

# Let them Eat Cake? The Resource Management Act 1991 and Food Security

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*In this article I assess how well the Resource Management Act 1991 (RMA) supports food security in Aotearoa New Zealand and whether reforms to its terms would help to strengthen its role for this purpose. I describe the multidisciplinary concept of food security and its status in Aotearoa New Zealand, and identify provisions of the RMA that empower planning approaches to promote two aspects: a positive food environment and long-term protection of natural resources for food production. I analyse how central government's interventions to release rural land with productive soils for development in Tāmaki Makaurau Auckland overrode Auckland Council's ability to fully implement RMA provisions to promote long-term food security. I conclude that the best way forward for food security would be to formalise it as an ongoing institutionalised policy area for broad central government attention to avoid repeat undermining of RMA implementation, rather than by another round of RMA reforms. My reasons include that adding food security to the purposes of the RMA would only address some of its requirements and that local authority implementation of the RMA is in any case always subject to central government's support.*

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## 1. INTRODUCTION

*The task is huge, but the tools are there. The challenge is mainly a matter of fashioning political will strong enough to overcome entrenched interests ...*

*Hilal Elver, United Nations Special Rapporteur on the Right to Food<sup>1</sup>*

Global agencies, including the United Nations, understand the importance of planning for food security.<sup>2</sup> This article assesses how well the Resource Management Act 1991 (RMA) provides a framework to contribute to food security in the immediate and longer terms for New Zealanders,<sup>3</sup> and finds that existing suggestions for reform of the Act may be unlikely to help. Rather, it seems that arrangements to promote food security as an issue for government are required.

The article first defines and identifies issues surrounding food security<sup>4</sup> before moving to examine how Aotearoa New Zealand rates in its achievement.<sup>5</sup> A case study of competing claims over land with productive soils on the urban boundary of Pukekohe serves as an example of the political limitations on effectiveness of the RMA to protect a scarce natural resource required for food security.<sup>6</sup> The following part then considers various proposals for reform to improve food security.

Ultimately, I conclude that amendments to the RMA would not address the root of the food security problem, which seems to be the absence of food security from central government's policy agenda. The original legislative intent to protect natural resources required for food production long term, especially soil and water, can always be relegated beneath vested interests; for example, of property owners and developers. Political impetus is required to regain protection for the lowest income earners today, who are struggling to feed their families, and all future generations of New Zealanders. This all seems consistent with the words from the United Nations Special Rapporteur on the Right to Food in the quote above.

1 Hilal Elver, United Nations Special Rapporteur on the Right to Food "Why are there still so many hungry people in the world?" *The Guardian* (online ed, 19 February 2015) <<https://www.theguardian.com/global-development/2015/feb/19/why-hungry-people-food-poverty-hunger-economics-mdgs>>.

2 Elver, above n 1.

3 Protecting water and soil are both equally relevant for food production, although I focused on soil alone in the case study for the research paper which forms the basis of this article.

4 In part 2.

5 In part 3.

6 In part 6.

This article was written during the period of changeover in 2017 from the fifth National government<sup>7</sup> to the sixth Labour government, and it attempts to assess the likely significance of that change for food security in the context of poor nutrition for the lowest income earners. The title suggests that history may offer a harsh judgement on the previous government for its free-market-inspired opposition to planning for food security,<sup>8</sup> comparing its dismissive attitudes with those of Queen Marie Antoinette in France in the 18th century.<sup>9</sup>

## 2. FOOD SECURITY ISSUES

### 2.1 Defining Food Security

*[A]gricultural policies should be compatible with environmental sustainability and trade rules consistent with food security.*<sup>10</sup>

Food security is a recent,<sup>11</sup> multi-faceted policy concept that seeks systemic solutions to hunger and malnutrition. Goal 2 of the United Nations' 2015 Sustainable Development Goals (SDG 2) aimed to “end hunger, *achieve food security* and improved nutrition and promote sustainable agriculture” by 2030.<sup>12</sup> The 1996 World Summit on Food defined food security: “When all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life.”<sup>13</sup> It is still urgent even though the world produces more food than its total population can eat: in 2016, 793 million people were undernourished globally, and about one-third of the food produced is wasted.<sup>14</sup>

7 2008–2017.

8 Interviews with Hon Nathan Guy MP, Primary Industries Minister and Hon Nick Smith MP, Minister for Housing and Minister for the Environment in Isobel Ewing “Government ignores horticulture industry’s call to protect soils from urban sprawl” TV3 Newshub (New Zealand, 11 March 2017).

9 Supposedly, the Queen suggested eating cake as a solution for her subjects who were hungry because they had no bread. “Did Marie-Antoinette Really Say ‘Let them Eat Cake’?” *Encyclopaedia Britannica* (online ed).

10 Elver, above n 1.

11 Google Scholar searches for 1980 and 2016 generated 25 and 2,000 results respectively.

12 Emphasis added. United Nations *Transforming Our World: The 2030 Agenda for Sustainable Development* GA Res 70/1, A/RES/70/1 (2015).

13 1996 World Food Summit quoted by Sarah Stevenson *Edible Impact: Food Security Policy Literature Review* (Toi Te Ora — Public Health Service, BOPDHB, Whakatane, 2011).

14 United Nations “Sustainable Development Knowledge Platform: Sustainable Development Goal 2” <<https://sustainabledevelopment.un.org/sdg2>> and United Nations Food and Agriculture Organization “SAVE FOOD: Global Initiative

Food insecurity is problematic short term and long term for different reasons. Immediate problems include lack of equitable access to safe, nutritious food, especially for people on the lowest incomes. Longer term, everybody faces possible food insecurity, especially because of environmental threats to the natural resources required to produce food, including soil and water.

A well-functioning, secure food system,<sup>15</sup> as illustrated in Figure 1, requires well-established inter-sectoral connections between *production* of assured supplies of locally and sustainably produced, safe and nutritious (“healthy”) food and its equitable *distribution*.<sup>16</sup> Its other elements include “processing, ... consumption, and waste management”.<sup>17</sup>

Figure 1: Sustainable food<sup>18</sup>



on Food Loss and Waste Reduction” <<http://www.fao.org/save-food/resources/keyfindings/en/>>.

15 A generally applicable “systems” approach to problem-solving was proposed by Donella H Meadows *Thinking in Systems: A Primer* (ed Diana Wright, Sustainability Institute, Chelsea Green Publishing, White River Junction, VT, 2008) at 1 quoted by Stephanie Tai “Food Systems Law from Farm to Fork and Beyond” (2015) 45 Seton Hall L Rev 109 at 159–160.

16 The Economist Intelligence Unit *Global Food Security Index 2017: Measuring Food Security and the Impact of Resource Risks* (EIU, London, 2017).

17 Kameshwari Pothukuchi and Jerome L Kaufman “The Food System: A Stranger to the Planning Field” (2000) 66 J Am Plan Assn 113 at 113 cited by Emily Leib “All (Food) Politics is Local: Increasing Food Access Through Local Government Action” (2013) 7 Harv Law and Pol Review 321 at 321.

18 Groundswell Centre for Local Food and Farming, Ithaca, New York: “Sustainable Food” image <<http://groundswellcenter.org/event/farm-to-plate-conference/>>.

Interrelated economic, trade and political systems and environmentally sustainable food production all have to be addressed to improve food security.<sup>19</sup> The emerging field of food systems law,<sup>20</sup> which attempts to provide a framework for food security, therefore connects with many sectors, including:<sup>21</sup>

- public health;
- population health;
- nutrition;
- economics (including behavioural economics);
- planning;
- agriculture;
- politics;
- trade; and
- environmental sustainability and resource management.

Soils are dynamic, fragile, and non-renewable within a human lifespan.<sup>22</sup> Once they are cleared for development to make way for roads and building foundations<sup>23</sup> the land is non-productive in the absence of expensive replacement.

## 2.2 Measuring Food Security and Benchmarking Food Environments

The Economist Intelligence Unit's Global Food Security Index 2017 (GFSI) combines four measures:<sup>24</sup>

- *Food affordability*: considers factors affecting people's ability to pay for food, such as income, housing costs, vulnerability to price shocks, and organised support when shocks occur;
- *Food availability*: measures national food supply, risk of disruption, national capacity to disseminate food, and agricultural research;
- *Food quality and safety*: measures include variety and nutritional quality of "average diets"; and

19 United Nations, above n 14, at paras 2.3–2.5 and 2a–2c.

20 See Tai, above n 15.

21 Baylen J Linnekin and Emily M Broad Leib "Food Law & Policy: The Fertile Field's Origins and First Decade" (2014) Wis L Rev 557 at 560.

22 Kelly Slater "Auckland's Productive Land: Can the Unitary Plan Serve and Protect?" (Research project presented in partial fulfilment of the requirements for the degree of Master of Urban Planning, University of Auckland, 2013) at 10.

23 At 13.

24 The Economist Intelligence Unit "Global Food Security Index: Methodology" <<http://foodsecurityindex.eiu.com/Home/Methodology>>.

- *Natural resources and adjustment*: assesses exposure to climate change impacts, susceptibility to natural resource risks, and adaptation.

Additionally, the INFORMAS reporting system that recently reported on New Zealand identifies four components of food environments that impact on food security:<sup>25</sup>

- physical (food availability, quality, promotion);
- economic (costs);
- policy (rules); and
- socio-cultural (norms, beliefs).

According to the same report, these components are influenced by:<sup>26</sup>

- the food industry (products, placement, price, promotion);
- government (regulations and laws, fiscal policies, health promotion); and
- society (traditional cuisines, cultural and religious values and practices).

### 2.3 Food Insecurity and Health Problems

The quality of food that people eat affects their health. The very large, 10-year longitudinal PURE study found “[h]igher fruit, vegetables and legume consumption was associated with a lower risk of non-cardiovascular, and total mortality”.<sup>27</sup> Obesity combined with malnutrition occurs in societies that rank poorly for food quality, with plentiful food that has low nutritional value, and inaccessible healthy food, especially fruit and vegetables.

### 2.4 Responsibility for Nutrition: Individual vs Community

*Our neoliberal society’s present emphasis on individualism creates a version of human beings that can undermine our efforts to build healthy and inclusive communities.*<sup>28</sup>

25 S Vandervijvere, S Mackay and B Swinburn *Benchmarking Food Environments 2017: Progress by the New Zealand Government on Implementing Recommended Food Environment Policies and Prioritised Recommendations Full Report* (University of Auckland, Auckland, July 2017) at 8.

26 Vandervijvere and others, above n 25.

27 Victoria Miller and others “Fruit, vegetable, and legume intake, and cardiovascular disease and deaths in 18 countries (PURE): a prospective cohort study” (2017) 390 *The Lancet* 2037.

28 Shiloh Groot, Bridgette Masters-Awatere, Clifford van Ommen and Natasha Tassell-Matamua “Conclusion: Towards Building an Equitable Society” in Shiloh

Whilst “victim blaming” dominates some politicians’ responses to obesity,<sup>29</sup> a public health approach to food security recognises that individual food-related behaviours take place in the varying physical, social and economic contexts of communities.<sup>30</sup> Consequently, food security focuses on improving elements of the food environments in which individuals make food choices; for example, by measuring recommended food environment policies.<sup>31</sup>

## 2.5 Threats to Food Security

In 2017 the GFSI downgraded three-fifths of countries for food security over the previous year, because of:<sup>32</sup>

- migration;
- increased demand for food outstripping production;
- drought in Sub-Saharan Africa; and
- political stability risk “in almost every region”.

Other growing threats include population growth, urbanisation, climate change and poverty.

Increasing global population increases environmental stress, partly because of extra demand for food.<sup>33</sup> The projected global population of 10 billion by 2050 may require a 50 per cent boost in agricultural production, which would stretch already strained natural resources.<sup>34</sup> Additionally, general population growth contributes to urbanisation spreading further onto agricultural land

Groot, Bridgette Masters-Awatere, Clifford van Ommen and Natasha Tassell-Matamua (eds) *Precairy: Uncertain, Insecure and Unequal Lives in Aotearoa New Zealand* (Massey University Press, Auckland, 2017) 254 at 255.

29 Fran Baum *The New Public Health* (3rd ed, Oxford University Press, Melbourne, 2008) at 79–81.

30 Sarah Gerritsen and Clare Wall *How We Eat: Reviews of the evidence on food and eating behaviours related to diet and body size* (Ministry of Health, Wellington, 2017) at 12.

31 For example, Vandervijvere and others, above n 25.

32 The Economist Intelligence Unit, above n 16, at 6.

33 For example, Derek Nolan (ed) *Environmental and Resource Management Law Online* ch 1, part 3, para 1.11.

34 United Nations Food and Agriculture Organization [FAO] “The Future of Food and Agriculture: Trends and Challenges” (2017) quoted by The Economist Intelligence Unit, above n 16, at 8.

(urban sprawl). This threatens the resilience of food systems<sup>35</sup> and production.<sup>36</sup> Arguably, desire for country living on the edge of urban areas reflects an ongoing preference to avoid the historical harshness of poorly planned urban environments.<sup>37</sup> For example, in England it is hard to persuade developers to create “sustainable communities at brownfield locations rather than peripheral estates at greenfield locations”.<sup>38</sup>

Various factors put food security increasingly at risk. Climate change may cause poverty, and consequently food insecurity, for an extra 35 to 122 million people by 2030.<sup>39</sup> It also threatens food supplies, when productive land is increasingly compromised by coastal inundation or flooding. Exposure to globalised markets presents a particular challenge for food security. Countries that produce agricultural and horticultural produce for export may experience shortages of scarce natural resources for their own domestic food supplies. For example, in Ecuador, growing flowers for export has raised concerns about security of water supplies for local food needs.<sup>40</sup> Countries which depend on importing food supplies rely on working markets, and their food security is consequently at risk of supplies being interrupted by political instability.

Also, there are systemic financial and lifestyle difficulties that make recruiting and maintaining farmers in the role difficult; for example, in Australia.<sup>41</sup> Financial pressure from supermarkets that dominate food retailing drives down prices and so threatens viability of their businesses. Similarly, requirements to provide required volumes favour monocultures and reduce

35 Nick Rose and Adrian Hearn *Food Systems and the Role of Local Government* (SUSTAIN, Melbourne, 2017) <<http://www.circlesoffood.org/wp-content/uploads/2016/04/FOOD-SYSTEMS-AND-THE-ROLE-OF-LOCAL-GOVERNMENT-Final.pdf>> at 5.

36 In the US context see, for example, Jess Krannich “A Modern Disaster: Agricultural Land, Urban Growth, and the Need for a Federally Organised Comprehensive Land Use Planning Model” (2006) 16 *Cornell Journal of Law and Public Policy* 57 at 100.

37 As described by W Ashworth *The Genesis of Modern British Town Planning* (1954) chs I–III referred to by Kenneth Palmer in “Origins and Guiding Ideas of Environmental Law” in Klaus Bosselmann, David Grinlinton and Prue Taylor (eds) *Environmental Law for a Sustainable Society* (2nd ed, New Zealand Centre for Environmental Law, Auckland, 2013) 3 at 5.

38 David Adams “The ‘Wicked’ Problem of Planning for Housing Development” (2011) 26(6) *Housing Studies* 951 at 958.

39 FAO, above n 34, at 8.

40 Patricio Mena-Vásquez, Rutgerd Boelens and Jeroen Vos “Food or flowers? Contested transformations of community food security and water use priorities under new legal and market regimes in Ecuador’s highlands” (2016) 44 *Journal of Rural Studies* 227 at 227.

41 Rose and Hearn, above n 35.



variety and local distribution.<sup>42</sup> Systems that privilege industrialised models of farming have also placed threats on the viability of small, local food producers; for example, in the United States.<sup>43</sup>

Finally, the global dominance of the influential fast-food market threatens quality of food. For example, in Australia, “policy settings and planning frameworks that often prevent local government from taking into account health and wellbeing and environmental considerations when making decisions on ... applications for ... new fast food franchise outlets”.<sup>44</sup>

## 2.6 Food Security and Resource Management

*A major effort is needed to avoid practices that exacerbate the negative impacts of food production and consumption on climate, water and ecosystems.*<sup>45</sup>

The Food and Agriculture Organization recognises that agricultural intensification (including intensive use of water, fertilisers and pesticides) threatens to destroy water habitats and soil, along with future production and crop and animal biodiversity.<sup>46</sup> Also, the SDG 2 to end hunger by 2030 includes promoting sustainable agriculture in order to protect ecosystems and the needs of future generations for resources to produce foods via “direct action to conserve, protect and enhance natural resources”.<sup>47</sup>

There are predictions for increasing efficiency of land use for food production (growing plant-based foods without soil)<sup>48</sup> and a move to foods derived from plants rather than animals. Nevertheless, in 2015 it was estimated

42 See, in the Australian context, Rose and Hearn, above n 35, at 5; and in New Zealand, Josephine Orange “Planning for Food in Auckland” (Research project presented in partial fulfilment of the requirements for the degree of Master of Planning Practice, University of Auckland, 2009) at 50.

