of the Conservation Act and the Crown’s landowner interests mean there may be matters considered under the Conservation Act process that are not considered under the RMA process (and/or rather issues that are considered according to different criteria). Conversely, where effects (such as traffic) cross the boundary of the conservation land there may be effects that are not considered in the Conservation Act process. In practice, however, in the vast majority of instances approval under the Conservation Act is likely to be more stringently considered than a land use consent under the RMA.

Possible improvement

There are several options to address the current overlap. The first is to exempt from section 9(1) of the RMA any activity which holds a current concession under the Conservation Act (provided there are no cross boundary effects – to be determined through the concession granting process)

The second (more politically difficult) option would be to (a) review the Conservation Act regime to more clearly distinguishing between the *management of effects* and *exercising an ownership interest*, (b) require all environmental assessment to be undertaken under the RMA; while (c) maintaining a role for DoC in granting concessions but doing so taking account of a narrower range of issues (such as length of occupation, consideration of alternative sites, maintaining public access, site etc).

A third option is to develop a integrated consent process involving alignment of district plan and concession requirements within conservation areas and a joint decision-making process (perhaps in the style as that used for restricted coastal activities – but modified to reflect the scale of activities being regulated).

Significance of overlap to process inefficiency: High where it occurs though scale of issue uncertain. Further research required to scope the scale of issue in practice.

4 Historic Places Act 1993

	HPA Authorities	Corresponding RMA regulation
Intervention/activity controlled (What)	Destruction damage to archaeological sites.	Land use, soil disturbance, occupation of/disturbance to seabed - the consequence of which may be the destruction, damage or modification of an archaeological site.
Purpose (Why)	Protection of archaeological sites.	Protection of historic heritage (including archaeological sites).
Means of control (How)	Any person wishing to undertake work that may damage, modify or destroy an archaeological site, or to investigate a site by excavation, must first obtain an authority from the NZHPT for that work (ss.10-20 of the HPA).	Local authorities must recognise and provide for the protection of historic heritage from inappropriate subdivision and development when exercising functions (including development of district and regional plans and the consideration of resource consents). Typically this means that plans require consent for activities that might adversely affect known historic heritage (including archaeological sites). Although this will obviously depend on individual plans.
Existing means of managing potential duplication	None specified in legislation.	
Nature and extent of duplication	<p>An archaeological site is a site associated with human activity that occurred before 1900.</p> <p>The HPA archaeological authority process applies to all sites that fit the HPA definition, regardless of whether:</p> <ul style="list-style-type: none"> ▪ the site is recorded in the NZAA Site Recording Scheme or registered by the NZHPT ▪ the site only becomes known through development work taking place ▪ the activity is permitted under a district or regional plan, or a resource or building consent has been granted. <p>Hence, in theory at least, there is a clear and significant overlap between the RMA and the HPA when it comes to responsibility for protecting archaeological sites. Consent could be required under both regimes.</p> <p>In practice, however, the nature of the overlap is more subtle. RMA plans tend not to regulate to protect archaeological sites. They will contain objectives and policies to that end but tend to rely on the HPA authority process as the <i>method of implementation</i> rather than</p>	

duplicate regulation in the district or regional plan.

Also, as indicated above, many archaeological sites remain unknown and it is difficult to regulate (in an RMA sense) to protect something that is not known about in advance of it being discovered during development. For that reason it is common for resource consents to contain conditions relating to “accidental discovery”. Such conditions require work to cease and the Historic Places Trust (HPT) to be notified if archaeological evidence is unearthed.

It is also common to request information on archaeology in the AEE an/or require archaeology assessments as a condition of consent when there is reason to believe that there may be archaeological sites present.

Under the RMA, consents are not generally required to destroy, damage or modify archaeology (although they may be required in respect of scheduled cultural heritage features). Rather, consents are required for activities that have other potential environmental effects. Their potential impact on archaeological sites is incidental to the primary purpose of regulation. That distinction is important.

Where an activity, regulated primarily for other reasons, may damage archaeology, it is common for resource consents (in areas where archaeology is known or suspected) to contain conditions, or advisory notes, that an HPT authority will/may be required.

Therefore it is not correct to assume that there is *duplication of regulation* (even though duplication may be legally possible). But there certainly is still duplication in the sense that there are two *regulatory processes* required in relation to a single activity.

In other words while it is not the same thing being regulated, the intervention is aimed, at least in part, at the same or similar purpose. Therefore, there is an obvious opportunity to condense consideration of the issues into a single process.

Possible improvement

There are two options:

- Develop a joint process (retain the HPT in its authority granting role but provide for that decision to be taken together with the RMA consent)
- Bring the authority granting process within the RMA to be an integral part of the general field of resource management.

At first look, only the second option seems to be feasible and to add value in terms of process efficiency. Integrated decisions through some form of joint decision-making process involving 74 local authorities with a centralised body like the HPT would not be easy. In any event, the approach would not overcome the need for separate consideration when archaeology is discovered after resource consent is granted.

