DENTONS

Transforming Challenges into Opportunities:
Delivering the next wave of infrastructure

September 2025

Contents

Foreword

Infrastructure sits at the heart of economic resilience, social equity and environmental sustainability. It determines how we live, work and connect and it shapes the opportunities created for future generations.

I recently had the opportunity to visit clients in Melbourne and Sydney alongside Partners Paul Buetow and Brendan Cash, and Australian partner Matt Coleman. Conversations we shared reinforced the value of trans-Tasman collaboration, exploring how we can leverage experience and expertise on approaches to planning, procurement and delivery.

Perhaps what struck me most was the appetite for engagement with New Zealand. There is genuine interest in the opportunities our market presents, whether that's investing in critical infrastructure, partnering on major projects or introducing innovative delivery models.

Australia's infrastructure sector offers some clear lessons for New Zealand. A transparent pipeline can help avoid market overload, while targeted investment in skills and supply chains will be vital as energy and transport projects compete for the same resources. Australia's pivot to collaborative procurement and stronger ESG outcomes also shows the value of rethinking how projects are delivered, not just what gets built. For New Zealand, the takeaway is simple: we need to embed long-term thinking into infrastructure planning; so that investment decisions can be made to unlock delivery, and to also make a resilient and responsive system that sets us up well for the future.

Transforming Challenges into Opportunities: Delivering the next wave of infrastructure is the third edition in our infrastructure series. It brings together perspectives from our infrastructure specialists on some of the most pressing issues shaping projects and the sector in New Zealand today.

Our aim is to provide practical insights that help you anticipate change, manage risk and seize opportunity in a rapidly evolving landscape.

We explore what New Zealand can learn from Australia's approach to social housing, provide an update to the Public Works Act and its application to critical infrastructure, while also outlining a timely update on health and safety developments affecting the sector.

Recently there have been a number of key changes to water reform and the Resource Management Act, we provide clarity on what lies ahead for local authorities and developers. We also include a thought piece on renewable energy, focusing on successful energy transitions around the globe and the need for bi-partisanship when it comes to New Zealand's energy strategy.

Our technology and privacy specialists touch on the emerging issues around potential changes to the petrol tax and the privacy implications of infrastructure data. Finally, Noor Kapdi, Chairperson of Dentons Africa shares lessons learned from South Africa and and how they could help us to shape the future of infrastructure delivery in New Zealand.

At Dentons, we believe that infrastructure is more than just physical assets. Infrastructure is about building communities, enabling opportunity and shaping a more inclusive and sustainable future. We value diversity of thought and believe that the best solutions emerge when different perspectives are brought to the table. Through collaboration with our clients, partners and policymakers, we are committed to building a better New Zealand, together.

We hope this update provides useful context and commentary for our clients and colleagues working across the infrastructure ecosystem. As always, we welcome your feedback and look forward to continuing the conversation with you.

Sara Cheetham
Partner

Building better futures: Social Housing in New Zealand and lessons from across the ditch

In New Zealand and Australia, governments are grappling with how to deliver more homes, faster and with better outcomes for vulnerable communities. As New Zealand embarks on a strategic reset of its housing investment approach, Australia's recent initiatives offer valuable insights.

New Zealand's social housing landscape

New Zealand's social housing landscape is shaped by growing demand, constrained supply and evolving policy responses. With thousands of New Zealanders on the waitlist and affordability pressures mounting, the Government has recognised the need for a more coordinated and strategic approach. Recent reforms aim to streamline funding, accelerate delivery and better align housing with infrastructure planning.

The Government's 2025 draft Government Policy Statement on Housing and Urban Development (GPS-HUD) sets out a long-term vision: "Right house, right place, right people". It aims to grow towns and cities with efficient infrastructure and ensure housing meets the needs of all New Zealanders.[1]

Budget 2025 introduced a Flexible Fund to consolidate fragmented housing programmes. With NZ$250 million in capital funding over 10 years, it aims to deliver up to 900 new social and affordable homes from 2027. The Government also committed NZ$128 million for 550 new social homes in Auckland in 2025/26, alongside lending facilities to lower borrowing costs for community housing providers.[2]

Challenges facing social housing in New Zealand

Despite these initiatives more is required. Key challenges include:

- **Housing affordability:** House prices remain out of reach for many, with the median price over seven times the national median income.
- **Supply constraints:** Planning delays, infrastructure bottlenecks and land availability continue to restrict housing delivery.
- **Limited social housing stock:** Nearly 20,000[3] families remain on the waitlist, and build rates are slowing.
- **Homelessness and rental stress:** Many households face rental unaffordability, spending more than 30% of income on housing.
- **Infrastructure funding gaps:** Councils and developers struggle to fund enabling infrastructure, prompting the need for reforms to development contributions and financing tools.