43 Nicholas Johnson and A Bryan Endres “Small Producers, Big Hurdles: Barriers Facing Producers of ‘Local Foods’” (2011) 33 *Hamline J Pub L and Policy* 49 at 49–51.

44 Rose and Hearn, above n 35, at 5.

45 Elver, above n 1.

46 FAO “Sustainable Food and Agriculture: The 5 principles of Sustainable Food and Agriculture, Principle 2. Sustainability requires direct action to conserve, protect and enhance natural resources” <<http://www.fao.org/sustainability/en/>>.

47 FAO, above n 46.

48 Steven Carden, CEO Pāmu Farms, Landcorp “Meeting the Challenge” (Presentation to “Tipping Points” Environmental Defence Society Conference, Auckland, September 2017) <<http://www.eds.org.nz/assets/EDS%20Conferences/2017%20Conference/1435%20Carden%2C%20Steven.pdf>>.

that 95 per cent of the planet's food is directly or indirectly produced on soils.<sup>49</sup> Sustainable agriculture requires local food production, as close as possible to consumers, in order to minimise greenhouse gas emissions and contributions to climate change from freight and refrigeration.<sup>50</sup>

Resource management planning can improve community food security, promoting equitable accessibility to safe and nutritious food; for example, by:<sup>51</sup>

- ensuring socio-economically disadvantaged communities have public transport to low-cost food shopping;
- promoting and subsidising places for local farmers' markets;
- encouraging sustainable local, community food production; for example, by encouraging community gardens (which can also have community building or community security<sup>52</sup> value); and
- developing schemes to promote backyard gardening and use of home-grown fruit and vegetables.

Planning, in conjunction with local government and central government, can also promote a healthy food environment by reducing obstacles in the way of individuals trying to make healthy food choices by:<sup>53</sup>

- restricting unhealthy food promotion to children in non-broadcast media (eg billboards for fast food around schools);
- zoning laws for unhealthy food outlets;
- zoning laws for healthy food outlets; and
- promoting the relative availability of healthy foods food service outlets.

## **2.7 Food Security's Political Nature**

Addressing food security by planning is deeply controversial in a globalised economy dominated by the philosophies of free trade. For example, in Australia, one of the first actions of the newly elected government in 2013 was to overturn

49 FAO 2015 International Year of Soils "Healthy soils are the basis for healthy food production" <<http://www.fao.org/soils-2015/news/news-detail/en/c/277682/>>.

50 Tai, above n 15, at 113.

51 Baum, above n 29, at 567. See also the recommendations made by Orange for community food security, above n 42.

52 Food security can in some contexts like this include aspects of community security: Angga Dwiartama and Cinzia Piatti "Assembling local, assembling food security" (2016) 3 *Agric Hum Values* 153 at 154.

53 Vandervijvere and others, above n 25, at 14.

the previous government's food plan.<sup>54</sup> According to Rose and Hearn, the reason was preference for non-interventionism in highly profitable food markets.<sup>55</sup>

## 2.8 Local Initiatives

Some local governments around the world have led the way in promoting aspects of food security, especially growing local food. For example:

- City of Sydney Council has Ethical Food Guidelines that promote community gardens and footpath gardening.<sup>56</sup>
- Transition Towns aim to foster “caring and supportive communities based on values that respect resource limits and create resilience” whilst reducing carbon dioxide emissions and greatly reducing reliance on fossil fuels;<sup>57</sup>
- Bristol is a UK Transition Town, and promotes urban agriculture and local food with allotments;<sup>58</sup>
- Winnipeg (also a Transition Town) local authorities have incorporated food security into their local plans, prioritising preservation of productive land in proximity to consumers; water for farming for the local food markets, as well as drinking water; encouraging farmers' markets for the sale of locally grown food; designating a proportion of retail space for fresh fruit and vegetables to offer an alternative to the price-setting supermarkets; fostering grassroots initiatives that promote food self-sufficiency at the communal or individual level such as community gardens, allotments, urban farming, berm gardens;<sup>59</sup>
- City of Port Phillip's (Melbourne) Food Security Vision incorporates many similar initiatives.<sup>60</sup>

54 Rose and Hearn, above n 35, at 10.

55 At 10.

56 City of Sydney “Community Gardens” <<http://www.cityofsydney.nsw.gov.au/community/participation/community-gardens>>.

57 Transition Network.org “Principles” <<https://transitionnetwork.org/about-the-movement/what-is-transition/principles-2/>>.

58 Bristol City Council *Bristol Development Framework: Core Strategy* (Bristol City Council, Bristol, 2011) at 22, 73 and 97 <[https://www.google.co.nz/search?q=Bristol+City+Council+%E2%80%9CBristol+Development+Framework+Core+Strategy%E2%80%9D+%282011%29+&ie=utf-8&oe=utf-8&client=firefox-b&gfe\\_rd=cr&dcr=0&ei=MpcTWqb4E-LDXvi3o9AI](https://www.google.co.nz/search?q=Bristol+City+Council+%E2%80%9CBristol+Development+Framework+Core+Strategy%E2%80%9D+%282011%29+&ie=utf-8&oe=utf-8&client=firefox-b&gfe_rd=cr&dcr=0&ei=MpcTWqb4E-LDXvi3o9AI)>.

59 City of Winnipeg *Our Winnipeg: It's Our City, It's Our Plan, It's Our Time* (City of Winnipeg, Winnipeg, 2011) at 79 and 82 <<http://www.winnipeg.ca/interhom/CityHall/OurWinnipeg/>>.

60 Orange, above n 42.

### 3. FOOD INSECURITY IN AOTEAROA NEW ZEALAND

*Fresh food “out of reach”: cost of healthy diet too high for poorest families, say experts*<sup>61</sup>

This part of the article describes inconsistent rankings for Aotearoa New Zealand in different aspects of food security measurement. I consider both short-term and longer-term food security issues, referring to Orange’s categories of community food security and rural land protection.<sup>62</sup>

#### 3.1 Food Insecurity Measurements

Individuals on the lowest incomes experience food insecurity, poor nutrition and associated health problems, and income inequalities remain much higher than in the 1980s.<sup>63</sup> A definition adopted for use here<sup>64</sup> from an American version<sup>65</sup> states food insecurity exists when “the availability of nutritionally adequate and safe foods, or the ability to acquire such foods in socially acceptable ways, is limited or uncertain”.<sup>66</sup> “Social acceptability” incorporates cultural aspects; for example, shame associated with reliance on charitable emergency food.

Government has not funded up-to-date nutrition and food security research,<sup>67</sup> but previously researchers have consistently found that it is difficult for people on the lowest incomes to access food required for a healthy diet.<sup>68</sup> The latest adult nutrition survey (2008/2009) found low food security in 14.9

61 Amy Wiggins “Fresh food ‘out of reach’: cost of healthy diet too high for poorest families, say experts” *The New Zealand Herald* (Auckland, 10 November 2017) at 1.

62 Orange, above n 42, at 29–32.

63 Ministry of Social Development *The Social Report 2016 — Te pūrongo oranga tangata* (Ministry of Social Development, Wellington, 2016) at 133.

64 For example, by Claire Smith, Winsome R Parnell, Rachel Brown *Family Food Environment: Barriers to acquiring affordable and nutritious food in New Zealand households* (Families Commission, Wellington, 2010) at 5.

65 David Holben “Position of the American Dietetic Association: Food insecurity and hunger in the United States” (2006) 106(3) *Journal of the American Dietetic Association* 446 at 447.

66 Winsome R Parnell and Andrew R Gray “Development of a food security measurement tool for New Zealand households” (2014) 112 *British Journal of Nutrition* 1393.

67 Vandervijvere and others, above n 25.

68 Kimberly Jackson and Rebekah Graham “When Dollar Loaves are All You Have: Experiences of Food Insecurity in Hamilton, New Zealand” in Shiloh Groot, Bridgette Masters-Awatere, Clifford van Ommen and Natasha Tassell-Matamua (eds) *Precurity: Uncertain, Insecure and Unequal Lives in Aotearoa New Zealand* (Massey University Press, Auckland, 2017) 76 at 77.

per cent of males and 21.4 per cent of females,<sup>69</sup> with incidence associated with deprivation.<sup>70</sup> Older surveys showed that the burden of food insecurity fell most heavily on Pacific families in New Zealand,<sup>71</sup> with up to 50 per cent of adults and children affected.<sup>72</sup> There is no recent nutrition or food security research for children, but it is likely to reflect high levels of hardship:

- in 2015, eight per cent of children lived with “material hardship”;<sup>73</sup> and
- the 18 per cent hardship rate for 0 to 17-year-olds “ranked New Zealand as doing less well than almost all the richer western European countries against whom New Zealand has traditionally benchmarked”.<sup>74</sup>

According to a general health survey, the percentage of adults eating the recommended amounts of vegetables and fruit<sup>75</sup> reduced to 40 per cent in 2015 from 43 per cent in 2006/07.<sup>76</sup>

Food insecurity gains prominent media coverage. For example, front-page headline news in 2017 reported research that shows people on the lowest incomes struggle to buy fresh fruit and vegetables, with wages for lowest-income families remaining “constant since 1982”, but prices of fruit and vegetables rising 14 per cent over 12 months.<sup>77</sup>

Possibly most powerfully, qualitative research describes one vulnerable person’s lived experience of food insecurity:<sup>78</sup>

Anna lives in a two-bedroom unit with her young daughter, and experiences constant worry about stretching her resources. There isn’t enough money from her welfare provisions to pay for housing, power and food. ... Anna purchases

69 University of Otago and Ministry of Health *A Focus on Nutrition: Key findings of the 2008/09 New Zealand Adult Nutrition Survey* (Ministry of Health, Wellington, 2011) at 263.

70 At 263.

71 Conducted in 1997 and 2002 and referred to by E Rush *Food Security for Pacific Peoples in New Zealand: A report for the Obesity Action Coalition* (Obesity Action Coalition, Wellington, 2009) at 20 <[www.obesityaction.org.nz](http://www.obesityaction.org.nz)>.

72 At 20.

73 J Simpson and others *Child Poverty Monitor: Technical Report 2016* “Material hardship” (New Zealand Child and Youth Epidemiology Service, University of Otago, Dunedin, 2016) at 15 <<http://www.nzchildren.co.nz/>>.

74 Ministry of Social Development, above n 63, at 142.

75 Ministry of Health *Eating and Activity Guidelines for New Zealand Adults* (Ministry of Health, Wellington, 2015) at 12.

76 Ministry of Health *Annual Update of Key Results 2015/16: New Zealand Health Survey* (Ministry of Health, Wellington, 2016) at vii.

77 Elaine Rush, Carolyn Cairncross and Isaac Amoah quoted by Wiggins, above n 61, at 1.

78 Jackson and Graham, above n 68, at 77.

cheap dollar loaves of white bread from the local corner store to stave off her hunger pains. The absence of enough nutritious food means she is unable to produce enough breastmilk to feed her baby, creating a vicious cycle of hunger and sleep deprivation, culminating in an emotional breakdown at the local family support centre.

The double burden of obesity and malnourishment occurs amongst lowest-income earners and their whānau. An obesity epidemic has generated the third highest rates in the OECD,<sup>79</sup> and is well documented by media.<sup>80</sup> Matching food insecurity, a disproportionate burden of obesity is borne by lowest-income earners:<sup>81</sup> “twenty percent of children living in the most socioeconomically deprived areas are obese, compared with 4% living in the least deprived areas”.<sup>82</sup> Obesity leads to health problems. It is associated with 9 per cent of all illness, disability and premature mortality and is the “leading modifiable risk to health, equal with smoking”.<sup>83</sup>

From an international perspective, Aotearoa New Zealand does much better as a country for food security than the preceding discussion of food insecurity and obesity would suggest. In 2017 it ranked 14th equal out of 113 GFSI countries with Finland.<sup>84</sup> GFSI identified particular strengths for food safety, food safety-net programmes, and access to finance for farmers.<sup>85</sup> However, the same index also reported undernourishment of 5 per cent of the population.<sup>86</sup> Significantly for this examination of the RMA, the country fell from previous years because of a new measure which assesses a country’s exposure to climate change and natural resource risks.<sup>87</sup>

The country performed inconsistently in an international benchmarking of government policy and infrastructure supports that impact on food security via the food environment (INFORMAS).<sup>88</sup> It did well for front-of-pack nutrition

79 Vandervijvere and others, above n 25, at 8.

80 For example, a 2017 report documented how the double burden of obesity and malnutrition accounts for an increasing number of child hospitalisations: Kirsty Johnston “Poor eating behind more kids’ ills: Number of New Zealand children needing hospital treatment for inadequate nutrition doubles in past decade” *The New Zealand Herald* (Auckland, 19 September 2017) at A8.

81 Ministry of Social Development, above n 63, at 60.

82 Ministry of Health, above n 76, at vii.

83 Ministry of Social Development, above n 63, at 57.

84 The Economist Intelligence Unit “Global Food Security Index: New Zealand” <<http://foodsecurityindex.eiu.com/Country/Details#New%20Zealand>>.

85 The Economist Intelligence Unit “New Zealand”, above n 84.

86 239,000 out of 4.78 million: The Economist Intelligence Unit “New Zealand”, above n 84.

87 The Economist Intelligence Unit “Methodology”, above n 24.

88 Vandervijvere and others, above n 25.

labelling for packaged food,<sup>89</sup> and a voluntary advertising code to restrict “occasional food and beverage advertising” to children and young people.<sup>90</sup>

Forty-seven per cent of the indicators were inadequately implemented,<sup>91</sup> including planning-related areas such as:<sup>92</sup>

- restricting non-broadcast promotion of unhealthy food to children;
- zoning laws for healthy and unhealthy food outlets that would support communities to limit unhealthy food outlets;<sup>93</sup>
- promoting the relative availability of healthy foods food service outlets; and
- ensuring trade and investment agreements did not negatively affect population health.

The outcomes are the obesity rates, which are very poor.<sup>94</sup>

### 3.2 Food Affordability

*You can spend forty bucks just on vegetables and stuff ... and there's just like a few, and if you bought forty bucks' worth of junk food you've got like nearly a whole trolley full ...*<sup>95</sup>

*Affordability is left to the market.*<sup>96</sup>

The National government placed reliance on markets to assure affordability. For example, the Ministry for Primary Industries (MPI) acknowledged that affordability may fall within SDG 2, in which it participates; but “[a]ffordability is left to the market. Strong competition between food retailers and ready access to imported food has ensured foods are competitively and fair[ly] priced. The

89 There is an Australia and New Zealand-specific Health Star Rating system for packaged food. Ministry for Primary Industries “Health Star Ratings” <<http://www.mpi.govt.nz/food-safety/whats-in-our-food/food-labelling/health-star-ratings/>>.

90 Advertising Standards Authority “New Children and Young People’s Code Comes Into Full Effect” <<http://www.asa.co.nz/2017/08/31/new-children-code-applies/>>.

91 Wiggins, above n 61.

92 Vandervijvere and others, above n 25, at 14.

93 Wiggins, above n 61.

94 Professor Boyd Swinburn quoted by Amy Wiggins “New Zealand food policies need to change to tackle obesity” *The New Zealand Herald* (online ed, Auckland, 24 July 2017).

95 “Anna”, a research participant quoted by Jackson and Graham, above n 68, at 80.

96 Email from Stacey Moir (Customer Enquiries Coordinator Ministry for Primary Industries) to the author (15 September 2017).