The other option of bringing the regulation of disturbance to archaeological sites within the RMA itself warrants close inspection. It would not, however, be straightforward. There would need to be a general prohibition on disturbing archaeological sites either known or unknown without consent (or perhaps unless provided for in a plan). Consent applications could then be considered contemporaneously with applications for the substantive activity (e.g. earthworks etc)

where such consents are required.

Where no other consent is required, consent for archaeological disturbance would be required (in the same way as an earthworks consent might be required even though the building development might be permitted). The trick will be how to manage archaeology that is discovered only during construction phase but that is a problem that already exists and it would not be aggravated under the model proposed.

The broader issue would be whether territorial councils would have (or be able to easily engage on an as needed basis) the specialist expertise to be able to make good decisions on what should be allowed to be lost and what conditions ought to apply. Associated with that is the question of what, if any, on-going advisory role there might be for the HPT. It might be, for example, that while the local authority becomes the consent authority for archaeological authorities, the HPT is retained as a statutory adviser that provides advice on applications (either on a “when requested” or some other basis).

These and other issues would need more detailed consideration.

Significance of overlap to process inefficiency: Moderate to high – clear overlap and frequency of authorisations is high. Incidence of HPA authorisation and resource consent processes being required in relation to the same project unknown.

5 Electricity Act 1992

	Grid investment Test	Corresponding RMA regulation
Intervention/activity controlled (What)	Grid investments by Transpower.	Use of land for transmission purposes.
Purpose (Why)	Ensure that Transpower makes prudent investment decisions and does not abuse its position as a monopoly business by making uneconomic investments that it can charge on to its customers.	Avoid, remedy or mitigate adverse effects on the environment.
Means of control (How)	<p>Application of the grid investment test (GIT) to grid upgrade plans (GUPs) (proposed new transmission investments). As specified in Part F of the Electricity Governance Rules - prepared under the Electricity Act 1992.</p> <p>The GIT must be met before the Electricity Commission can <i>approve an investment</i> by Transpower. Approval enables Transpower to recover the cost of transmission from its customers (electricity generators).</p> <p>The GIT is met when the proposed investment maximises the <i>net market benefit</i> compared to alternative projects.</p> <p>A net market benefit occurs when market benefits exceed market costs. One of the costs to consider is the <i>"costs of complying with or arising pursuant to all existing and anticipated laws, regulations and administrative determinations."</i></p>	Transpower cannot <i>build the project</i> (construct/upgrade a transmission line) without a designation, resource consent or an appropriate provision in the district plan enabling the activity.
Existing means of managing potential duplication	<p>None.</p> <p>There is no requirement specified as to how approvals should be sequenced. Nor is there any formal connection between GIT and RMA processes in terms of ensuring information, analysis and conclusions attained as part of one process have application in the other process.</p>	

Nature and extent of duplication

The lack of connection between the Electricity Act and RMA approvals processes should be of no real surprise. They are discrete exercises undertaken for very different purposes.

There are, however, two dimensions which create a murky interface.

GIT process review of RMA considerations

The GIT implies a need to look at likely costs of the transmission project - and alternative projects - of complying with RMA. This may include alternatives to transmission projects (such as new generation near load centres, demand management etc) but it may include alternative transmission projects (such as upgrading an existing line rather than building a new one- or a new line along a different route).

The GIT methodology ensures that the costs of RMA compliance are factored into the decision-making in coming to a view as to what option has greater net market benefit.

This means that in applying the GIT, Transpower (and, separately, the Electricity Commission) must determine how much the designation (and/or resource consent) processes are likely to cost. This includes *administration costs* and the cost of *complying with conditions* that may be placed on the approval (or recommended in the case of a designation) by the local authority.

Clearly, if the application for the GIT *precedes* the notice of requirement/consent application under the RMA, assessing RMA compliance costs is going to be very difficult.

(Conversely if the GIT *follows* the RMA approvals Transpower runs the risk of having spent a great deal of time and money gaining RMA approval but the EC determining that the project does not meet the GIT).

In the past this has meant that the Electricity Commission has consulted with potentially affected communities as part of the GIT process. The Government has even previously requested that in fulfilling this requirement the Electricity Commission:

Endeavour to ensure that its processes and information gathering will assist the decision-making process under the RMA in relation to designations and resource consents for a new transmission line

(Letter from Minister of Energy to the Electricity Commission - April 2005)

Thus the GIT process has overlapped with past RMA processes to the extent that the Electricity Commission has been talking with communities about how effects can be avoided, remedied or mitigated.

GIT conclusions in the RMA decision-making context

Section 171 of the RMA states that amongst other things, a local authority considering a notice of requirement (NOR) must have particular regard to “*whether adequate consideration has been given to alternate sites, routes, or other methods of undertaking the work*”.

The same section also requires consideration of whether the project is *reasonably necessary for achieving the objectives of the requiring authority*.