1 New Zealand Government, 2025 Policy Statement on Housing and Urban Development, currently in draft form.
2 New Zealand Treasury, Summary of Initiatives in Budget 2025; and see Ministry. of Housing and Urban Development Budget 2025 focuses on reprioritising spending.
3 Ministry of Social Development, Housing Register.

Australia's approach: Scale, structure and speed

Australia has launched two major national initiatives to accelerate social housing delivery:

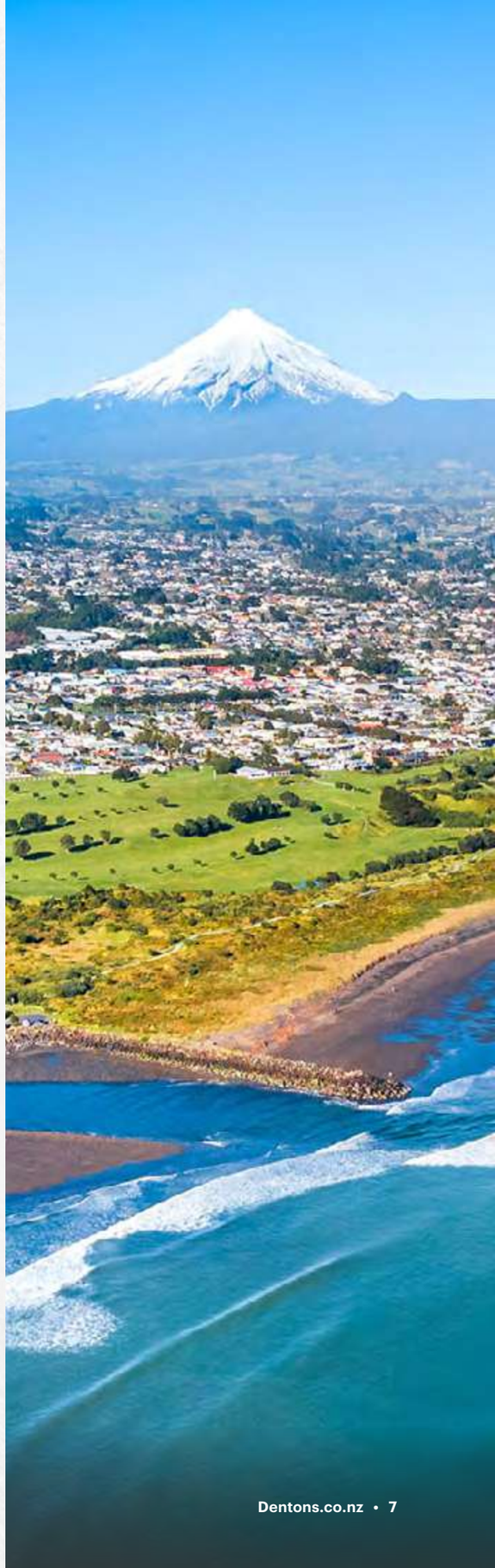
1. **Social Housing Accelerator:** This AU$2 billion Commonwealth programme funds thousands of new and refurbished social homes across all states and territories.[4]
2. **Housing Australia Future Fund (HAFF):** This AU$10 billion sovereign fund supports the delivery of 40,000 social and affordable homes over five years. Housing Australia, a quasi-bank funded by Treasury and social bonds, administers the programme through concessional loans and grants.[5]

Victoria's Ground Lease Model (GLM) also sets out a blueprint for a Public-Private Partnership in social housing. The GLM offers a compelling example of how public land can be leveraged for long-term social housing outcomes without being sold. Under the GLM:

- Homes Victoria leases land to a consortium for 40 years to build, operate and maintain housing.
- After the lease term, land and homes return to public ownership, preserving public assets.
- The developments include a mix of social, affordable, market rental and specialist disability housing with projects being designed to include community amenities like parks, co-working spaces and social enterprise hubs.