Commerce Commission has overall responsibility for ensu[r]ing market[s] are operating fairly.”<sup>97</sup>

However, prices of nutritious food are too high for people on the lowest incomes to afford. There are several reasons for high prices apart from normal seasonal fluctuations. In 2017, extreme weather events caused flooding which led to scarcity of the staple kūmara and leafy green vegetables.<sup>98</sup> Other factors include goods and services tax (GST) of 15 per cent, increasing demand for food produced in Aotearoa New Zealand on global markets and limited economies of scale,<sup>99</sup> and high farm production costs (even though many costs such as carbon emissions and pollution are still externalised to the environment).<sup>100</sup>

Food producers on the precious 14 per cent of productive land<sup>101</sup> seek markets to maximise their financial returns, often overseas. For example, in 2014, horticultural exports returned \$2.23b.<sup>102</sup> Consequently, consumers here have to compete with consumers overseas. Global markets set domestic prices,<sup>103</sup> with some occasionally surprising results, such as French butter selling more cheaply here than New Zealand butter.<sup>104</sup>

Food affordability is a critical aspect of food security and “[e]conomic factors have the greatest influence on food insecurity, particularly the cost of accommodation in relation to total household income”.<sup>105</sup> Research shows that

97 Moir, above n 96.

98 Aimee Shaw “Setting the record straight: Why food prices are more expensive in NZ than in Australia” *The New Zealand Herald* (online ed, Auckland, 28 June 2017).

99 Interview with Brent Webling, New Zealand Food & Grocery Council spokesperson, in Shaw, above n 98.

100 For an explanation of reasons for dairy prices escalating on the domestic market in 2008 see Statistics New Zealand “The rising cost of food in New Zealand” <[http://www.stats.govt.nz/browse\\_for\\_stats/economic\\_indicators/prices\\_indexes/rising-cost-of-food-in-nz.aspx](http://www.stats.govt.nz/browse_for_stats/economic_indicators/prices_indexes/rising-cost-of-food-in-nz.aspx)>.

101 “Elite land (typically defined as Class 1) is the most versatile, multiple-use land on flat to undulating land. Prime land (or Classes 2 and 3) is also very good prime agricultural and horticultural land with slight (Class 2), or moderate (Class 3), physical limitations to arable use. Classes 1–2 land represent 5% of total New Zealand land areas and Classes 1–3 land represent 14%.” Horticulture New Zealand “Submission to the Ministry of Business, Innovation and Employment on the Urban Development Authorities” (15 May 2017) at 4.

102 Horticulture New Zealand “Submission to the Productivity Commission on the Using Land for Housing — Issues Paper” (22 December 2014).

103 Interview with Mark Robinson, Fonterra Co-operative Group Limited spokesperson, in Shaw, above n 98.

104 Shaw, above n 98.

105 Susan Bidwell *Food Security: A review and synthesis of themes from the literature* (Canterbury District Health Board, Christchurch, 2009) at 3 <<http://www.cph.co.nz/wp-content/uploads/foodsecurityreview.pdf>>.



when those on the lowest incomes receive additional money they spend it on more food of better quality.<sup>106</sup>

The INFORMAS report identifies several strategies that government could (but does not) adopt to improve food affordability, including:<sup>107</sup>

- reducing taxes (eg GST) on healthy foods;
- increasing taxes on unhealthy foods;
- food subsidies to favour healthy foods;
- food-related income support for healthy foods;
- assessing health impacts of trade agreements;
- protection of regulatory capacity of government for population nutrition; and
- population intake targets.

Post-election change may be coming up, with the new Minister of Health mentioning a connection between plans to raise the minimum wage and food security,<sup>108</sup> and perhaps implicitly accepting that government has a role to play in food security instead of being as hands-off as its predecessors.

### **3.3 Food Safety and Supply**

The Ministry for Primary Industries takes responsibility for ensuring that all food, produced domestically and imported, is safe for human consumption.<sup>109</sup> In this way, the extensive food safety regime contributes positively to food quality.

Presently, there is no government minister or body responsible for supply of food, which reflects the previous government's preference for market "solutions" in food security. The New Zealand Food Safety Authority used to be charged with responsibility for monitoring food safety *and supply*,<sup>110</sup> but it was merged into the MPI in 2012. The MPI does not manage food supply because of New Zealand's food production "far exceeding what the population can consume".<sup>111</sup> Further, "New Zealanders [sic] access to an affordable supply of healthy foods is primarily the responsibility of the market acting in response to consumer demand".<sup>112</sup>

106 Jackson and Graham, above n 68, at 85–86.

107 Vandervijvere and others, above n 25, at 14.

108 Interview with Hon David Clark MP, Health Minister in Wiggins, above n 61.

109 Moir, above n 96.

110 Maria Turley and Martin Tobias *Food and Nutrition Monitoring in New Zealand* (Public Health Intelligence Occasional Bulletin No 19, Ministry of Health, Wellington, 2003) at 22.

111 Moir, above n 96.

112 Moir, above n 96.

Horticulture New Zealand tried to persuade the previous Minister for Primary Industries to plan for better food security, arguing that food supplies are at risk because of failure to protect productive soils.<sup>113</sup> The Minister denied there is a problem with a lot of food being exported and substitutes being imported, arguing “it is what consumers expect”.<sup>114</sup>

### 3.4 Individual and Community Responsibilities for Nutrition

*A focus on the responsibility of low-income citizens to seek out ad hoc and complicated ways to feed themselves fails to engage with the underlying causes of their austerity.*<sup>115</sup>

The state provides healthcare in a mixed public–private model, and arguably the shifting limit to state-funded interventions in nutrition reflects variation in governments’ philosophies about individual versus state responsibility. Scholars suggest that the idea that malnourished individuals are primarily in need of education regarding their lifestyles reflects a neoliberal worldview.<sup>116</sup> On the other hand, public health approaches emphasise policy involvement in setting food environments that promote healthy eating behaviours.<sup>117</sup>

Under the previous government, approaches to promoting healthy nutrition focused on supporting individual behaviours through education, consistently with the National Party’s philosophy of helping families to take better care of themselves.<sup>118</sup> For example, the “Childhood obesity plan”<sup>119</sup> focuses on access to nutrition education, food labelling and healthy activity.<sup>120</sup> Also, the “flagship prevention platform” was Healthy Families New Zealand, supporting environments that promote better nutrition including at work, and in school/

113 Ewing, above n 8.

114 Ewing, above n 8.

115 Jackson and Graham, above n 68, at 84.

116 At 80, referring to Ted Schrecker and Clare Brama *Neoliberal Epidemics: How Politics Makes Us Sick* (Palgrave Macmillan, London, 2015).

117 For media discussion see, for example, Sophie Barclay “Feeding the nation: Obesity, poverty and nutrition” *The New Zealand Herald* (online ed, Auckland, 24 January 2014); and Sophie Barclay “Feeding the nation: The Solutions” *The New Zealand Herald* (online ed, Auckland, 28 January 2014).

118 New Zealand National Party “Health: The National-led Government is helping New Zealanders to stay healthy, as well as delivering world class health services” <<https://www.national.org.nz/health>> (accessed prior to the 2017 national election).

119 Ministry of Health “Childhood obesity plan” (Ministry of Health, Wellington, 2015) <<http://www.health.govt.nz/our-work/diseases-and-conditions/obesity/childhood-obesity-plan>>.

120 Ministry of Health, above n 119.

early childhood education.<sup>121</sup> Neither address affordability or secure supplies of nutritious foods. However, even though the *How We Eat* report focuses on individual-level eating behaviours, it does identify that these behaviours occur within wider social, physical and economic contexts.<sup>122</sup>

### 3.5 Exposure to Global Food Markets

There are risks to food security associated with the fact that international trade makes up 60 per cent of the country's economic activity,<sup>123</sup> and arguably exporting food and importing substitutes is characteristic of unsustainable food production, additionally creating avoidable contributions to greenhouse gases.

Advantages of importing include year-round access to supplies of seasonal and tropical produce,<sup>124</sup> but extra risks to food security include:

- supplies being interrupted because of global instability; and
- price increases of foods that are exported with average domestic prices “often follow[ing] the import and export prices”.<sup>125</sup>

### 3.6 Threats to Natural Resources Required for Food Production

Urban sprawl and intensified agriculture have put pressure on the natural resources required for food production, especially water and soil. Local authorities' attempts to protect rural land were undermined by the previous government because of a determination to address housing affordability by increasing supply of rural sections for development. For example, the National Policy Statement on Urban Development Capacity (NPS-UDC) issued by the previous Minister for Housing in 2016 directed that councils “in rapidly growing urban areas provide enough land for new housing and business development”.<sup>126</sup> Murphy identifies how the previous government articulated

121 Healthy Families NZ <<https://www.healthyfamilies.govt.nz/#home-2>>; including through a separate programme Ministry of Health “Health Promoting Schools” <<http://hps.tki.org.nz/>>.

122 Gerritsen and Wall, above n 30, at 12.

123 New Zealand Foreign Affairs and Trade “Trade” <<https://www.mfat.govt.nz/en/trade/nz-trade-policy/>>.

124 Statistics New Zealand “Fresh fruit and vegetables prices — our global connection” <[http://www.stats.govt.nz/tools\\_and\\_services/newsletters/price-index-news/jan-14-fruit-and-vege.aspx](http://www.stats.govt.nz/tools_and_services/newsletters/price-index-news/jan-14-fruit-and-vege.aspx)>.

125 Statistics New Zealand, above n 124.

126 Hon Nick Smith MP, Minister for the Environment “NPS on Urban Development agreed as building boom continues” (press release, 1 November 2016) <<https://www.beehive.govt.nz/release/nps-urban-development-agreed-building-boom-continues>>. And see below part 4 on RMA and central government.

a preference for deregulation of planning, along with its other neoliberal, free-market preferences,<sup>127</sup> and that its drive to facilitate the release of land for development matched a political commitment to reform planning.<sup>128</sup>

Industrialised agricultural methods, often for export, also pose a threat to soils' ability to support long-term food security. For example, the accumulation of carcinogenic cadmium in topsoils after 70 years' use of phosphate-based fertiliser threatens soils<sup>129</sup> and places future generations of New Zealanders at risk of inheriting land "unfit for food production".<sup>130</sup>

### 3.7 Local Food Security Initiatives

Figure 2: Whangarei Growers Market Facebook page<sup>131</sup>



127 Laurence Murphy "The Politics of Land Supply and Affordable Housing: Auckland's Housing Accord and Special Housing Areas" (2016) 53(12) *Urban Studies* 2530 at 2540–2541.

128 At 2543.

129 Catherine Dearsley "Cadmium Levels from Fertiliser in Soil and Food: The Adequacy of New Zealand's Law and Policy" (2015) 19 *NZJEL* 241.

130 At 280.

131 <<https://www.facebook.com/thewhangareigrowersmarket/>>.

The research for this article did not extend to systematic investigation of urban design and community food security initiatives.<sup>132</sup> However, easily accessible examples include the:

- Whangarei Growers Market, established to resist the domination of Whangarei supermarkets on local fruit and vegetable growers;<sup>133</sup>
- South Auckland Teaching Garden project to help people grow fruit and vegetables at home;<sup>134</sup>
- Auckland Council sustainability website that promotes community gardens and avoiding food waste;<sup>135</sup>
- Dunedin City Council local food strategy, involving: New Zealand's only food resilience officer; researchers and academics working collaboratively on food systems; planning policy requiring space for on-site food production on residential development;<sup>136</sup> the Otago farmers' market; Otago Polytechnic's living campus gardens; food banks; community gardens and the hospitality industry;<sup>137</sup> and
- Food Policy Councils in the Tauranga and Western Bay of Plenty Region.<sup>138</sup>

As a caveat, Aotearoa New Zealand research shows that growing your own food turns out to be no solution for food security for those on the lowest incomes, because they tend to be time poor and live in insecure rental accommodation.<sup>139</sup>

These examples provide evidence that community food security initiatives are possible where there is enough support. Next, I consider how the RMA is organised to provide for resource management, and the role of central government determined there.

132 For example, as detailed by Orange, above n 42, at 42–49.

133 Elizabeth Campbell “Edi(ta)ble Urbanism: The Food, The Veil and the City” (Thesis submitted in partial fulfilment of the requirement for the Master of Architecture, University of Auckland, 2013).

134 Auckland Teaching Gardens Trust in collaboration with Auckland Council.

135 Auckland Council “9 ways you can ‘live lightly’” Tō Tātou Tāmaki Makaurau: Our Auckland <<http://ourauckland.aucklandcouncil.govt.nz/articles/news/2017/09/9-ways-you-can-live-lightly/>>.

136 Dunedin City Council “Residential activities, development, and subdivision activities provide high quality on-site amenity for residents” Second Generation District Plan Objective 15.2.2, Policy 15.2.2.1.

137 Dwiartama and Piatti, above n 52, at 154.

138 Dana Thompson “Case Study 1: Establishing a Local Food Policy Council” (Toi Te Ora, Bay of Plenty, March 2016) <<http://ana.org.nz/wp-content/uploads/2016/11/Establishing-a-Food-Policy-Council.pdf>>.

139 Rebekah Graham and Kimberly Jackson “No, poor New Zealand families can't just ‘grow their own vegetables’” The Spinoff (Auckland, 9 August 2017) <<https://thespinoff.co.nz/parenting/09-08-2017/no-poor-new-zealand-families-cant-just-grow-their-own-vegetables/>>.

## 4. RMA: ORGANISATION AND CENTRAL GOVERNMENT

In this part of the article I briefly identify the hierarchical framework of the Resource Management Act 1991 and the role of central government in its implementation.

### 4.1 Overarching Principle and Higher-level Documents

The RMA consolidated prior legislation covering all aspects of environmental and resource management (apart from mining),<sup>140</sup> carrying forward planning acts and zoning systems.

#### 4.1.1 Overarching purpose of RMA, matters of national importance and food security

The RMA's overarching, core purpose is to promote "sustainable management" of natural and physical resources,<sup>141</sup> intended in 1991 to advance the environmentalism then gaining ground globally<sup>142</sup> beyond "sustainable development".<sup>143</sup>

Sustainable management means managing resources "in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and *for their health and safety*" while.<sup>144</sup>

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems*; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

As a discrete policy area, food security fits within s 5 of the RMA because of its connections with health.

140 Kenneth Palmer "Origins and Guiding Ideas of Environmental Law" in Klaus Bosselmann, David Grinlinton and Prue Taylor (eds) *Environmental Law for a Sustainable Society* (2nd ed, New Zealand Centre for Environmental Law, Auckland, 2013) 3 at 6.

141 Resource Management Act 1991 [RMA], s 5(1).

142 For an overview of international and New Zealand developments see K Palmer, above n 140, at 12–16.

143 David Grinlinton "Legitimate planning guidance or potential constitutional vandalism? National Policy Statements after *King Salmon*" (2015) BRMB 83 at 85.

144 RMA, s 5(2) (emphasis added).

Decision-makers under the RMA are also obliged to take into account the matters of national importance listed in s 6.<sup>145</sup>

#### 4.1.2 The Minister for the Environment and matters for national direction

The Minister for the Environment (MFE), assisted and advised by the Ministry for the Environment (the Ministry),<sup>146</sup> has powers to provide national direction in relation to matters of national significance.<sup>147</sup> Mechanisms include national environmental standards,<sup>148</sup> national policy statements,<sup>149</sup> and calling in decisions from local authorities.

The Ministry for the Environment's general website explanation says national direction's objective is in relation to how specific resources should be managed "to protect the environment, strengthen the economy and enable New Zealanders to provide for their social and cultural well-being".<sup>150</sup> It is interesting that the emphasis here is on strengthening the economy at large, which may be different from s 5's economic well-being of people and communities. Less subtly, s 5 health is completely excluded. Of course, the Ministry's explanation has no general legal effect. However, national policy statements (NPSs) are subordinate legislative instruments under the Legislation Act 2012.<sup>151</sup> To be *intra vires*, a NPS must be within the scope of pt 2 of the RMA.<sup>152</sup>

In determining whether it is "desirable" to prepare a NPS, MFE may have regard to any matter related to the general purpose of a NPS, including those listed in s 45(2)(a)–(j),<sup>153</sup> several of which could be relevant to food security. These include:

145 These s 6 RMA matters relate to (a) preservation of coast; (b) outstanding natural features; (c) significant vegetation and habitats; (d) public access to waterways; (e) Māori relationships with taonga; (f) historic heritage; (g) customary rights; and (h) natural hazards.