This raises the question that, assuming the GIT process precedes the RMA process, how much regard RMA decision-makers should have to the GIT approval in meeting these two considerations under section 171(b) of the RMA. Certainly it would seem obvious that if the project

met the GIT is must be “reasonably necessary”. Similarly, one could argue that the GIT represents “adequate consideration of alternative sites, routes and methods.” (Although admittedly the GIT won’t consider subtle alternatives in the route).

The other possibility is, of course, that after meeting the GIT (including potentially consulting with communities regarding effects) the RMA recommendation/decision might be to decline the project. However, if this did occur it would mean that the GIT process got the assessment of RMA compliance costs very wrong.

As can be seen, the relationship between Part F of the Electricity Governance Rules and the RMA is complex and has been muddled by the desire to take the RMA into account in the GIT process. The extent to which that laudable intent is possible (or even helpful) is, however, a matter of debate.

Possible improvement

This issue is particularly challenging to resolve entirely. On the one hand, the GIT must take RMA compliance costs into account. If it did not, there is a real risk that it could approve projects that looked good in all aspects other than being “incontestable” under the RMA.

On the other hand, it does seem overly ambitious to suggest that Transpower, or the Electricity Commission, can really predict what the compliance costs of a project will really be ahead of that project being considered. And, as discussed above, to even approach such an understanding would mean duplicating some of the normal RMA consultation process. Although the Government has previously implored the Commission to align its enquires with RMA processes, there is no regulatory requirement to do so. (Nor is it clear how it would do so).

If the identified interface issues were considered significant enough that change was required, the issue would need detailed consideration. However, the answer is likely to lie in amendment the Electricity Governance Rules rather than the RMA.

There seem to be two options:

- Remove the obligation to include a calculation of compliance costs with a more realistic requirement for the Electricity Commission merely to be satisfied that the project (and alternatives considered) could be consented under the RMA. Such a conclusion would be reached through a process of reviewing planning documents, any preliminary scoping and consultation work carried out by Transpower and/or discussions with relevant consent authorities. Such a determination ought not to have any weight in the subsequent RMA process.
- Design a joint consultation process which Transpower as the RMA requiring authority and the Electricity Commission as the GIT decision-maker run jointly. (This may be problematic since Transpower wears two hats in this process).

Significance of overlap to process inefficiency: Low overall by potentially high in context of a limited number of large projects. While the complex relationship between the Electricity Governance Rules and the RMA may lead to a need for the Electricity Commission to consider alternatives and for a duplication in community consultation, the GIT needs to be conducted to a level of detail commensurate with the scale of investment.

6 Biosecurity Act 1993

	Regulation for pest control	Corresponding RMA regulation
Intervention/activity controlled (What)	Pests on property. Keeping/spreading of pests.	Land use involving keeping of animals. Other uses of resources that result in effects that can be mitigated by pest control.
Purpose (Why)	The eradication or control of plant or animal pests posing a risk to biodiversity, water and soil, human health or primary production	Maintenance and/or restoration of biodiversity (and potentially other matters)
Means of control (How)	Rules in a regional pest management strategy (RPMS) requiring landowners to remove/destroy pests. Regulation stopping sale, deliberate spread, propagation/breeding of certain pests (including, but not limited to, the specification of “unwanted organisms by MAF BNZ).	1. Conditions on resource consents (mostly land use but also coastal occupation and damming diversion) to: (a) mitigate and effect (through, for example, ecological restoration and on-going management – including pest control); or (b) avoid an effect (through, for example, prohibiting the keeping of certain animals or requiring certain management practices to minimise pest spread). 2. Rules in district plans making keeping of certain animals (e.g. goats, deer, mustelids etc) prohibited or non complying activities.
Existing means of managing potential duplication	None	
Nature and extent of duplication	<p>The extent of overlap is not currently large as control of pests under the RMA is limited. However, there is a move by many regions away from “species led” pest management (an approach that targets single pest species everywhere are anywhere) to “site led” pest management (an approach involving intensive management of multiple pests on and around specific sites to protect the biodiversity values of selected sites. That changes the relationship between the RMPs and RMA plans. RPMSs are designed as species management tool rather than as a site management tool. RMA plans are more focused on protecting specific sites (SNAs etc).</p> <p>The relationship between the RMA and the Biosecurity Act (BSA) has been characterised as the RMA setting the objectives and the Biosecurity Act providing some of the management tools (i.e.</p>	

regulation making powers not available under the RMA).

That approach is, however, being increasingly challenged by regional councils. Many regions have refocused attention from primary production to biodiversity, causing some to question whether they need to have RPMSs at all.

Currently the only reason they prepare RPMSs is to access certain regulatory powers (they do not need RPMSs to engage in operational control themselves or to access enforcement powers). Whilst councils can regulate the deliberate farming/keeping of animals under the RMA, they probably cannot impose obligations on landowners to control pests that are present “unintentionally” on a person’s land. Except that, as control of certain pests may be able to be controlled as a permitted activity condition where there is a clear link between the land use and the presence of a pest (although to the author’s knowledge that has not been attempted). As noted above, pest control may also be required as mitigation for some other effect (For example, EW required that the loss of part of a wetland be compensated by restoration/enhancement of the remaining wetland by large scale removal of invasive willows and other pest control).