146 Environment Act 1986, s 31.

147 For a full description of the Minister for the Environment's [MFE] powers under the RMA see Kenneth Palmer *The Laws of New Zealand/Resource Management/ PART IV ADMINISTRATIVE AUTHORITIES/(19) Central Government/ Minister for the Environment* para 213.

148 RMA, ss 43–44A.

149 Sections 45–55.

150 Ministry for the Environment "A way forward for national direction — 2016" <<http://www.mfe.govt.nz/publications/rma/way-forward-national-direction-2016>>.

151 Legislation Act 2012, s 4.

152 Grinlinton, above n 143, at 83.

153 RMA, s 45(2)(j).

- (i) Protecting soil and water (“the actual or potential effects of the use ... or protection of natural and physical resources”);<sup>154</sup>
- (ii) Prioritising local food, to reduce carbon emissions from freighting food around the country or importing food (“New Zealand’s ... obligations in maintaining ... aspects of the ... global environment”);<sup>155</sup>
- (iii) Effects on the whole country — for example, protecting land and water associated with a food-growing hub (“anything which affects or potentially affects more than 1 region”;<sup>156</sup> and “anything which, because of its scale ... is of significance to ... New Zealand”).<sup>157</sup>

MFE is also empowered to “call in” a matter that has been lodged with a local authority that relates to a proposal of national significance and refer it instead to a board of inquiry or the Environment Court for decision.<sup>158</sup> In determining whether a matter is one of national significance for this purpose, MFE can have regard to any relevant factor,<sup>159</sup> including 10 specifically listed.<sup>160</sup> These include matters that have aroused widespread public concern about environmental impact;<sup>161</sup> are relevant to international environmental obligations;<sup>162</sup> and will assist the Crown in fulfilling its public health functions.<sup>163</sup> A possible food security example may be an overseas landowner’s application to build on a substantial part of the elite soil in one of the country’s food hubs.<sup>164</sup>

#### 4.1.3 National Policy Statement on Urban Development Capacity 2016

The previous Minister for the Environment (also the Minister for Housing) consulted on a proposed version<sup>165</sup> and then issued the National Policy Statement on Urban Development Capacity<sup>166</sup> to direct decision-makers to

154 Section 45(2)(a).

155 Section 45(2)(b).

156 Section 45(2)(d).

157 Section 45(2)(f).

158 Section 142(2). In this case MFE may have regard to “any relevant factor”: s 142(3); including the matters listed in s 142(3)(a)(i)–(x) and (b) (replaced by s 10(1) of the Resource Management Amendment Act 2011).

159 Section 142(3).

160 Section 142(3)(a)(i)–(x) and (b).

161 Section 142 (3)(a)(i).

162 Section 142 (3)(a)(iv).

163 Section 142 (3)(a)(viii).

164 For an explanation of concerns see Jamie Gray “Growing pains” *The New Zealand Herald* (Auckland, 17 November 2017) *The Business* 10 at 10.

165 For discussion of the proposed version see Kenneth Palmer “Editorial: Proposed National Policy Statement on Urban Development Capacity” (2016) *Resource Management Bulletin* 153.

166 Ministry for the Environment “National Policy Statement on Urban Development



increase land available for development, because, he said, “[t]he long-term root cause of New Zealand’s housing affordability problems is insufficient land supply”.<sup>167</sup>

The NPS-UDC directs RMA decision-makers planning for urban environments to enable growth by allowing development to go “up” by intensifying urban areas, and “out” by releasing land in greenfield areas.<sup>168</sup>

It is interesting that the NPS-UDC is not entirely consistent with the RMA. Arguably, it is a closer match with the Ministry’s website explanation of the purposes of national direction than it is with s 5 itself for two reasons. First, the objectives and policies omit health from matters that otherwise parallels 5 of the RMA, and refer to a separate concept, “environmental wellbeing”. Secondly, safeguarding soil<sup>169</sup> is omitted. Land protection is about providing choices for dwellings and business, efficient use of urban land, and limiting adverse impacts on the “competitive operation of land and development markets”.<sup>170</sup>

#### 4.1.4 Other mechanisms to promote the RMA

Finally, the Minister is obliged to consider other options for achieving the purpose of the RMA apart from those already mentioned,<sup>171</sup> including various economic instruments such as levies.<sup>172</sup>

Further research would be required to discover why the variances exist; in particular, whether or not unsuccessful attempts to reform pt 2 of the RMA in 2013<sup>173</sup> would have made similar changes.

Capacity 2016” (Ministry for the Environment, Wellington, 2016) [NPS-UDC] <<http://www.mfe.govt.nz/publications/towns-and-cities/national-policy-statement-urban-development-capacity-2016>>.

167 Hon Nick Smith MP, above n 126. For alternative points of view and discussion see below part 6.2.

168 NPS-UDC, above n 166, at 3.

169 RMA, s 5(2)(b).

170 NPS-UDC, above n 166, at 11.

171 RMA, s 32.

172 Sections 24(1)(f)–(i) and 24(1)(a)–(e) as amended by the Resource Management (Simplifying and Streamlining) Amendment Act 2009, s 22.

173 Ministry for the Environment *Resource Management: Summary of RMA Reform Proposals 2013* (Ministry for the Environment, Wellington, August 2013) at 11–16. Generally, these proposed amendments were intended to “smooth the path for development” by reducing the weight to be given to environmental considerations whilst increasing the weight given to development considerations: Sir Geoffrey Palmer QC *Protecting New Zealand’s Environment: An Analysis of the Government’s Proposed Freshwater Management and Resource Management Act 1991 Reforms* (New Zealand Fish and Game Council, September 2013) at para 123.

## 4.2 Middle and Lower-level Documents

The middle layer of RMA documents includes regional councils' regional policy statements<sup>174</sup> and regional plans.<sup>175</sup> The policy statement must give an overview of the region's resource management issues, and describe policies and methods (excluding rules)<sup>176</sup> to achieve integrated management of the natural and physical resources.<sup>177</sup> Regional plans include objectives for the region, together with the policies, rules and methods to achieve them.<sup>178</sup> The district plans which must be made by the responsible territorial authority are the lower-level RMA documents.<sup>179</sup> District plans must also include objectives for the district, together with the policies, rules and methods to achieve them.<sup>180</sup>

## 4.3 Effect of Hierarchical Framework of RMA

The RMA's legislative framework is hierarchical and provides mechanisms for strong governance. The directives of each level, all derived from the overarching principles of Parliament's legislation, have to be given effect to by the level below. Arguably, this top-down approach has advantages in overcoming too much interference from local vested interests. On the other hand, there is support for more "grassroots" decision-making,<sup>181</sup> including specifically for sustainable agriculture.<sup>182</sup>

At the apex of the RMA is the overarching purpose of the Act spelt out in pt 2, which "drives every decision made under the Act",<sup>183</sup> and therefore binds all RMA decision-making, including by local government.

The highest-level documents include objectives and policies<sup>184</sup> "which must be given effect to in lower order planning documents".<sup>185</sup> Following the Supreme Court's decision in *Environmental Defence Society Inc v The*

174 There must be at least one policy statement for each region: RMA, s 60(1).

175 These are optional: RMA, s 60(1).

176 RMA, s 62(1).

177 Section 62(1).

178 Sections 67(1) and 67(2)(b).

179 Sections 73–77D.

180 Section 75(1).

181 See below part 7.4.

182 Jason J Czarnezki "Food, Law & the Environment: Informational and Structural Changes for a Sustainable Food System" (2011) 31 Utah Envtl L Rev 263 at 274.

183 Rt Hon Sir Geoffrey Palmer QC "Key considerations for future resource management reform" (Presentation to "Tipping Points" Environmental Defence Society Conference, Auckland, September 2017).

184 RMA, ss 45(1) and 58.

185 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 (SC) at 612 per Arnold J.

*New Zealand King Salmon Co Ltd*<sup>186</sup> (*King Salmon*) it can no longer be argued that “give effect to”<sup>187</sup> means an overall broad judgement on the matter. Local authorities have a strict obligation to “implement” NPSs in every regional policy statement, regional plan, and district plan (and unitary plan):<sup>188</sup>

Under the “overall judgment” approach, a policy direction to “avoid” adverse effects is simply one of a number of relevant factors to be considered by the decision maker, albeit that it may be entitled to great weight; under the “environmental bottom line” approach, it has greater force.

The “architect” of the RMA recently expressed the hope that *King Salmon* would put an end to the previous ad hoc balancing that courts had “habitually” undertaken.<sup>189</sup>

## 5. LOCAL GOVERNMENT, RMA AND SOIL PRESERVATION

This part of the article briefly considers the roles of local authorities in relation to food security following recent changes to the RMA in the wake of *King Salmon*’s affirmation of the hierarchical framework. Broadly, local authorities must implement the overarching purpose of the RMA and the higher- and middle-level documents. MFE has a supervisory role in relation to RMA responsibilities of regional councils and territorial authorities,<sup>190</sup> including ability to direct a change to a district plan.<sup>191</sup>

### 5.1 Local Government and 2017 Development Capacity Obligations

Regional and territorial authorities (district and unitary councils) have obligations to promote the purposes of the RMA. They must achieve integrated resource management by establishing and implementing objectives and policies.<sup>192</sup> Regional authorities also have to give effect to the RMA in their regions, including by controlling land use to conserve water and soil.<sup>193</sup>

186 At 612–613 and 620 per Arnold J.

187 RMA, ss 62(3), 67(3) and 75(3).

188 *King Salmon*, above n 185, at [97] per Arnold J.

189 G Palmer, above n 183.

190 K Palmer, above n 140.

191 RMA, s 25A(1).

192 Regional councils’ functions are prescribed by RMA, s 30(1); territorial authorities’ district functions are prescribed by RMA, s 31(1) and (2).

193 RMA, s 30(1)(c)(i)–(iia).

Things have changed since a 2017 RMA amendment. The overarching sustainable management purpose remains,<sup>194</sup> but both levels of local authority now have specific statutory obligations to “ensure development capacity in relation to housing and business land”.<sup>195</sup> These are in addition to obligations under the NPS-UDC for areas of high growth.<sup>196</sup>

## 5.2 Balancing Housing and Food Security

Before *King Salmon*, the Environment Court (EC) at least twice upheld territorial district councils’ approval of plan changes that selectively put aside regional plan soil conservation policy to allow rezoning for housing development: soil lost to housing.<sup>197</sup> Since *King Salmon* affirmed the hierarchical framework of the RMA,<sup>198</sup> subsequent cases might have been decided differently. Housing may have lost to soil because council’s duty to give effect to both the overarching purpose of soil preservation in s 5(2)(b) and the higher-level status of a regional plan should have been upheld. However, maybe this possibility has in turn been reduced by the 2017 amendments and the NPS-UDC growth and development obligations.<sup>199</sup>

Since grounds for further litigation have possibly been created by the previous government, it is worth examining some of the arguments about balancing soil and housing in the two Canterbury cases. In both cases the EC allowed up-zoning of land with versatile soils despite regional policy statements prioritising their protection.

In *Becmead*, the EC decided<sup>200</sup> that demand for housing could justify derogation from soil protection despite s 5(2)(b). In the Court’s view, s 5(2)(b) had to be read in the context of s 5(2) as a whole, with precedence for the opening “managing the use [and] development”. The Court rejected the possibility that s 5(2)(b) should take precedence over the management function of s 5(2).<sup>201</sup>

194 In 2013 the previous government unsuccessfully attempted to get enough parliamentary support for amending these directly: G Palmer, above n 183.

195 Regional councils — RMA, s 30(1)(ba): inserted, on 19 April 2017, by s 12(1) of the Resource Legislation Amendment Act 2017; territorial authorities — RMA, s 31(1)(aa): inserted, on 19 April 2017, by s 13(1) of the Resource Legislation Amendment Act 2017.

196 See above part 4.1.3.

197 *Becmead Investments Ltd v Christchurch City Council* [1997] NZRMA 1; and *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25.

198 See above part 4.3.

199 See above part 4.1.3.

200 Citing Barker J in *Falkner v Gisborne District Council* [1995] 3 NZLR 622 at 632.

201 *Becmead*, above n 197, at 23.

Similarly, in *Canterbury Regional Council*, the EC emphasised that soil protection is only one factor that has to be balanced against others.<sup>202</sup> The Court decided it was significant that protection of versatile land was not a matter of national importance under s 6 of the RMA<sup>203</sup> as it had been in the previously applicable Town and Country Planning Act 1977.<sup>204</sup> There would have to be factual and economic factors relating to a particular region to empower a regional council to make a policy to protect versatile soil or another resource.<sup>205</sup>

The 2017 amendments and the NPS-UDC may have caused confusion about the future balance between soil and housing. However, arguments for soil remain. First, horticulture should fall within the “business” growth referred to under the NPS-UDC.<sup>206</sup> Secondly, applying *King Salmon*:

- the 2017 amendment and NPS-UDC should be read subject to the overarching purposes in pt 2 of the RMA, including s 5(2)(b); and
- district plans must give effect to regional soil conservation policies.

## 6. HOUSING VERSUS SOILS IN TĀMAKI MAKĀURAU AUCKLAND

*As Auckland tries to house its bulging population, ... losing prime agricultural land may mean it struggles to feed its people.*<sup>207</sup>

During population growth and an accompanying housing crisis in Tāmaki Makaurau Auckland, greenfield housing development has increasingly encroached on versatile soils<sup>208</sup> and put long-term food security at risk despite local government’s protective endeavours.

Research into the adequacy of soil protection in the draft Auckland Unitary Plan concluded that those preliminary proposals to limit urban sprawl

202 *Canterbury Regional Council*, above n 197, at 35 and 47.

203 At 47.

204 Town and Country Planning Act 1977, s 3(1)(d).

205 *Canterbury Regional Council*, above n 197, at 47.

206 This suggestion was made by Professor Kenneth Palmer, Resource Management Law lecture, University of Auckland, October 2017.

207 Olivia Allison “Auckland sprawl threatens food basket” RNZ News (online ed, New Zealand, 24 September 2014) <<http://www.radionz.co.nz/news/national/255367/auckland-sprawl-threatens-food-basket>>.

208 Paul Spoonley in Jemma Brackebush “NZ’s growing population a concern for growers and farmers” RNZ News (online ed, New Zealand, 30 October 2017) <<https://www.radionz.co.nz/news/country/342670/nz-s-growing-population-a-concern-for-growers-and-farmers>>.

were inadequate.<sup>209</sup> However, since these were watered down in the ultimate Auckland Unitary Plan it seems unsurprising that subsequent concerns<sup>210</sup> about Auckland's food security have been vehemently expressed, identifying a future need to import food from other regions and food price rises.<sup>211</sup>

The case seems to demonstrate both urgency for reform and inevitable opposition to its achievement.<sup>212</sup>

## 6.1 Background

### 6.1.1 Auckland housing crisis

Growth in housing demand has been fuelled by growth in population and mainly unrestricted buying for overseas-based non-residents. The estimated population of 1,657,200<sup>213</sup> is projected to grow to 2,142,600 by 2043.<sup>214</sup> Advocacy for a national population plan is partly founded on a need to protect productive soils around the country, because attempts to cap Auckland's population alone may pass the need to build on productive soils to other regions.<sup>215</sup> Mostly unrestricted buying by non-residents has led to problems. For example,<sup>216</sup> in 2013 there were 33,360 unoccupied "ghost" dwellings in Auckland,<sup>217</sup> houses bought by speculators and left empty.<sup>218</sup> During the 2017 national election campaign the new government promised a ban on non-residents buying existing houses as one of its first acts in government if elected.<sup>219</sup>

209 Slater, above n 22, at 55.

210 For example, Statement of Evidence of Dr Fiona Curran-Cournane on behalf of Auckland Council before the Auckland Unitary Plan Independent Hearings Panel (01 December 2014) at para 1.1 <<https://hearings.aupihp.govt.nz/online-services/new/files/hGSexQxy4GqB7Ecr4klJEXUOyOF2uxAdNpPW8JaqYChG>>.

211 Allison, above n 207. See also Gray, above n 164.

212 For a discussion of reform possibilities see part 7.

213 As at 30 June 2017. Statistics New Zealand "Auckland population grows across the boards" <[http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/SubnationalPopulationEstimates\\_AtJun17\\_MR2.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/SubnationalPopulationEstimates_AtJun17_MR2.aspx)>.

214 Statistics New Zealand "Urban area population projections by age and sex 2013–2043" <<http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECO DE7566#>>.

215 Spoonley, above n 208.

216 Non-residents may purchase any non-sensitive property: Overseas Investment Act 2005, s10(1)(a).

217 Statistics New Zealand: 2013 Census of Population and Dwellings, Unoccupied dwelling count by area unit, Auckland.

218 For example, Anne Gibson "Rise of the ghost homes — More than 33,000 Auckland dwellings officially classified empty" *The New Zealand Herald* (online ed, Auckland, 12 June 2016).

219 New Zealand Labour Party "Our plan to start fixing the housing crisis: Crack

Housing in the region ranked as fourth least affordable in an international survey in 2016,<sup>220</sup> with prices rising 85 per cent in the four years to 2016.<sup>221</sup> Worsening affordability has been accompanied by rising overcrowding and homelessness,<sup>222</sup> with an estimated 23,409 Aucklanders homeless in 2017.<sup>223</sup>

### 6.1.2 Auckland productive soils

The best, most versatile soils in Auckland are non-renewable, scarce, and nationally significant.<sup>224</sup> The less than 1 per cent of land with elite soils, mostly around West Pukekohe, with frost-free weather and access to distribution hubs produces onions and potatoes for the whole country.<sup>225</sup>

Development has disproportionately encroached onto highly productive agricultural and horticultural land.<sup>226</sup> This is the 27 per cent of total land with elite and prime soils, the next two top categories of prime soils.<sup>227</sup> More than 8 per cent was lost to development by 2012.<sup>228</sup> The loss matters because land with these and the elite soils provides exclusively for some rural uses, including outside production of vegetables.<sup>229</sup>

down on speculators; Ban foreign speculators from buying existing homes” <<http://www.labour.org.nz/housing>>.

220 Demographia International *13th Annual Demographia International Housing Affordability Survey: 2017 — Rating Middle-Income Housing Affordability* (3rd Quarter 2016) <<http://www.demographia.com/dhi.pdf>>.

221 Fiona Rotherham and Tina Morrison “Auckland house prices up 85pc in four years” *The New Zealand Herald* (online ed, Auckland, 15 July 2016) <[http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11675211](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11675211)>.

222 The 2013 Census revealed significant overcrowding for more than 200,000 people in Auckland, including about 63,000 children, most significantly affecting Pacific peoples. Based on 2013 Census of Population and Dwellings. Statistics New Zealand “Auckland Housing now very different from the rest of New Zealand’s” (17 December 2014) <[http://m.stats.govt.nz/tools\\_and\\_services/media-centre/additional-releases-archive/auckland-housing-trends-17-december-14.aspx](http://m.stats.govt.nz/tools_and_services/media-centre/additional-releases-archive/auckland-housing-trends-17-december-14.aspx)>.

223 Auckland Council “Homelessness Policy Project” <[http://infocouncil.aucklandcouncil.govt.nz/Open/2017/07/CEN\\_20170719\\_AGN\\_7015\\_AT.htm#PDF3\\_Attachment\\_54512\\_1](http://infocouncil.aucklandcouncil.govt.nz/Open/2017/07/CEN_20170719_AGN_7015_AT.htm#PDF3_Attachment_54512_1)>.

224 Curran-Cournane, above n 210, para 1.1.

225 Allison, above n 207; and Curran-Cournane, above n 210.

226 Curran-Cournane, above n 210, at paras 1.1 and 1.2.

227 55,356 hectares, or 12 per cent, of prime (LUC Class 2); and 65,090 hectares, or 15 per cent, of prime (LUC Class 3): Curran-Cournane, above n 210, at para 1.1.

228 Curran-Cournane, above n 210, at para 1.2. See also Fiona Curran-Cournane, Melanie Vaughan, Ali Memon and Craig Frederickson “Trade-offs between high class land and development: Recent and future pressures on Auckland’s valuable soil resources” (2014) 39 *Land Use Policy* 146 at 153.

229 Curran-Cournane, above n 210, at paras 1.1 and 1.2.

Figure 3: Land use capability (LUC): location of versatile soils in Auckland Council area

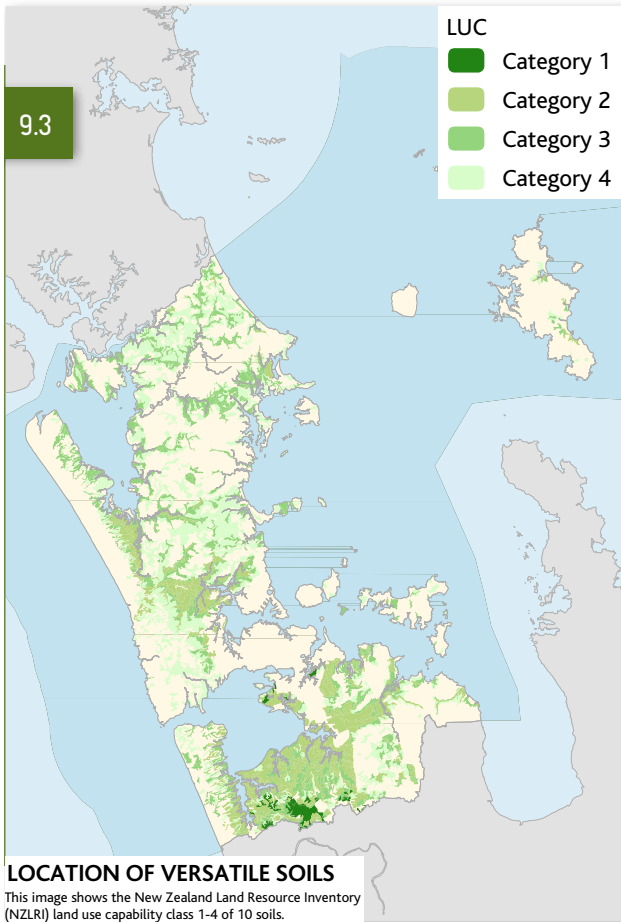
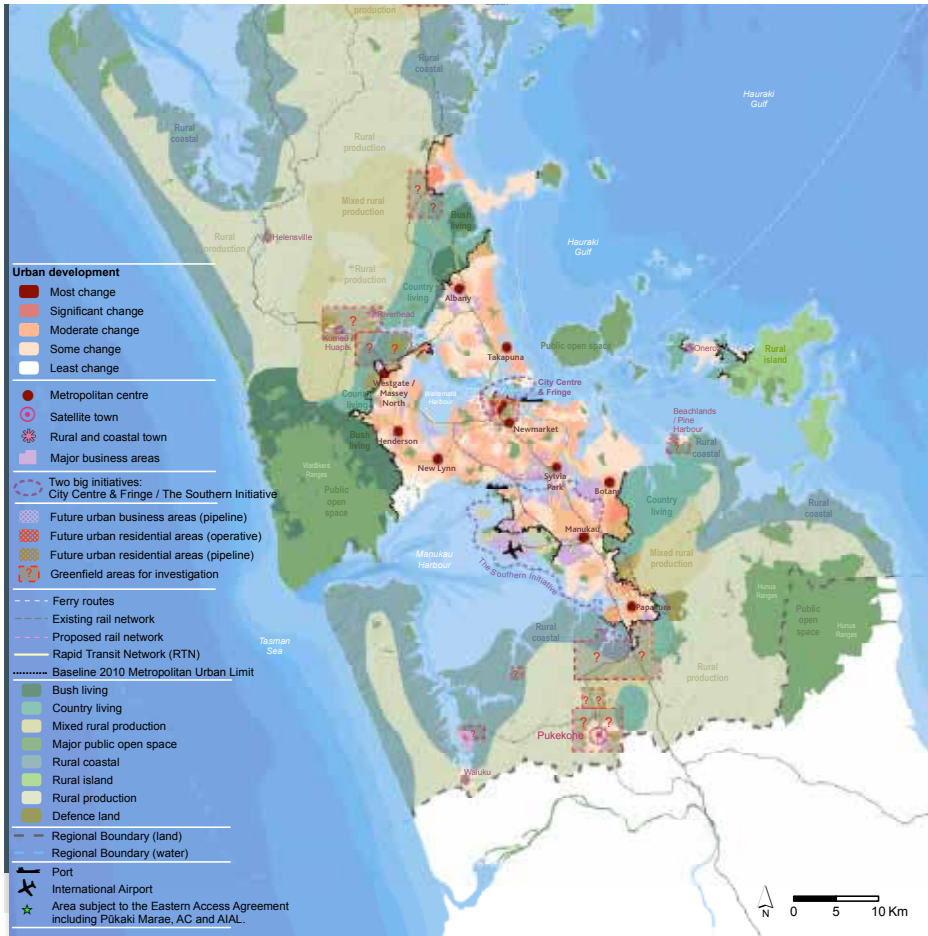




Figure 4: Auckland Wide Development Strategy map



Figures 3<sup>230</sup> and 4<sup>231</sup> show the most versatile soils (darkest three shadings in Figure 3); and the high-level strategy including an area for investigations for future housing development around these close to Pukekohe in the south (Figure 4).

230 *The Auckland Plan*, below n 244, Figure 9.3 Soils of High Production Value at 226.

231 Map D.1 Development Strategy Map (Auckland-Wide) at 54.

## 6.2 Politics and Housing

Land with versatile soils on the margins of Auckland's urban areas became caught in the crossfire of clashing interests and opinions about how to improve housing affordability.<sup>232</sup>

Very broadly, on one side, the previous government supported demands of landowners and developers to allow greenfield development by "up-zoning" rural land. For example, the previous Minister of Housing (and for the Environment) argued for this kind of deregulation because he claimed planning practice and restrictions on supply of development land were the primary causes of unaffordable housing.<sup>233</sup> This view is not only a New Zealand perspective, it spreads between jurisdictions.<sup>234</sup> As evidence in support he referred to Auckland, where median section prices increased 350 per cent from 1990 to 2016; and building costs increased only 78 per cent during the same time.<sup>235</sup>

On the other side, Auckland Council wanted to maximise zoning restrictions to protect rural land and soil, and to allow increased intensification of housing within existing urban limits, known as "brownfield" development. Proponents accept planning practice may be one contributing factor to housing unaffordability,<sup>236</sup> but they also emphasise other interacting factors including low housing production and general house price inflation due to increased demand.<sup>237</sup>

The next sections of the article briefly describe key events in chronological order.

## 6.3 Productivity Commission Inquiry into Affordable Housing: March 2012

Auckland Council tried to gain a wide ambit for the government-appointed Productivity Commission's investigation into a deepening housing affordability

232 Murphy, above n 127, at 2531. For an insight into opposing political party views about housing affordability see Housing Accords and Special Housing Areas Bill — Third Reading (5 September 2013) 693 NZPD 13328.

233 See, for example, "Auckland affordable housing depends on Unitary Plan — Smith" RNZ News (online ed, Auckland, 26 July 2016) <<https://www.radionz.co.nz/news/national/309489/akl-affordable-housing-depends-on-unitary-plan,-minister-says>>.

234 Murphy, above n 127, at 2533.

235 Hon Nick Smith MP, above n 126.

236 For example, Auckland Council's Submission to the Productivity Commission's Draft Report on Housing Affordability February 2012 at 3.

237 Adams, above n 38, at 958 cited by Murphy, above n 127, at 2533.

crisis,<sup>238</sup> but the report still focused on price and planning issues in accordance with the specific terms of reference.<sup>239</sup> Major factors, according to the Commission, included “land supply restrictions” and “costs and delays in regulatory processes” (both planning regulation matters), as well as “problems with achieving scale in new house construction”.<sup>240</sup> Auckland Council argued for extension of the scope for the inquiry to add in a fundamental affordability issue: house prices outrunning incomes,<sup>241</sup> and demand-side issues such as the impact of the Accommodation Supplement on rents and the overall house prices market; along with other ways to assist home ownership and renting.<sup>242</sup> Other factors for the inquiry could also have included overseas buyers and availability of mortgage finance. However, the terms of reference kept these issues out of bounds.

#### 6.4 The Auckland Plan: March 2012

Shortly after its creation in amalgamated form, and against the backdrop of the Productivity Commission’s inquiry, Auckland Council<sup>243</sup> developed the Auckland Plan,<sup>244</sup> which continued planners’ attempts to encourage urban consolidation and housing intensification to “mitigate the consequences of uncontrolled, low-density urban sprawl”.<sup>245</sup> Its attempts to restrict the footprint of urban development are consistent with the overarching sustainable

238 Auckland Council Submission to the Productivity Commission’s Draft Report on Housing Affordability February 2012 at 3.

239 New Zealand Productivity Commission *Housing Affordability Inquiry Report* (March 2012) at p iii–iv.

240 At iii. The inquiry also identified that the then current approach to social housing in New Zealand “will not provide sufficient support for many New Zealanders in need”.

241 Auckland Council Submission, above n 238, at 3.

242 At 4.

243 The Local Government (Auckland Council) Act 2009 replacing the Local Government (Tamaki Makaurau Reorganisation) Act 2009 now repealed. Auckland Council is also subject to the provisions of the Local Government Act 2002. The amalgamation included seven territorial authorities and the regional council into a single territorial authority that is a “unitary authority”: “Auckland Reorganisation Legislation” Local Government Key Legislation (online ed, Thomson Reuters) IN 1.04.

244 Auckland Council *The Auckland Plan* (adopted in March 2012 under ss 79 and 80 of the Local Government (Auckland Council) Act 2009) <<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/Pages/auckland-plan.aspx>>.

245 Errol Haarhoff and others *Future Intensive: Insights for Auckland Housing* (National Institute of Creative Arts and Industries, The University of Auckland, 2012) at 1.

management purpose of the RMA and the specific purpose to protect soils.<sup>246</sup> They address Auckland Council's statutory, regional council function to control the use of land for the purpose of soil conservation.<sup>247</sup> They are also deeply unpopular with those who stand to gain from unrestricted development opportunities.

The Auckland Plan is Auckland Council's long-term spatial plan,<sup>248</sup> public consultation for which involved "thousands of Aucklanders",<sup>249</sup> with a vision of "creating the world's most liveable city".<sup>250</sup> Its purpose is to contribute to Auckland's well-being (social, economic, environmental and cultural) through a 20- to 30-year growth and development strategy.<sup>251</sup> The Auckland Plan provides a basis for regional policy-making and district plan rule-making in the Auckland Unitary Plan<sup>252</sup> which is the detailed resource management plan.<sup>253</sup>

#### 6.4.1 Food security

The Auckland Plan acknowledges the importance of stewardship of Auckland's finite natural resources for the future of Auckland,<sup>254</sup> including specifically for food security. Directive 8.6 requires recognising, promoting and strengthening the value and contribution of local urban and rural food systems "to improve resilience, resource use efficiency and community food security"<sup>255</sup> because:<sup>256</sup>

Productive food-growing land is being compromised significantly in some parts of the world: ongoing urbanisation and climate change may exacerbate this. Global resource scarcity, peak oil, and climate change add to the value of local food production and place an additional premium on Auckland's and New Zealand's productive capacity. Food resilience is likely to be a prized element of city living in the future, and it is essential that this dynamic is recognised in planning for Auckland's future.

246 RMA, s 5(2)(b).

247 Section 30(1)(c)(i).

248 "A form of planning for cities, regions or countries that seeks to provide long-term direction for development and achievement of social, economic and environmental wellbeing." *The Auckland Plan*, above n 244, at 380.

249 Auckland Council "Plans and strategies: How your plans work together" <<http://temp.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/Pages/howplansworktogether.aspx>>.

250 Auckland Council, above n 249.

251 *The Auckland Plan*, above n 244, section A.2.4 at 10.

252 Auckland Council, above n 249.

253 See below part 6.6.

254 *The Auckland Plan*, above n 244, ch 7, box 7.1.6.