Conceptually the line between what is carried out under the BSA and what is carried out under the RMA is being increasingly blurred. However there is no evidence that this is causing any particular difficulties for either local authorities or resource users at this point.

Possible improvement

The conceptual boundary between the BSA and the RMA has traditionally been that the RMA *stops* people doing something, whereas the BSA can *make* a person do something (including spend money). That distinction may however be overstated. Both the BSA and the RMA impose a cost. Furthermore, if pests are seen as an by-product of land use then requiring that negative effect (i.e. pest) to be managed as a condition of land use is no different than requiring nutrient run off (for example) to be managed. In other words the RMA doesn’t just stop people doing things, it requires that people internalise the cost of their externalities – that often involves doing things and spending money they otherwise would not.

Viewed in that way there may be an argument that, longer term, some of the BSA pest management powers could be imported into the RMA. Regions could then prepare a regional pest plan or integrate pest control powers into other regional plans (such as land management, freshwater or biodiversity plans).

Under that model, the BSA would continue to deal with pre border, border, surveillance and incursion response biosecurity, but once an organism is declared present and unable to be eradicated, it falls to be dealt with under the RMA - if a case can be made that the presence of the pest compromises RMA outcomes. If it does not compromise such outcomes, it would be up individuals, industries or regional councils to decide whether they want to control the pest of their own volition (or in the case of regional councils in accordance with their functions and powers under the LGA).

There is probably no need to take action on this point at this time but it may be something to watch for the future. Undoubtedly, better integration of pest management and biodiversity function would be desirable. For that reason the alternative tidy-up of removing the

	<p>ability to control pests under the RMA would seem a backward step. Of course, bringing pest management within the RMA should also produce some efficiency gains from not having two rule making processes.</p>
<p>Related overlaps</p>	<p>The area of pest management has various other overlaps that should be noted. In particular, The <i>Wildlife Act</i> contains a list (Schedule 8) of animals not protected but may be kept, bred, or farmed in captivity pursuant to regulations. This applies to mustelids (ferrets, stoats and weasels) and there are specific regulations controlling the farming breeding and sale of ferrets (administered by DoC) aimed at managing the risk to biodiversity values. Similarly, under the <i>Wild Animals Control Act</i>, DoC has powers to manage wild (introduced) species that are both pests and a recreational/commercial hunting resource. Under that Act, DoC controls the feral range of animals and regulates matters such as the boundary fencing requirement for deer farms, and identifies areas where deer farms and safari parks are regulated or prohibited.</p>

7 Land Transport Management Act 2003

	Regional Land Transport Strategies	Corresponding RMA intervention
Intervention/activity controlled (What)	Direction of regional land transport infrastructure/services provision - including major activities being planned for the 30 year period.	Land use/provision and protection of land for transport infrastructure.
Purpose (Why)	An affordable, integrated, safe, responsive and sustainable land transport system.	Strategic integration of infrastructure (including transport infrastructure and land use).
Means of control (How)	Regional Land Transport Strategies (RLTSs) that bind Regional Land Transport programmes (RLTPs) that in turn form the basis of funding applications to the New Zealand Transport Agency (NZTA).	Regional policy statements, district plans and growth strategies that set the direction, scale, timing and form of urban growth and development in a region/district.
Existing means of managing potential duplication	<p>Section 75 of the Land Transport Management Act (LTMA) 2003 (as amended in 2008) states that an RLTS must be consistent with a relevant national or regional policy statement and take into account any relevant district plans.</p> <p>RLTSs and RLTPs must take account of the Government Policy Statement (GPS) on land transport which details the government's desired outcomes and funding priorities for the transport sector. It provides guidance on the factors NZTA should take into account when evaluating programmes and strategies and approving activities for funding. The GPS identifies <i>integrated planning</i> (being integration of land use, urban design and transport planning) as key factor.</p> <p>Guidelines on the preparation of RLTSs prepared by the NZTA similarly stress the interdependency between transport and land use and encourage the need for collaboration and engagement between transport planners and land use planners, urban designers and other professionals when preparing RLTSs.</p> <p>Although the principle of integration is established in policy and in guidance, (and a link created in law) the process by which this is achieved is not well developed.</p>	
Nature and extent of duplication	<p>Transport planning and land use/urban growth control are of course quite different disciplines. There is not so much as overlap in terms of policy and planning effort, but there is a clear inter-dependency between the two.</p> <ul style="list-style-type: none"> ▪ The quality and direction of land use control can determine the extent and nature of transport infrastructure required ▪ Timely transport investment of the right kind is critical to realising land use/urban growth (as well as underpinning economic and social) objectives. <p>The only duplication is in the fact that both the RLTS and the</p>	

RPS/district plan development *processes* are similar in that they require widespread consultation. Some of the issues discussed will be closely related. To give the public the full picture, alignment and integration in that consultation would be beneficial.

It is, however, difficult to see how this process integration could be regulated for. It is not at all clear that all future RPSs will deal with urban growth issues. At present only 2 or 3 deal with such issues in any detail. Requiring consultation on RLTSs and RPSs to be aligned would make little sense where urban growth management does not play a significant role.

In terms of the substantive issue of ensuring consistency and mutual support in the two documents' policy direction, the existing arrangements seem sufficient.

Possible improvement

The only change to current (newly introduced) arrangements might be to introduce specific allowance for consultation of RLTSs and RPSs to be conducted jointly when timing and the scope of issues make that sensible. There would seem to be nothing stopping such practice right now but some recognition of the benefit of such practices may be warranted.

Significance of overlap to process inefficiency: Low

8 Sale of Liquor Act 1989

		Corresponding RMA intervention
Intervention/activity controlled (What)	Sale of Liquor	Use of land for sale of liquor
Purpose (Why)	<p>To control the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.</p> <p>(To ensure “supply” is made responsibly – rather than to control amount of supply⁴)</p>	To manage off sites effects of the activity. (Not to control supply)
Means of control (How)	<p>Licensing of persons selling Liquor in the form of on licences, off licences, club licences and special licences.</p> <p>A liquor licence is specific to the license holder but is generally associated with a particular site. It does not, however, attach to the site.</p> <p>(A liquor licence has been described as a privilege that allows the holder to sell liquor when others may not).</p>	District plan land use rules/land use consent requirements
Existing means of managing potential duplication	<p>The Sale of Liquor Act (SOLA) and the RMA were designed to have separate but complementary jurisdictions.</p> <p>To ensure that there are not contradictory authorisations granted by the territorial authority under the RMA and the SOLA, an application for a liquor license needs to be accompanied by a certificate from the local authority that the proposed use of the premises meets the requirements of the RMA (i.e. is either permitted by a plan or is the subject of a valid resource consent).</p> <p>(Note the territorial authority is the District Licensing Authority under the SOLA).</p> <p>The general scheme of the SOLA is not to consider the externalities on the physical environment (traffic, litter, light spill, parking, signage, noise etc) that are controlled under the RMA but rather, to focus on the management practices of the licensee.</p>	

⁴ Note that need to control the *volume* of supply – the number of licensees in a particular location is currently being considered in the context of the Sale of Liquor Amendment Bill currently before Parliament. (It has been ruled that the broader impacts of alcohol on community well-being and public health can only be considered in liquor licensing decisions if they can be directly linked to the particular premises being considered).

<p>Nature and extent of duplication</p>	<p>The liquor licence application process involves applicants providing details of their proposed business and the steps they will take to avoid sales to minors and undertake other host responsibility practices. Licence applications are publicly notified.</p> <p>Under the SOLA, the territorial authority is the District Licensing Agency (DLA) which is responsible for assessing applications for liquor licenses that are not opposed by the Police, the District Medical Officer of Health or any other party who has standing to make a submission on an application.</p> <p>Where there is opposition, the application is considered by the Liquor Licensing Authority (LLA).</p> <p>The Sale of Liquor Act set out to make liquor licences ‘easy to get, easy to lose’. The primary criterion is the “suitability” of the applicant (and, of course, RMA compliance for the site). This means applications for new premises or new licensees of existing premises are seldom declined. Licences, however, only last 1 year. When considering applications for the renewal of licences, the past management is taken as a reflection of the “suitability” of the licensee.</p> <p>Renewals are publicly notified and communities have an opportunity to raise problems and issues of poor management.</p> <p>The ALAC guide “<i>Planning for Alcohol in the Community</i>”⁵ has the following to say about the relationship between the Sale of Liquor Act and the RMA:</p> <p><i>Despite the intended complementarity of planning and licensing, in 1996 the Liquor Licensing Authority reported a ‘gap in jurisdiction’ that leaves it ‘powerless’ to respond to communities’ reasonable concerns. The gap is that broad zoning in District Plans does not address the suitability of a particular site, yet licensing decisions cannot do this either. If a licence applicant of ‘suitable character’ has obtained resource consent based on current zoning rules, the Liquor Licensing Authority must grant the licence if it meets the criteria in the Sale of Liquor Act.</i></p> <p><i>Many community objections are not about an applicant’s character or alcohol in general, but about problems they expect to arise from having licensed premises on a particular site. In some cases, raising concerns at a licensing hearing has led the licensee to change the proposed type of business to be more acceptable to neighbouring community – but the licensing system cannot address location issues or consider neighbouring land use except in setting the hours of trading.</i></p> <p>In other words, the licensing process outlined in the SOLA assumes that questions over the impact or effects of licensed premises have been considered in the resource consent process through the District Plan. Land use activities and the impact of these on communities such as hours, density and location of licensed premises are common community concerns but ones that are related to the RMA rather than the SOLA consenting process. If they have not been adequately considered within the RMA context they generally cannot</p>

⁵ See http://www.alac.org.nz/FileLinks/4500_ToolkitRevised.8da7698a.pdf

be addressed under the SOLA.