255 Chapter 8, directive 8.6.

256 Chapter 8, para 527.

Directive 8.6 fits with the separate goal to reduce greenhouse gas emissions by 40 per cent by 2040 on 1990 levels.<sup>257</sup>

This is a significant policy-level advance from the previous Auckland Regional Policy Statement 1999 which was apparently silent on local and community food security as a goal for protecting agricultural land.<sup>258</sup>

#### *6.4.2 Future growth within limits*

The Auckland Plan anticipated growth of up to one million people and future need for 400,000 new homes, but to give effect to its drive to protect rural productivity and amenity, reaffirmed spatial limits for the urban footprint.<sup>259</sup> Seventy per cent of the region's land is rural, and the Auckland Plan emphasises the importance of the rural contribution, including local food production,<sup>260</sup> with a target to increase the contribution to 50 per cent by 2040.<sup>261</sup>

It allows for up to 40 per cent of the population living outside the current urban area, and up to 70 per cent living inside the current urban area, anticipating staged growth around a rural urban boundary<sup>262</sup> in Auckland's Unitary Plan, within the 2010 metropolitan urban limit.<sup>263</sup> It also directs planning for "a seven-year average of unconstrained development capacity ... at any point in time with a minimum of five years' and a maximum of 10 years' capacity".<sup>264</sup>

The high-level development strategy attempts to achieve balanced growth within a "quality compact city" and protection for rural Auckland because:<sup>265</sup>

An important benefit of a quality compact city is enhanced urban amenity, complemented by rural and coastal lifestyle opportunities. Lifestyles affect the international perception of Auckland as a good place to live and work. Encouraging growth within the existing urban footprint protects Auckland's rural hinterland and its productive potential: it enables ready access to coastal, marine and other recreation areas.

257 Chapter 8, target 8, at 202.

258 Orange, above n 42, at 43–44.

259 *The Auckland Plan*, above n 244, ch 10, para 563.

260 Chapter 9, para 530.

261 At 220–221. In 2007 the rural sector contributed about \$400m to the Auckland economy, and the target was \$600m by 2040.

262 Section D, paras 133–138 at 49–50.

263 Planned accommodation 280,000 new dwellings over 30 years: 160,000 new dwellings in new greenfield land, satellite towns and other rural and coastal towns, plus 1,400 hectares of new greenfield business land: ch 10, para 563 and directive 10.1.

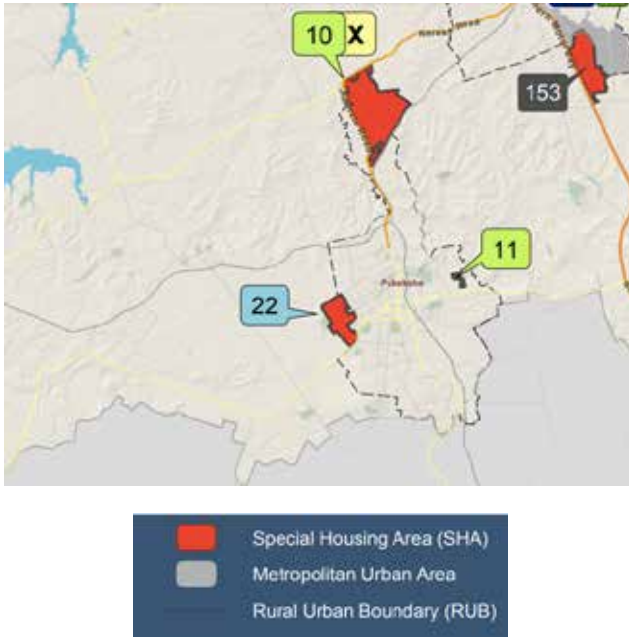
264 Chapter 10, para 563, directive 10.2. See also part 6.8 below referring to the National Policy Statement on Urban Development Capacity.

265 Section D, para 109, box D.1.

Overall, the signs in the Auckland Plan were good for the soil protection element of food security, but central government then became involved with the introduction of the Auckland Housing Accord.

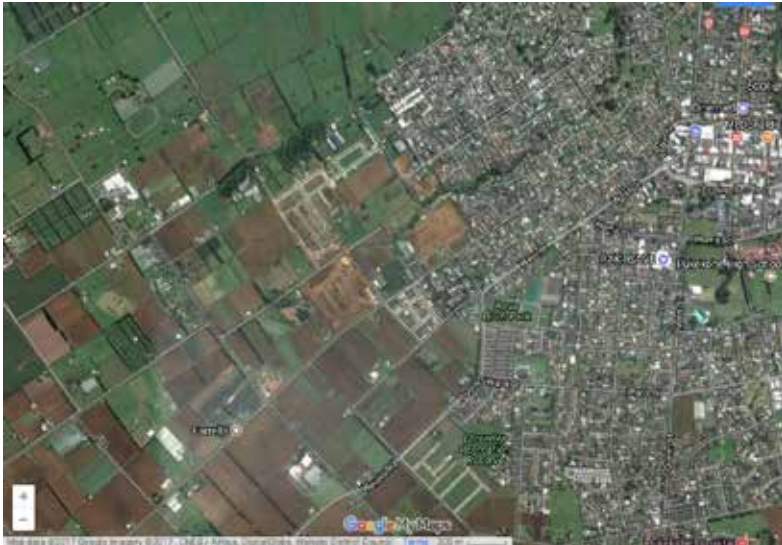
### 6.5 Auckland Housing Accord: October 2013

Figure 5: Auckland Council Special Housing Areas (Tranches 1–10)<sup>266</sup>



266 Auckland Council “Special Housing Areas (Tranches 1–10)” (31 March 2016) <<http://temp.aucklandcouncil.govt.nz/EN/ratesbuildingproperty/housingsupply/Documents/overviewtranchesonetoten.pdf>>. Belmont was SHA 22.

Figure 6: Housing pressing in on horticulture, West Pukekohe<sup>267</sup>



The Auckland Housing Accord<sup>268</sup> between the previous Minister of Housing and the Auckland Mayor was an agreement to fast-track the freeing up of land for housing development in nominated Special Housing Areas (SHAs) pending finalisation of the Auckland Unitary Plan and amendments to the RMA, and in its haste it allowed new housing on precious soils. In particular, it seems that Special Housing Area 22 was in the area of valuable soils in Pukekohe West that was won for exclusion from development between the draft and proposed Auckland Unitary Plan.<sup>269</sup>

The Auckland Housing Accord had a target to consent 39,000 extra houses in three years<sup>270</sup> by immediately meeting the Productivity Commission’s recommendations for de facto planning deregulation<sup>271</sup> in nominated areas,

267 Google Maps satellite version <<https://www.google.com/maps/d/viewer?mid=1Be-sDIZhBnJ4hpwgH2chkYmq1Ao&hl=en&ll=-37.20527813087501%2C174.88479135961916&z=15>>.

268 Minister of Housing and Auckland Mayor “Auckland Housing Accord” (3 October 2013). The legislative authority for the housing accord was the Housing Accords and Special Housing Areas Act 2013.

269 This appears to be the case from Slater, above n 22, at 34, although her commentary was formulated before the relevant land became a Special Housing Area and this may not be completely correct.

270 9,000 in year 1; 13,000 in year 2; and 17,000 in year 3. Ministry of Business, Innovation and Employment “Auckland Housing Accord” <<http://www.mbie.govt.nz/info-services/housing-property/housing-affordability/auckland-housing-accord>>.

271 See above part 6.3.

pending finalisation of the Auckland Unitary Plan and RMA amendments. Limited record keeping obscures numbers of built dwellings,<sup>272</sup> even though there was success in consenting targets,<sup>273</sup> but one clear result was that SHA 22 in Belmont was allowed on Pukekohe's precious productive land (see Figure 5 above).<sup>274</sup>

Arguably, the concept of central government involvement in local planning via Special Housing Areas challenges the nature of local planning by disrupting the balance of power,<sup>275</sup> but the previous government made sure that its legal authority to do so was well established. Section 25A of the RMA is the legislative "stick" which enables the Minister to direct local authorities about planning matters<sup>276</sup> and "to directly grant planning permission for residential developments".<sup>277</sup> Further, central government's involvement in this way was founded on the legislative authority of the Housing Accords and Special Housing Areas Act 2013.

The next section of this part briefly describes the process by which the Auckland Unitary Plan was finalised, with the implementation of the Auckland Housing Accord running along in the background.

## 6.6 Auckland Unitary Plan

### 6.6.1 Draft Auckland Unitary Plan (released March 2013) and Proposed Auckland Unitary Plan (notified September 2013)

Auckland Council moved to give effect to the high-level Auckland Plan<sup>278</sup> by developing the Auckland Unitary Plan. It combines the regional policy

272 Suggestions are these were quite limited, especially on privately owned Special Housing Area developments: Sharon Brett Kelly "Auckland Council unsure how many affordable homes built" RNZ News (online ed, 4 July 2017) <<http://www.radionz.co.nz/news/political/334387/auckland-council-unsure-how-many-affordable-homes-built>>.

273 By mid-2017 the consenting target was 96 per cent achieved, with 1,683 hectares of the Future Urban zoned land having been "live-zoned" by plan variation in 15 Special Housing Areas, capable of accommodating over 23,000 new dwellings: Ministry of Business, Innovation and Employment "Greenfield land supply" in *Auckland Housing Accord Third Quarterly Report for the Fourth Accord Year: 1 April to 30 June 2017* at 22 <<http://www.mbie.govt.nz/info-services/housing-property/housing-affordability/document-image-library/auckland-housing-accord-monitoring-report-06-2017.pdf>>.

274 Auckland Council "Special Housing Areas (Tranches 1–10)" (31 March 2016), above n 266; see also Gray, above n 164.

275 Murphy, above n 127, at 2531 and 2544.

276 RMA, s 25A inserted by s 8 of the Resource Management Amendment Act 2005.

277 Murphy, above n 127, at 2531.

278 See above part 6.4.



statement, regional plan (including a regional coastal plan) and district plan.<sup>279</sup> The process was run during the same time period as the SHA negotiations described in the previous section, in which central government exercised its influence in the direction of freeing up land for greenfield development as well as within urban boundaries. At the end of the process, long-term food security was less secure than it could have been under a more direct translation of the soil protection provisions of the Auckland Plan, with more potentially productive rural land becoming available long term for housing.<sup>280</sup>

The specially legislated-for Auckland Unitary Plan procedure was based on the RMA plan process, but in line with central government's urgency about releasing land for development, with an abbreviated timeframe, and fewer appearances and appeals.<sup>281</sup> The draft Auckland Unitary Plan<sup>282</sup> allowed six months for informal submissions after its March 2013 release. Next, the proposed Auckland Unitary Plan<sup>283</sup> was notified, allowing another six months for formal submissions to the Independent Hearings Panel, and generating "more than 100,000 planning points".<sup>284</sup>

Close analysis of the draft Auckland Unitary Plan found that the proposals for housing up-zoning<sup>285</sup> in the Franklin District, including Pukekohe, would have encouraged further development on a significant portion of high-quality productive land.<sup>286</sup> Subsequently, the proposed Auckland Unitary Plan proposed allowing even more,<sup>287</sup> with a Future Urban Zone for land inside the rural urban boundary.<sup>288</sup> The combined up-zoning effect of the Auckland Housing Accord and Auckland Unitary Plan processes created concern about the future of productive soils and long-term food security, in particular around the three

279 Auckland Council "How Your Plans Work Together", above n 249.

280 See below part 6.6.3.

281 For example, there was an Independent Hearings Panel (rather than Council-appointed commissioners) along with pre-hearing meetings: Local Government (Auckland Transitional Provisions) Act 2010. Auckland Unitary Plan Independent Hearings Panel "Our process" <<http://www.aupihp.govt.nz/procedures/>>. For an overview and practical commentary on the process see Richard Brabant "The Proposed Auckland Unitary Plan Hearing Process — a Template for the Future?" (2016) Resource Management Bulletin 123.

282 Auckland Council *Draft Auckland Unitary Plan* (March 2013) <[http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps\\_pid=IE16567302](http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE16567302)>.

283 Auckland Council *Proposed Auckland Unitary Plan* (September 2013) <<http://unitaryplan.aucklandcouncil.govt.nz/pages/plan/Book.aspx?exhibit=ProposedAucklandUnitaryPlan>>.

284 Kenneth Palmer "Auckland Unitary Plan — Panel Report and Council Decisions" (2016) Resource Management Bulletin 169.

285 Including the "country living" zone.

286 Slater, above n 22, at 31–32.

287 K Palmer, above n 284; see also Allison, above n 207.

288 *Draft Auckland Unitary Plan*, above n 282, at para 3.2.4.

Pukekohe SHAs intended to accommodate 50,000 dwellings, “the majority on the highest quality land in the region”.<sup>289</sup>

In terms of the mechanisms for implementing the shrinking limits to rural housing development, the proposed Auckland Unitary Plan carried forward the Auckland Plan’s rural urban boundary, aspiring to avoiding new subdivision.<sup>290</sup> It also promoted amalgamated rural titles; transferring residential potential out of areas of elite or prime land;<sup>291</sup> and managing boundary adjustments to facilitate improvements in efficiency of rural production.<sup>292</sup> Pukekohe West was excluded from the proposed Auckland Unitary Plan and Slater noted this should be applauded.<sup>293</sup>

### *6.6.2 Auckland Unitary Plan Independent Hearings Panel (hearings: September 2014–May 2016; recommendations: July 2016)*

The Independent Hearings Panel recommended up-zoning even more rural land than the proposed Auckland Unitary Plan, having considered in excess of 9,000 submissions that raised more than 100,000 planning points.<sup>294</sup>

Auckland Council made its own submissions to the Independent Hearings Panel on the rural urban boundary (supported by Horticulture New Zealand’s independent submissions),<sup>295</sup> strongly opposing up-zoning land with elite and prime soils to Countryside Living (CL).<sup>296</sup> Referring to the RMA’s sustainable management and soil protection roles, Auckland Council argued that:<sup>297</sup>

rezoning of this finite resource to the CL zone fails to safeguard the life-supporting capacity of soil ... [and] fails to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations as anticipated by section 5 of the RMA.

289 Allison, above n 207.

290 *Proposed Auckland Unitary Plan*, above n 283, at para 25.

291 At para 27.

292 At para 29.

293 Slater, above n 22, at 34.

294 Auckland Council “Unitary plan submissions and further submissions” <<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-by-laws/our-plans-strategies/unitary-plan/history-unitary-plan/submissions-proposed-auckland-unitary-plan/Pages/unitary-plan-submissions-further-submissions.aspx>>.

295 Statement of Evidence by Stuart John Ford for Horticulture New Zealand before the Auckland Unitary Plan Independent Hearings Panel (9 December 2014) at paras 1.9, 5.10–5.16 and 6.12–6.13 <<file:///C:/Users/Mike/Downloads/RPS%20Rural%20Hort%20NZ%20EIC%20Stuart%20Ford.pdf>>.

296 Auckland Council Closing Remarks on behalf of Auckland Council before the Auckland Unitary Plan Independent Hearings Panel in Relation to Topic 081 Rezoning and Precincts (Geographical Areas): Rezoning Only at para 4.20.

297 At para 4.20.

At the end of submissions the Independent Hearings Panel formulated its recommendations against a backdrop of rare cross-political-party support for increased land supply. The previous Finance Minister announced that “if the council failed to deliver enough housing capacity, the government could act”.<sup>298</sup> In support, the then opposition Labour Party identified limits to land supply as “the big one” amongst causes of high house prices, and threatened to abolish the rural urban boundary itself if it had the chance.<sup>299</sup>

Arguably, it was no surprise in this political context that the Independent Hearings Panel ultimately recommended an extensive revision of the proposed Auckland Unitary Plan.<sup>300</sup> The Independent Hearings Panel endorsed the rural urban boundary as a planning tool, but recommended its expansion to accommodate more than 30 per cent capacity above the proposed Auckland Unitary Plan.<sup>301</sup> In addition, the Independent Hearings Panel recommended preserving regional policy statement policies about the rural urban boundary, but deleting its location down to district plan level to allow response to applications for plan changes.<sup>302</sup>

The next subsection identifies how in the end Auckland Council rejected some of the Independent Hearings Panel’s up-zoning recommendations in order to protect productive soils, but still allowed for development of even more land.

### *6.6.3 Auckland Council’s decisions version (Auckland Unitary Plan (Operative in Part)): August 2016*

Auckland Council considered and responded to the Independent Hearings Panel’s recommendations swiftly to keep up with central government’s procedural timetable, steadfastly supporting some of the Auckland Plan’s soil protection provisions, and adopting an amended version. This version was notified, subject to some exclusions for areas subject to appeals, in November 2016 as the Auckland Unitary Plan (Operative in Part)<sup>303</sup> (AUP(OIP)).

298 “Auckland Council must open up land — English” RNZ News (online ed, 18 May 2016) <<http://www.radionz.co.nz/news/political/304193/auckland-council-must-open-up-land-english>>; and Todd Niall “Akl house prices build unlikely political alliances” RNZ News (online ed, 19 May 2016) <<http://www.radionz.co.nz/news/on-the-inside/304258/akl-house-prices-build-unlikely-political-alliances>>.

299 Niall, above n 298.

300 K Palmer, above n 284, at 169.

301 At 169.

302 At 170.

303 Auckland Council *Auckland Unitary Plan (Operative in Part)* (November 2016 updated December 2017) <[http://unitaryplan.aucklandcouncil.govt.nz/pages/plan/Book.aspx?exhibit=AucklandUnitaryPlan\\_Print](http://unitaryplan.aucklandcouncil.govt.nz/pages/plan/Book.aspx?exhibit=AucklandUnitaryPlan_Print)>.

Soil protection provisions remain in the “middle level”<sup>304</sup> regional policy provisions of AUP(OIP), which must all then be implemented by the detailed provisions of the regional plan and the district plan.<sup>305</sup> Most significantly for the purposes of this article, the regional policy provisions in ch B provide for urbanisation “avoiding elite soils and avoiding where practicable prime soils which are significant for their ability to sustain food production”.<sup>306</sup> They also recognise several other matters more generally relating indirectly to food security as issues of regional significance:

- urban growth and form;<sup>307</sup>
- natural resources;<sup>308</sup>
- the rural environment;<sup>309</sup> and
- environmental risk.<sup>310</sup>

Chapter B2, some of which is at the time of writing subject to appeal, also identifies the issue of limiting urban growth to maintain opportunities for rural production.<sup>311</sup> It declares objectives to focus growth within the metropolitan area 2010;<sup>312</sup> to contain urbanisation within the rural urban boundary,<sup>313</sup> towns and villages,<sup>314</sup> and to ensure that the rural urban boundary achieves quality, compact urban form.<sup>315</sup> The rural environment section of ch B<sup>316</sup> mirrors the provisions on urban form, focusing on avoiding non-productive activity on areas of land containing elite and prime soils.<sup>317</sup>

304 See above part 4.2.

305 See above part 4.3 on hierarchical structure of the RMA.

306 Auckland Council *Auckland Unitary Plan B2.2.2 Policies* (2)(i) <<http://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20B%20RPS/B2%20Urban%20Growth.pdf>>; see also B2.6.1(b).

307 *Auckland Unitary Plan Operative in Part*, above n 303, at B1.4(1).

308 B1.4(6).

309 B1.4(8).

310 B1.4(9).

311 B2.1(7).

312 B2.2.1(2).

313 G1; see also H18 Future Urban Zone.

314 B2.2.1(4).

315 B2.2.2(2)(a).

316 B9 Toitū te tuawhenua — Rural environment.

317 See, for example, paras B9.1 (issues include protecting elite soils from urban expansion); B9.2.1(1) and (2) (objectives include rural productivity and protecting elite soils); B9.3.1(1)–(3) (protecting and recognising land with elite and prime soils and other productive land); and B9.4.1(2) (protecting elite soils from subdivision).

Auckland Council’s version of the AUP(OIP) deleted the Independent Hearings Panel’s version of some objectives and policies for rural subdivision because the Independent Hearings Panel’s approach would have allowed a proliferation of rural-residential lots in production-focused rural zones, and undermined:<sup>318</sup>

- the Auckland Plan’s strategic direction for rural areas; and
- the concept of the compact city; and
- the focus of rural lifestyle in the Countryside Living zone.

In particular, AUP(OIP) removed Future Urban Zone status from that area to the south of Pukekohe not already included in a SHA.<sup>319</sup>

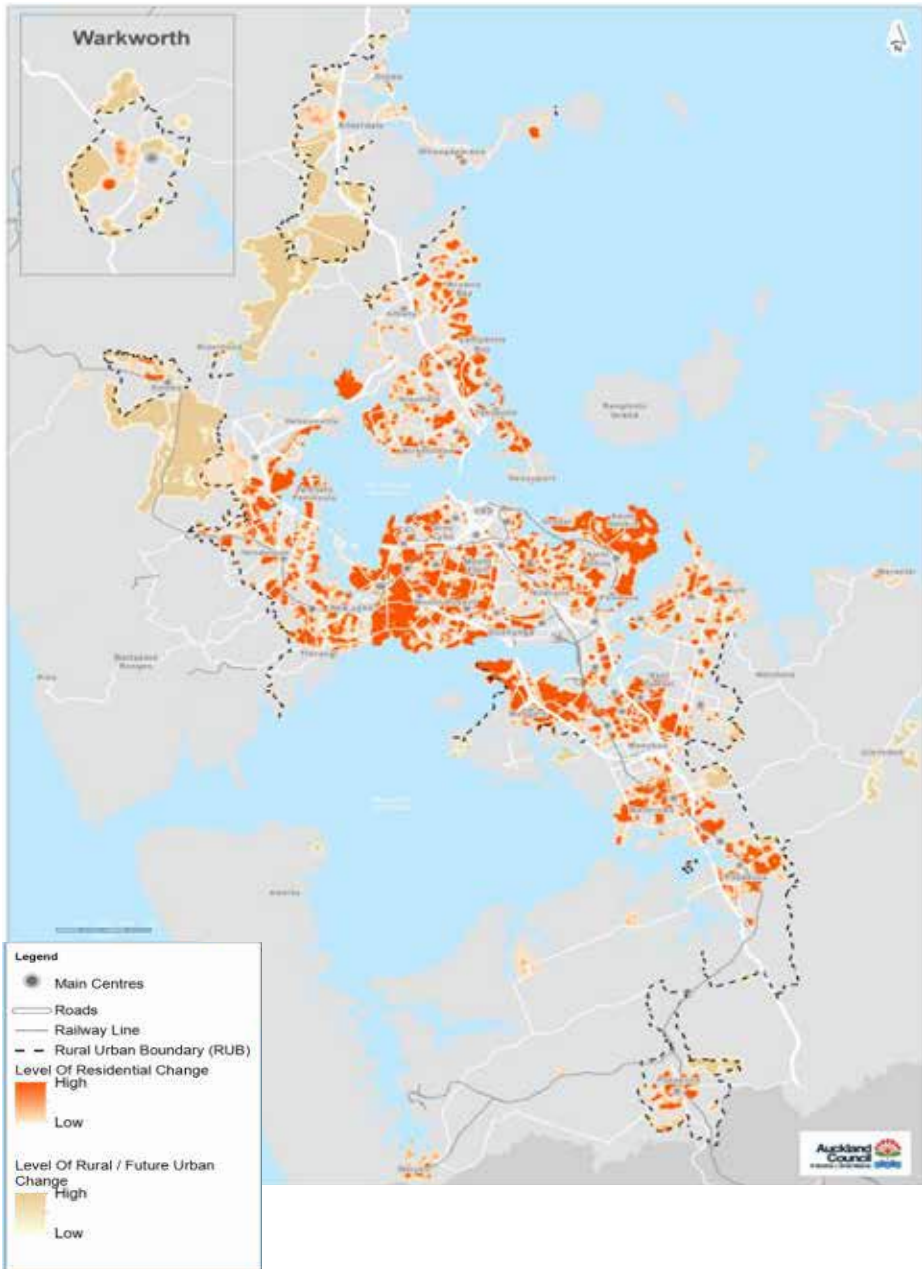
Nevertheless, as shown in Figure 7, AUP(OIP) still involved yet another increase in land earmarked “future urban” from 11,000 hectares in the proposed Auckland Unitary Plan to 15,000 hectares.<sup>320</sup>

318 Auckland Council *Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan* (19 August 2016) at para 13.2(a)(i)–(iv).

319 Auckland Council Future Urban areas Unitary Plan zoning changes map — attachment to Auckland Council Planning Committee Open Agenda (7 March 2017) <[http://infocouncil.aucklandcouncil.govt.nz/Open/2017/03/PLA\\_20170307\\_AGN\\_6719\\_AT\\_WEB.htm](http://infocouncil.aucklandcouncil.govt.nz/Open/2017/03/PLA_20170307_AGN_6719_AT_WEB.htm)>.

320 Todd Niall “Council changes Auckland land supply plans” RNZ News (online ed, 7 March 2017) <<http://www.radionz.co.nz/news/national/325995/council-changes-auckland-land-supply-plans>>.

Figure 7: Areas of “up-zoning” between the proposed Auckland Unitary Plan and Auckland Unitary Plan (Operative in Part)<sup>321</sup>



321 John Duguid, General Manager Plans and Places, Auckland Unitary Plan Presentation to Property Institute of New Zealand (June 2017) <[https://www.propertyinstitute.nz/sites/default/files/uploaded-content/field\\_f\\_content\\_file/1350\\_john\\_duguid\\_-\\_property\\_institute\\_presentation\\_june\\_2017.pdf](https://www.propertyinstitute.nz/sites/default/files/uploaded-content/field_f_content_file/1350_john_duguid_-_property_institute_presentation_june_2017.pdf)>.

## 6.7 An Evidence Framework for the Future: November 2016

Shortly after Auckland Council's adoption of the AUP(OIP), Auckland Council's Research and Evaluation Unit created an Evidence Framework which identifies strategic evidence gaps that need to be addressed to provide a basis for decision-making on Auckland's future growth. These include research about land use and food security; for example, how to: determine the risks to Auckland's food supply posed by population growth; establish the costs and benefits of local food production, such as maintaining versatile soils on the urban boundary; and evaluate opportunities for food production in urban Auckland, as well as risks of individual/private/communal food production.<sup>322</sup>

Arguably, this new framework further emphasises that Auckland Council's future RMA decision-making will prioritise soil conservation, and take into account broader food security issues.

## 6.8 Auckland Application of National Policy Statement on Urban Development Capacity 2016<sup>323</sup>

The previous government was criticised for failing to provide strong leadership under the RMA.<sup>324</sup> Environmentalists, like others, have to be careful what they wish for. When the previous government offered strong leadership in the form of the NPS-UDC, it ended up heading in the opposite direction, promoting housing development without reinforcing soil protection. As has been seen, this national direction<sup>325</sup> was part of the backdrop for Auckland Council's new unitary planning process. The reason was that it applies to named areas of high growth, including Tāmaki Makaurau Auckland.<sup>326</sup> Auckland Council had to implement the NPS-UDC because of the hierarchical RMA framework and the Supreme Court decision in *King Salmon*.<sup>327</sup>

322 Auckland Council Research and Evaluation Unit *Evidence Framework 2016: Building a house of knowledge for Auckland* (Auckland Council, November 2016) <[http://temp.aucklandcouncil.govt.nz/SiteCollectionDocuments/about\\_council/planspoliciespublications/technicalpublications/aucklandcouncilevidenceframework2016.pdf](http://temp.aucklandcouncil.govt.nz/SiteCollectionDocuments/about_council/planspoliciespublications/technicalpublications/aucklandcouncilevidenceframework2016.pdf)>.

323 NPS-UDC, above n 166. Discussed above in part 4.1.3.

324 G Palmer, above n 183.

325 Along with the provisions for Special Housing Areas; see above part 6.5.

326 NPS-UDC, above n 166.

327 See above part 4.3.

## 6.9 Discussion

Whilst Auckland Council's response in the Auckland Plan to the emerging housing crisis was consistent with planning "best practice",<sup>328</sup> in its efforts to protect productive soils it met opposition. First, it did not fit in with central government's deregulatory philosophies. Further, some property owners have contested the protection of rural land. For example, protective provisions in the AUP(OIP) are currently under appeal, with challenges from Todd Property Group against focusing urban growth within the 2010 metropolitan boundary<sup>329</sup> and affirmations of a compact urban form.<sup>330</sup>

Several local issues arising in the Auckland case demonstrate the complexity of promoting food security as part of a planning process that has to accommodate significant growth, including: first, vast variations in soil quality and production value; secondly, speculators and land-banking; and thirdly, a mismatch between the "food security" interests of some horticulturalists and lowest-income earners.

First, flexibility and patient public consultation are required to ensure the best planning decisions are made. All soils are not equal, and local knowledge about the most precious and productive soils is needed to prioritise preservation of the most valuable, elite soils.

Secondly, land-banking tendencies of property speculators may subvert progressive growth strategies such as a rural urban boundary. Land-banking occurs in Auckland, specifically, where speculators purchase land within the rural urban boundary and refuse to sell it to horticulturalists or other productive farmers, preferring to defer sale until the land is up-zoned. It is interesting that the Ministry of Business, Innovation and Employment recommended SHAs in its Regulatory Impact Statement to address land-banking by allowing development despite planning restrictions. The idea was to stimulate the sale of land by some owners, who were holding development land for capital gains, by creating "commercial uncertainty".<sup>331</sup>

328 Stressing a compact city centre and requiring a portion of developments to be affordable; Murphy, above n 127, at 2539.

329 Appeal ENV-2016-AKL-000214: Todd Property Group against Auckland Unitary Plan Operative in Part Urban Growth and Form Objective B2.2.1(2) and Policy B2.2.2(4).

330 Appeal ENV-2016-AKL-000214, above n 329.

331 Jo Doyle, Director Housing Affordability Programme Ministry of Business, Innovation and Employment "Regulatory Impact Statement: Creating Special Housing Areas" (15 April 2013) <<http://www.mbie.govt.nz/info-services/housing-property/housing-affordability/document-image-library/ris-creating-special-housing-areas.pdf>> at 2.



Thirdly, large-scale horticulturalists have raised “food security” in support of their submissions to protect soils from housing encroachment.<sup>332</sup> However, they may in fact inadvertently be contributing to short-term food insecurity, by producing a restricted variety of crops and mostly exporting, so that domestic consumers have to pay more.<sup>333</sup> Mostly, growers share everyone’s interests in protecting productive soils, which is the long-term food security issue. (The exception is when their methods are not sustainable.)<sup>334</sup> Up-zoning rural land and increasing its value<sup>335</sup> has created some problems for growers with neighbouring land that limit their ability to cater for increased demand: the growers cannot afford to buy land for expansion, and they experience “reverse sensitivity”.<sup>336</sup>

Finally, Murphy concluded from the Auckland case that choosing between urban intensification and greenfield development involves preferences in political philosophy, despite claims about an evidence-based approach to housing affordability.<sup>337</sup> For example, in justifying removing planning restrictions on supply of rural land for housing, the Minister of Housing referred to the prices of sections going up, but did not mention reasons demand had escalated.<sup>338</sup> From a food security perspective, the story of central government’s intrusion into housing in Tāmaki Makaurau Auckland demonstrates how quickly local government’s efforts to protect productive urban land can be put to one side. The events seem to support Murphy’s view that central government response to a housing crisis, with different consequences for protection of rural land, can be strongly influenced by its preference for either regulatory or free-market solutions.<sup>339</sup>

332 Horticulture New Zealand, above n 101.

333 See above part 3.5.

334 See, for example, Dearsley, above n 129.

335 For example, a real estate industry expert has referred to a tripling of prices of up-zoned horticultural land in the region: RNZ Midday Rural News (online ed, 30 October 2017) <[http://www.radionz.co.nz/audio/player?audio\\_id=2018619722](http://www.radionz.co.nz/audio/player?audio_id=2018619722)>.

336 For example, in 2014 a Pukekohe grower complained of experiencing a kind of limbo after his land was earmarked as a Special Housing Area, because “whilst no-one has offered to buy his property or business, he fears he will be driven out of the area once it becomes over-run with city-siders”. The farmer anticipated problems once more residential neighbours moved in because of “reverse sensitivities”: neighbours already complain about noise, irrigation and spraying. Allison, above n 207.

337 Murphy, above n 127, at 2531.

338 See above part 6.2.

339 Murphy, above n 127, at 2545.

## 7. REFORMS

The RMA has mechanisms to improve food security, but political support for environmental management is generally lacking.<sup>340</sup> For example, the Act's overarching and specific purposes enable regional and local authorities to:

- make policies and rules for environmental management that would remove obstacles to the physical aspects of healthy food environments;<sup>341</sup> and
- protect water and soil for longer-term food security.