There are some exceptions:

- the impacts on neighbouring land use can be considered in the SOLA process in setting hours of trading,
- since the late 1990s the LLA has been willing to consider noise disturbance as indicating poor management and 'unsuitability'.

Similarly, the margins of the SOLA jurisdiction have been managed in subtle ways. Some public hearings, for example, have led to informal agreements on changes to reduce problems, such as an agreement for no late bands, improved insulation or closing windows, or the use of outdoor spaces at an agreed time. In such cases, the Authority has noted that a breach of the arrangement would raise questions about the licensee's "suitability" to hold a liquor licence.

Those exceptions aside, the two processes are largely discrete with the RMA generally not dealing with the social effects of liquor consumption (and the SOLA only doing so as far as such effects can be directly linked to the particular premises being considered). There is little scope to relitigate RMA issues in the SOLA context.

This clarity may be viewed as a strength of the relationship. On the other hand, the situation is sometimes confusing and frustrating for communities particularly where the sale of liquor (particularly on-licence) is treated as a permitted activity in plans, or is the subject of non notified applications. In such cases the community has not opportunity to raise, and have addressed, issues they consider locally important.

Possible improvement

The issues identified in the ALAC guide is more a question of practice under the RMA than one of a genuine gap in policy. (Indeed the guide sets out RMA practice advice to overcome the perceived gap).

In terms of *process*, the only real duplication between the regimes occurs when an application under the RMA requires notification which is then followed by a separate notification for SOLA purposes.

It would, however, seem difficult to integrate these processes. Although the territorial authority is involved in both, two issues suggest the processes may need to be kept separate:

- only those persons with an interest greater than the public generally may make a submission on a SOLA application, whereas there is open standing under the RMA (although there is a members Bill before the House to change the SOLA process to open standing)
- If objections are received on a SOLA application the application and the submission must be forwarded to the LLA for determination (in other words the territorial authority ceases to have a role).

It is also worth noting that the wider issue of taking account of broad social issues associated with liquor supply is being considered in the context of a government bill currently before Parliament - *the Sale and Supply of Liquor and Liquor Enforcement Bill*. That bill, amongst other things, requires licensing authorities to give effect to a council's *local alcohol plan* when considering new applications or license renewal. Local alcohol plans may cover the hours during which

alcohol may be bought and sold, the number of outlets in an area (density), proximity to community premise (e.g. schools).

The relationship between local alcohol plans and district plans requires further consideration. Currently that Bill provides no obvious link. The proposal does, however, appear to broaden the role of planning – and splitter the planning function beyond the RMA. There may be an opportunity to integrate such plans into the district plan process. This should be investigated further.

9 Prostitution Reform Act 2003

		Corresponding RMA intervention
Intervention/activity controlled (What)	Location of brothels/use of land for a brothel	Use of land for brothels
Purpose (Why)	<p>Not clear from legislation. Purpose of legislation is to decriminalise prostitution and to create a framework that safeguards human rights of sex workers and promotes welfare and occupation health and safety of sex workers.</p> <p>The focus on controlling location of brothels (which is only a small part of the Act) is not clearly related to the legislative purpose but seems to be related to managing potential conflicts and incompatibilities in land use</p>	Manage effects of land use (traffic, amenity etc)
Means of control (How)	<p>The Prostitution Reform Act allows for/anticipate the control of the location of brothels in one or two ways:</p> <ul style="list-style-type: none"> ▪ Bylaws to control location of brothels ▪ Requirement for TAs to take account of potential nuisance/offence caused by use of land for prostitution when considering land use consents under RMA. 	District plan rules and resource consents
Existing means of managing potential duplication	<p>As noted above there is an explicit requirement (section 15 (1)) for territorial authorities, when considering a resource consent (relating to the use of land for prostitution) to whether the business of prostitution -</p> <p><i>(a) is likely to cause nuisance or serious offence to ordinary members of the public using the are in which the land is situated; or</i></p> <p><i>(b) is incompatible with the existing character or use of the area in which the land is situated'.</i></p> <p>The Prostitution Reform Act makes clear that having regard to the above matters a territorial authority may grant or refuse a consent under section 104A to 104D or may impose conditions under section 108.</p> <p>Section 15 (3) makes clear that section 15 (1) may be over-ridden with respect to particular areas by the provisions of a district plan (in other words, a plan may make it clear that the effects of prostitution are not to be taken into account in consent decision-making in</p>	