Nevertheless, New Zealand's waters and soils are at risk for future generations.<sup>342</sup> Arguably, government has subverted the purpose of the RMA by providing weak leadership with the policy guidance "entrusted to it by the RMA"; and political influences at local level have tried to "tip the balance against the environment in favour of development".<sup>343</sup> Councils are criticised for failing to enforce the law in plans and to enforce consent conditions.<sup>344</sup>

The Minister has RMA tools available to improve the affordability aspect of short-term food security.<sup>345</sup> For example, with a willingness to forfeit market solutions they could investigate subsidising growers, perhaps with a tax concession, who sell product on the domestic rather than export market. This would be a big turnaround in political philosophy.

A neoliberal philosophical position may have contributed to the absence of political appetite for stronger implementation of the RMA for food security: individual responsibility for nutrition has recently been prioritised over community responsibility. Also, food security has had a low profile as a well-being issue compared with housing. In Tāmaki Makaurau Auckland central government used an RMA power to relegate resource protection beneath

340 Rt Hon Geoffrey Palmer QC "Not Green Enough: Local Government, the Resource Management Act and the Environment" (2017) Local Government Magazine 26 at 26.

341 For example, by taking the initiatives listed above in part 3.7.

342 In the case of soil see Dearsley, above n 129; and for water see Parliamentary Commissioner for the Environment *The state of New Zealand's environment* (Parliamentary Commissioner for the Environment, Wellington, June 2016) at 38 <<http://www.pce.parliament.nz/media/1666/the-state-of-new-zealand-s-environment.pdf>>.

343 G Palmer, above n 340, at 26.

344 At 26.

345 The RMA includes a responsibility for the Minister for the Environment to consider using all means of achieving the purposes of the Act including economic instruments: see above part 4.1.4.

developing rural land for housing (the NPS-UDC), backed up by specially enacted legislation.<sup>346</sup>

The rest of this part considers possible reforms to address the problems.

### 7.1 Rates Reductions

One suggestion is to investigate reinstating a differential rating system to incentivise the retention of rural land for productive purposes, by providing a rates discount.<sup>347</sup> Local authority rates for high-value rural urban boundary land are reported as an issue for growers who rent land because of pressure on owners to sell up to developers.<sup>348</sup> Investigations of dollar values involved would be required to evaluate whether the proposal would address the scale of the incentive to sell. Rates concessions could also incentivise producing varied fruit and vegetables for the domestic instead of the export market (assuming a willingness to regulate). However, it might be unfair for the cost of rates subsidies to be borne by the few local authorities in which food production “hubs” for the whole country are situated.<sup>349</sup>

### 7.2 A National Policy Statement on Rural Productive Land

As one alternative, Horticulture New Zealand proposes promoting the role of food security by issuing a national policy statement on rural productive land.<sup>350</sup> This would seem to be *intra vires*<sup>351</sup> because:

- (i) It would “state objectives and policies” about sustainable food production and associated protection of soil and water which fall within the overarching sustainable management purpose of the RMA;<sup>352</sup>

346 Housing Accords and Special Housing Areas Act 2013.

347 Unusually, New Zealand allows differential rating systems. This has in the past been used to support rural production: see Kenneth Palmer *Local Authorities Law in New Zealand* (Brookers, Wellington, 2012) at [12.5.1] and [12.6]. I acknowledge Professor Palmer with thanks for contributing this suggestion.

348 See, for example, Gray, above n 164, at 10.

349 For example, Pukekohe, the Horowhenua and Canterbury: Gray, above n 164, at 11.

350 Horticulture New Zealand Submission to the Ministry of Business, Innovation and Employment on the Urban Development Authorities (15 May 2017) at 10 <<http://www.hortnz.co.nz/assets/Natural-Resources-Documents/HortNZ-Submission-MBIE-Urban-Development-Authorities.pdf>>.

351 For a discussion of the requirements for a national policy statement [NPS] to be *intra vires* see discussion above in part 4.1.3 about the NPS-UDC.

352 RMA, s 5(1).

- (ii) Food security falls within the RMA's purpose because it is essential to promote "health";<sup>353</sup> and
- (iii) Food security is a "matter of national significance".<sup>354</sup>

However, in competing claims over productive land and water, local authorities would have to balance the new NPS against the NPS-UDC, which arguably may not help progress food security at all.

### 7.3 Adding Food Security into Part 2 of the RMA

Horticulture New Zealand's preferred improvement is to include food security as a matter of national importance for decision-makers in s 6 of the RMA.<sup>355</sup>

Significant advantages of adding food security into s 6 may include:

- Extra support for RMA decisions prioritising long-term food security matters such as protection of soil and water; and
- The process required for legal reform could provide a focal point for raising awareness of the scarcity and fragile nature of soils and water.

On the other hand, disadvantages may include:

- Further reforms to the RMA are generally undesirable because they were arguably excessively undertaken by the previous government<sup>356</sup> and interrupt development of the jurisprudence;<sup>357</sup>
- The reform may be unnecessary because s 5 of the RMA already directs decision-makers to take into account the need to protect soil and water;
- It may be hard to achieve, because homelessness probably arouses at least as much public concern as food insecurity. Complex explanations about long-term versus short-term needs would be required for prioritising this one specific area of well-being; and
- Suspicions may easily be aroused that the reform would mostly benefit horticulturalists' vested interests in maximising land to grow export crops for their own benefit. However, this could be overcome by switching from the addition of "food security" to "domestic food security".

<sup>353</sup> Section 5(2).

<sup>354</sup> Section 45(1). For a discussion of the requirements for a NPS to be *intra vires* see Grinlinton, above n 143, at 85.

<sup>355</sup> Horticulture New Zealand Submission, above n 350, at 10.

<sup>356</sup> For example, the Resource Legislation Amendment Act 2017.

<sup>357</sup> G Palmer, above n 183.

I would support this proposal, arguably as a less desirable alternative to the suggestions in the next section.

#### **7.4 A Minister and a Parliamentary Commission**

A strategy and coordination are required to plan and promote the food security efforts of central and local government with all other sectors. General theoretical principles broadly support the existence of local authorities to promote a balancing influence on central government, with the benefits including pluralism (representation of multiple interests), participation (democratic engagement) and responsiveness.<sup>358</sup> Scholars support both levels of responsibility for food security. For example, in the US, Krannich supports a federal solution,<sup>359</sup> whilst in New Zealand Stevenson writes optimistically about the possibilities for a collaborative response between community and local government.<sup>360</sup> The answer seems to be that both levels of government are required to shoulder different aspects of food security, and that a dedicated agency is required to coordinate the roles of both government and non-government.

Local authorities could do more for long-term and short-term food security, but central government has to shoulder most responsibility, especially for affordability in the short term. In the case of local authorities, in 2009 there was clearly a role for planning in food security in New Zealand, but it had “not been well articulated”.<sup>361</sup> Arguably, the situation is improving with some community food security initiatives around the country,<sup>362</sup> and with explicit references to food security in the Auckland Plan and Auckland Unitary Plan<sup>363</sup> that should empower planning for local initiatives such as urban agriculture, community gardens and farmers’ markets. Again, though, the hopes for these kinds of locally based interventions should not be overstated. National-level responses are required for issues such as high housing costs and low wages, along with “food sovereignty” issues such as exposure to food price setting on global markets and domination of the global food chain by transnational corporations.<sup>364</sup> Therefore, it is important not to rely on local authorities and planners for short-term food security.<sup>365</sup>

Central government needs to undertake overall responsibility for food security. The Health Act 1956 includes “improving, promoting, and protecting

358 K Palmer, above n 347, at 1075–1081.

359 See, for example, Krannich, above n 36.

360 Stevenson, above n 13, at 3.

361 Orange, above n 42, at 56.

362 See above part 3.7.

363 See above parts 6.4 and 6.6.

364 Orange, above n 42, at 56.

365 Rose and Hearn, above n 35, at 11.

*public health*” within the Ministry of Health’s functions.<sup>366</sup> Food security is a matter of concern for public health because of its impact on nutrition and health,<sup>367</sup> and the affordability aspect, in particular, involves national-level concerns such as wage levels and the impact of food exports on domestic prices.<sup>368</sup> However, the recent case of the housing crisis in Tāmaki Makaurau Auckland demonstrates how food security can be put at risk when a competing claim arises that is well represented by vested interests, government agencies and dedicated cabinet ministerial responsibility. At the time under the previous government there were arguably conflicting ministerial responsibilities (the Minister of Housing was also the Minister for the Environment), also a Minister of Trade and a Minister of Primary Industries, but no Minister of Food Security. On the other hand, the new government’s Minister of Health offers a welcome broad view on food security and its national-level, economic aspects, connecting the need for wage increases with food insecurity.<sup>369</sup> However, it remains to be seen how far the Minister will prioritise this issue in terms of regulating markets. For example, it will be important to assess progress with the INFORMAS recommendations.<sup>370</sup>

A Minister of Food Security could advocate for all aspects of food security in Cabinet, striving for policy coherence to reduce food insecurity for people on lowest incomes today and focusing on the need to protect water and soil for future generations. Relevant matters include agricultural policies being compatible with environmental sustainability and trade rules consistent with food security. That may require means of ensuring local producers can compete successfully against cheap imported food. According to Elver, globally this may mean altering international trade rules to prevent interference with domestic policies designed to eradicate hunger and poverty,<sup>371</sup> and this may also turn out to be the case in New Zealand.

Because of the complexities, and inter-sectoral nature of the issue, it seems that a dedicated agency that may survive electoral cycles is therefore required to address:

- needs of vulnerable stakeholders (lowest-income earners and future generations);

366 Health Act 1956, s 3A as inserted by s 13 of the Health and Disability Services Amendment Act 1995 (emphasis added).

367 See above part 2.3.

368 See above parts 2.2 and 3.5.

369 See above n 108.

370 Vandervijvere and others, above n 25, executive summary at 3–4.

371 Elver, above n 1.

- coordination of different policy areas (including environmental, economic, health and trade); and
- balancing competing vested interests.

Further research, including overseas searches within comparable countries and jurisdictions, is required to identify the best form which such an agency should take. First, it may be necessary to investigate whether an existing agency, such as the Health Promotion Agency, could undertake the role. Immediate impressions are that the Health Promotion Agency's agenda is not well enough geared towards a community responsibility perspective on nutrition, because its current work seems to be more directed to programme delivery to support individual behaviours.<sup>372</sup> Instead, the best model may be an independent agency with the power to initiate its own inquiries and reports to Parliament about food security, paralleling the Parliamentary Commissioner for the Environment.<sup>373</sup> Consideration of other models that report to a Minister would also be possible, such as the Law Commission which can undertake reviews and make recommendations for reform "at its own volition".<sup>374</sup> Of course, the effectiveness of any agency would depend on the true independence and courage of appointees and the adequacy of resources allocated by government to complete projects. Surviving a change of government would be another challenge, again depending on government's political will. However, one advantage may be that a government could not disband a dedicated, hopefully high-profile agency as occurred with the removal of food supply responsibilities from a more general agency under the previous government.<sup>375</sup>

## **7.5 An Environmental Constitution for Aotearoa New Zealand**

Of course, from a legal perspective it is evident that everything to do with food security, along with all other policy matters, depends on the political will of the government of the day in a Westminster-style democracy without a written

372 Health Promotion Agency "What we do: Nutrition and physical activity" <[www.hpa.org.nz/what-we-do/nutrition-and-physical-activity](http://www.hpa.org.nz/what-we-do/nutrition-and-physical-activity)>.

373 The functions of the Parliamentary Commissioner for the Environment are set out in s 16(1) of the Environment Act 1986 and include initiating their own reviews and investigations about natural resources and planning as well as responding to House of Representatives requests and directions: Parliamentary Commissioner for the Environment "About us: Functions & powers" <<http://www.pce.parliament.nz/about-us/functions-powers>>.

374 Law Commission Act 1985, s 5; see also Law Commission "How we conduct projects" <<http://www.lawcom.govt.nz/how-we-conduct-projects>>.

375 See above part 3.3 in connection with the previous New Zealand Food Safety Authority.

constitution.<sup>376</sup> Local authorities themselves only exist because of parliamentary legislation.<sup>377</sup>

It is beyond the scope of this article to address this constitutional issue here.<sup>378</sup> Nevertheless, it is perhaps unsurprising that the architect of the RMA, confronted with the constant attacks on the integrity of this pivotal Act, should attempt to put an end to the “fiddling” by effectively entrenching its objectives in a new constitution with an environmental right.<sup>379</sup>

## 8. CONCLUSIONS

This article has focused on the task of managing natural resources, including soil and water, to protect food security. It has concluded that better planning for food security is necessary in Aotearoa New Zealand for different reasons in both the short and longer terms. First, in the short term, it is important because people on the lowest incomes struggle to afford quality foods and achieve healthy nutrition, and the physical food environment is not as good as it could be at supporting healthy eating. Secondly, in the longer term, it is important to protect the life-supporting, food-producing capacity of soil and water, for all residents, including future generations.

Achieving food security is complex. It depends on well-functioning global and domestic food systems to underpin sustainable and equitable production and distribution of quality food. In their turn, food systems depend on favourable cultural, economic and socio-political circumstances, and management of natural resources. The emerging field of food systems law attempts to provide a coherent legal framework for this area, and the field is ripe for further research about how this might apply in Aotearoa New Zealand.

In the meantime, the RMA provides a legal framework for balancing competing demands on natural resources, including food security. Often, balancing is required between economic and environmental factors; for example, economic benefits accompanying farming intensification against well-

376 Parliamentary sovereignty is the general constitutional principle that there are no constraints on the state’s law-making, law-revoking powers. See, for example, Anthony Angelo *Constitutional Law in New Zealand* (Kluwer Law International BV, The Netherlands, 2011) at 32–35.

377 K Palmer, above n 347, at [23.8.1].

378 Including because it is the subject of my earlier research: Julia Maskill “A Green(er) Constitution for Aotearoa New Zealand?” (Research essay presented in partial fulfilment of the requirements for the degree of Master of Laws, University of Auckland, 2016).

379 Geoffrey Palmer and Andrew Butler *A Constitution for Aotearoa New Zealand* (Victoria University Press, Wellington, 2016) at 69–70.



being requirements of future generations for resources to produce food. The case of the housing crisis in Tāmaki Makaurau Auckland in the period leading up to the 2017 national election illustrates the particular difficulties encountered when competition to use productive soils close to urban boundaries arises between two competing well-being issues: in this case, housing and long-term food security. The matter was made more complex by a clear clash between central and local government about the causes of unmet housing demand, that seems to reflect differences in broader political philosophy.

The previous government strongly articulated that the main culprit in housing unaffordability was planning constraints on the release of greenfield land. On the other hand, Auckland Council pointed to other causes such as low wages; and supported extra housing, but mainly within existing urban limits (intensification) to protect the capacity of productive soils in accordance with the Auckland Plan. In this way, Auckland Council represented the interests of future New Zealanders in protecting soil and water necessary to produce food.

Auckland Council's emphasis on soil protection was progressively eroded by steps the previous government took to force release of extra rural land for housing, including special arrangements made outside the RMA's usual planning procedures between 2012 and the 2017 national election. The Ministers for Housing and Primary Industries defended this approach by reference to two aspects of a generally neoliberal perspective. The first was property rights: the Minister of Housing promoted a belief in the ability of rural landowners to make their own decisions about how to dispose of their own land, including for housing. The second was the Minister for Primary Industries' opinion that food security was catered for by relying on the efficacy of market solutions and consumer choice.<sup>380</sup>

The relative roles of the RMA and central government's exercise of power to override its objectives in the case of Tāmaki Makaurau Auckland's housing crisis seem to provide a good local example of Elver's opinion that, globally, the tools are already in place to promote food security,<sup>381</sup> and that the obstacle to overcome is vested interests. Arguably, therefore, reforms to the RMA are not the best way forward to protect natural resources and undertake planning for better food security. Rather, the element lacking here too is mainly "fashioning political will strong enough to overcome entrenched interests".<sup>382</sup>

380 Interviews with Hon Nathan Guy MP, Primary Industries Minister and Hon Nick Smith MP, Minister for Housing and Minister for the Environment in Ewing, above n 8.

381 Elver, above n 1.

382 Elver, above n 1; also G Palmer, above n 183.