	<p>certain areas (presumably areas where prostitution is to be provided for).</p>
<p>Nature and extent of duplication</p>	<p>The requirement of Section 15 of the Prostitution Reform Act is not so much duplication but, arguably, extends the purview of the RMA making clear that the nature of the activity of prostitution (i.e. the moral issue) can be considered as giving rise to effects that may legitimately be taken into account under in consent decision-making (provided a district plan does not say otherwise). Whether such effects can be taken into account in district plan making is less clear. (The Prostitution Reform Act is silent on that question).</p> <p>The potential for a territorial authority to make by laws to regulate the location of brothels under the Prostitution Reform Act may potentially overlap with the RMA – particularly if district plans can be used to regulate brothels for the same reasons (as noted above that question is not clear).</p> <p>The overlap appears to be within the Prostitution Reform Act itself since it provides for bylaw control and control under the RMA. Many territorial authorities appear to have adopted such bylaws. They tend to limit brothels to certain areas (e.g. the CBD) and/or contain general location requirements (such as, for example, that brothels shall be no closer than 150m from a “sensitive activity” or another brothel). Such bylaws ensure that no brothels can establish lawfully in areas where they may cause offence notwithstanding that an application may be made under the RMA – and may pass tests under the RMA. In that sense by-laws offer greater certainty of outcome.</p> <p>In summary, there seems to be little opportunity to remove duplication of regulatory requirements by amending the RMA. While a form of duplication does exist, many councils are unlikely to see it as duplication but rather as a broader and potentially more effective regulatory toolbox.</p> <p><i>Suggested improvement</i></p> <p>If clarity was required this would involve clarifying that certain effects (associated with issues of morality) are not to be taken into account in the preparation of district plans (and instead dealt with by bylaws). The difficulty with that approach is that the Prostitution Reform Act provides that such matters are relevant in the context of consent decision-making. To remove such issues from district plan consideration would, therefore create an untenable inconsistency. For that reason, (and because the overlap does not appear to be problematic) it is doubtful that there is any justification for action.</p>

10 Public Works Act 1981

		Corresponding RMA intervention
Intervention/activity controlled (What)	Acquisition of land for public works	Use of land for public works/granting of requiring authority status giving access to Public Works Act (PWA) powers
Purpose (Why)	Allow public works to be provided where and when necessary and to overcome potential for landholder hold out.	To provide certain network utility operators (being utility services formerly delivered by public agencies) to develop, upgrade and maintain necessary public services.
Means of control (How)	Land is acquired under the PWA through either: (a) <i>acquisition by agreement</i> (where a LINZ accredited supplier negotiates a deal with a landowner on a will buyer willing seller basis). This is the most common form of acquisition; or (b) compulsory acquisition involving a multi-step statutory process.	Network utility operators (defined in the Act) may apply to become <i>requiring authorities</i> . Once approved as requiring authorities they may (a) serve notice to designate land for a network utility operation (b) become the decision-maker in that designation process; (c) have land protected for the purpose of the designation once the designation is in place ; and (d) apply to the Minister of Lands to have land compulsorily acquired (by the Minister of Lands on behalf of the requiring authority) using powers of the Public Works Act
Existing means of managing potential duplication	Not applicable.	
Nature and extent of duplication	<p>There are essentially two areas of overlap between the PWA and the RMA.</p> <p>The first relates to the triggers to enable use the PWA powers. Under the PWA public work is defined and those agencies undertaking such works have access to powers to acquire land accordingly. However, the RMA provides an alternative (or additional) means of accessing PWA powers.</p> <p>In other words, the tests as to who should have access to compulsory acquisition powers are currently split between the RMA and the PWA. Under the RMA, someone can access powers by virtue of being a network utility operator, approved as a requiring authority, provided the Minister of Lands agrees.</p> <p>Access to the compulsory acquiring powers is not dependent on the</p>	

requiring authority designating land. It simply must have the status granted under the RMA.

(Note also, network utility operator may be anyone who is proposing to undertake a network utility operation or a work described as a *network utility operation* by regulation).

While this is not duplication, it does bring into the RMA questions about whether an entity ought to have (potential) access to PWA powers when that decision is arguably a matter to the PWA to address.

The current situation represents a blurring of purpose between the RMA and the PWA with issues of appropriateness of a service provider/project having access to compulsory acquisition powers being imported into the RMA when the issues are not directly relevant to the purpose of that Act.

The second, issue relates to the duplication in PWA and the RMA decision-making processes.

Under the RMA a territorial authority must have particular regard to the adequacy of the requiring authority's consideration of alternative sites, routes and other methods when considering whether a designation for a work should be made. The decision of the requiring authority may of course be appealed to the Environment Court.

Similarly though, if compulsory acquisition is required under the PWA the Minister's decision to proceed with compulsory acquisition may be appealed to the Environment Court. In considering such an appeal the Environment Court must again have regard to the adequacy of consideration given to alternative sites, routes, or other methods of achieving the objectives and whether it is reasonably necessary to take the land – even though those matters should have been determined during the designation process.

In other words, the PWA appeal process does duplicate the matters considered (and quite likely resolved) through the RMA process.

Compulsory acquisition is rare and it is not known whether there have been instances where a designation has been made and a subsequent decision to compulsorily acquire land has been overturned by the Environment Court under appeal pursuant to the PWA.

Although no research has been undertaken as part of this project, it is unlikely that this overlap represents a major issue.

Possible improvement

Notwithstanding the somewhat untidy interface between the RMA and the PWA, it is difficult to see any significant gains to be had from better aligning the statutes.

That said, further consideration might be given to separating the compulsory acquisition powers from the requiring authority status. Under this model, requiring authority status would relate solely to the question of who may *designate* land (with the privileges that entails in terms of land use decision-maker and protection of future use rights) under the RMA.

The question of whether an entity should have access to compulsory acquisition powers could be dealt with under an entirely separate process regulated by the PWA.

Such an approach would seem more rational and more consistent with the purposes of the respective legislation. Certainly it would remove a source of tension from the RMA and tidy up an anomaly in terms of the powers that flow from status granted under the RMA (requiring authority status is the only example of an RMA decision triggering access to powers under another statute).

11 Conclusion

This report highlights that most potentially beneficial change seems to rely on amendment to other statutes rather than (or in addition to) simply amending the RMA.

There are a large number of areas where the RMA has an “untidy” interface with other legislation. There are few instances, however, where the resolution of that untidiness is obvious or easy. In most cases current arrangements seek to make the best of difficult boundaries (spatial and functional) and while they are less than ideal, it may not be possible to achieve great improvement without a fundamental rethink of the scope of legislation (including, potentially section 5 of the RMA) – something that would in itself be highly disruptive.

Those difficulties and limitations noted, there are particular issues that warrant further investigation. These include the following matters:

- The Local Government Act which has clear over-lapping provisions in terms of both the ability to take contributions/levies at the time of development and administrative charges. Removing administrative charging from the RMA and relying on the LGA would seem possible, although some adjustment to the LGA charging powers (and limits) may be necessary. The larger issue with the LGA relates to the planning, monitoring and reporting requirements which do overlap in part with the RMA requirements. This causes a complex web through which local authorities must find a sensible path. While most successfully do so, the requirements could be greatly simplified and aligned saving time and resources (as well as encouraging more cross agency integration of effort). This should be a priority for further work.
- The relationship of the RMA to the Historic Places Act offers an opportunity to condense consideration of the land use effects and the archaeological disturbance into a single process. That’s seems most likely to be achieved by bringing the archaeological protection provisions of the HPA into the RMA and retaining the HPT in an advisory role.
- The interface with the Conservation Act also offers an opportunity for rationalisation. The most feasible approach might be involve the sequencing of consents such that the concession precedes any land use consent, and, if such a concession is granted, no land use consent under the RMA should be necessary – unless the Conservation Act process identifies offsite effects that cannot controlled under that act. (This should be possible since the Conservation Act process involves and environmental impact assessment similar to that required by the RMA). Regional council consents could still be required under the RMA.
- The relationship between the RMA and the Public Works Act presents an anomaly. There would seem to be a strong argument for separating the approval of requiring authorities (clearly an RMA function given the powers requiring authority status confers) from access to compulsory acquisition powers (otherwise conferred under the terms of the Public Works Act.

Issues of lesser significance (where change would be very difficult and/or yield marginal benefit) include the following matters:

- The new land transport legislation's increased emphasis on integrating land use, urban design and transport planning. While that makes sense, integrating the two planning *processes* would be neither appropriate nor feasible given the very different issues under consideration and the variation in the interdependency of these issues regionally. Further consideration should, however, be given to allowing joint consultation processes as RPSs and RLTSs are being prepared.
- The Sale of Liquor Act (and the current amendment Bill) and the Prostitution Reform Act both overlap to the extent that they allow planning for activities outside of the RMA/district plan process. That is not by itself problematic since the planning is aimed at addressing social issues rather than purely environmental issues. There seems to be little opportunity for rationalisation although the further consideration should be given to the possibility of local alcohol plans proposed in the *Sale and Supply of Liquor and Liquor Enforcement Bill*.
- Conceptually there is some attraction in combining pest management powers under the Biosecurity Act with the RMA effects management powers. However this would be difficult and controversial and should be seen as a longer term issue.
- The Electricity Act (and associated Governance Rules) do create a complex overlap of sorts but there are few viable ways to separate out the various interdependent interests.

One trend that is apparent is that the RMA's supposed emphasis on biophysical effects (and the consequent lack of attention of social issues and outcomes that might have been more likely to be considered within the ambit of past planning legislation) has led to the developing of planning frameworks outside of the RMA that arguably go even further than what was possible under the Town and Country Planning Act that preceded the RMA. In this category would be the changes introduced by the Prostitution Reform Act (particularly that ability to set bylaws regulating the location of brothels) and the notion of local alcohol plans being mooted in the *Sale and Supply of Liquor and Liquor Enforcement Bill* currently before Parliament.

Overall, this review has not identified glaring opportunities for significant gains through process rationalisation at the margin of RMA's jurisdiction. As noted above, however there are a few areas where further work might be justified.