Victoria's first GLM projects were completed in early 2024 in Brighton, Flemington and Prahran. There is a second wave underway in South Yarra, Hampton East and Port Melbourne.[6]

4 Australian Treasury Social Housing Accelerator.
5 Australian Government, Department of Finance Housing Australia Future Fund; and see Housing Australia programme overview.
6 Homes Victoria Ground Lease Model.



Lessons for New Zealand

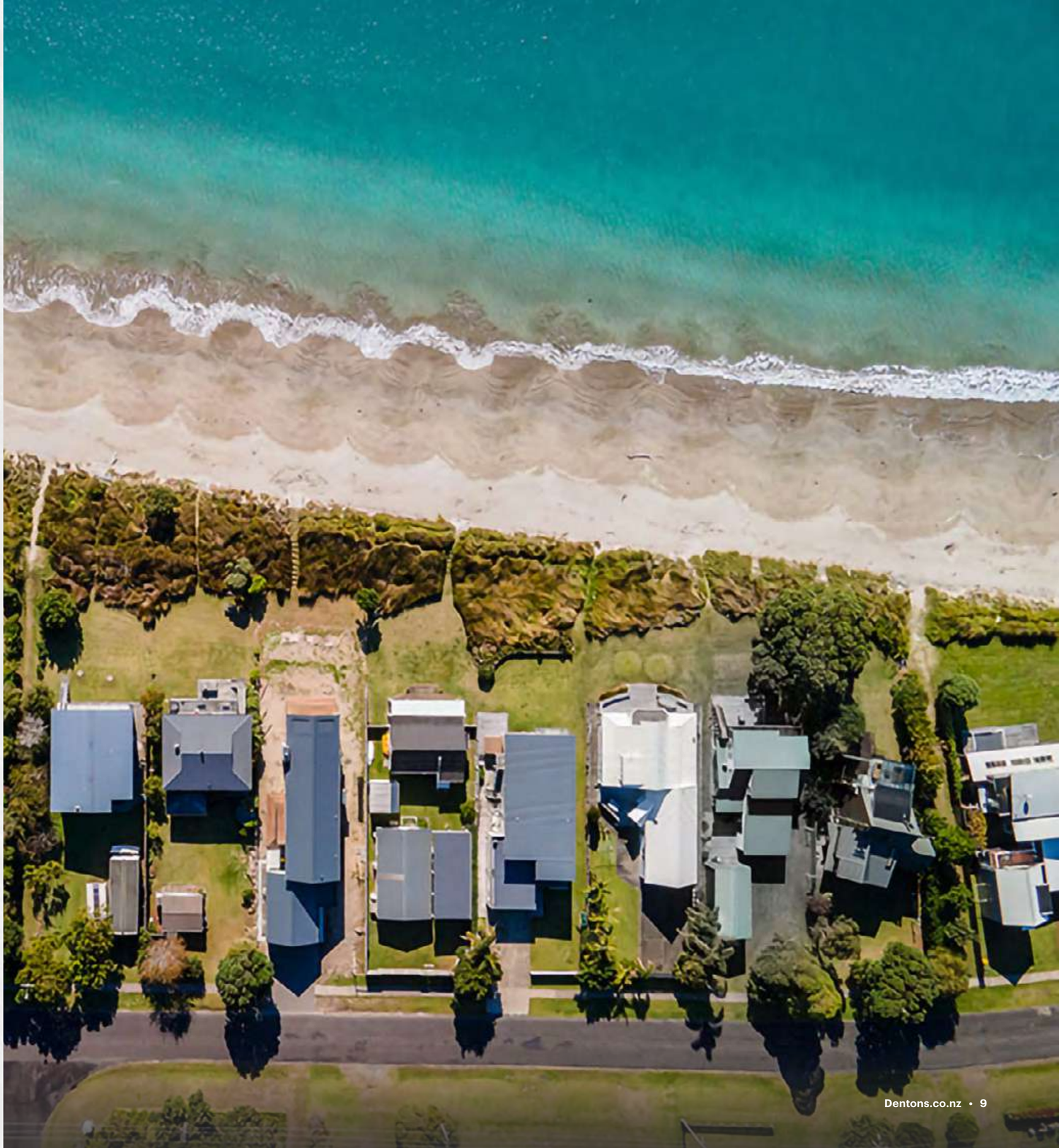
Australia's recent reforms in social and affordable housing offer some practical strategies New Zealand should consider. From funding structures to delivery models and governance, lessons that can be learnt from Australia include:

- **Coordinated funding with delivery:** Housing Australia's model balances national oversight with community responsiveness.
- **Transparent reporting and assurance:** Regular assurance statements build trust and track progress.
- **Scale and speed:** Structured funding rounds and upfront capital enable rapid mobilisation.
- **Indigenous housing leadership:** First Nations housing prioritisation aligns with New Zealand's Māori and Iwi Housing Framework for Action (MAIHI).[7]
- **Innovative delivery models:** Victoria's Ground Lease Model shows how long-term leases can unlock housing delivery while preserving public ownership.

Conclusion

As New Zealand refines its housing investment strategy, Australia's recent reforms and innovative models like Victoria's Ground Lease Model require further consideration. We don't need to reinvent the wheel. We can learn from what Australia is doing and adapt it to New Zealand conditions to build a better future.

7 MAIHI Ka Ora.



Fast-tracking land acquisition for critical infrastructure projects

Like many countries, New Zealand has an infrastructure deficit. The Government's drive to accelerate the delivery of large-scale public infrastructure includes how to speed up the acquisition of private land for such projects under the Public Works Act 1981 (PWA).

There have been several high profile instances where contested compulsory acquisition has led to multiple court cases, resulting in delays to projects securing land and delaying construction. Legal costs aside, by far the greater cost has been the exposure of the whole project to several years of rampant construction industry cost increases, which can add millions to the project cost. So, these land acquisition delays can have a very real impact on project delivery.

Earlier this year, the Government introduced the Public Works (Critical Infrastructure) Amendment Act which came into force on 27 August after an accelerated parliamentary process. Dentons has advised several government clients on this reform and we share our insights in this article.

The Bill amends the PWA to speed up the acquisition process for certain specified "critical infrastructure projects" which are essentially those public works which were listed in the Fast-track Approvals Act 2024. In a way, the Fast-track Approvals Act fast-tracked the consenting process, and the amendment to the PWA fast-tracks the land acquisition process, ensuring that those projects can occur quicker.

The new Schedule 2A to the PWA mainly covers road and rail projects, with a few housing and electricity projects included. The list of projects is closed, meaning that new projects cannot be added except by statutory amendment. This is because the initial focus of this amended process is on projects that can be commenced within the three year period before the amendments are subject to a statutory review.

Key amendments

- **Objections process:** The right to object to the Environment Court is replaced by the ability to submit directly to the Minister or relevant council.
- **Conditions for acquisition:** Compulsory acquisition can only proceed once planning approvals (e.g. consent, designation or notice of requirement) are in place. The Minister or council must publish reasons for the acquisition.
- **Recognition payment:** A new payment of 5% of land compensation (capped at NZ$92,000) for all acquisitions of land for critical infrastructure.
- **Incentive payment:** An additional 15% of compensation (minimum NZ$5,000, maximum NZ$150,000) for landowners who reach agreement before a Notice of Intention to Take Land is issued. This replaces existing incentive provisions under s72A of the PWA.

The changes to the objection process do not apply to any "protected Māori land". Owners will retain the right to object to the Environment Court, while still receiving recognition and incentive payments. This was a significant concern for submitters and opponents of the Bill, many of whom wanted an absolute ban on any Māori land being acquired for public works.

These changes only apply to specified critical infrastructure projects, but acquiring authorities can choose not to apply these to a particular project if they prefer to use the existing PWA processes. Any such decision is irreversible, must be publicly notified and must apply to an entire project, meaning all acquisitions on that project are subject to the same regime. We cannot envisage an acquiring authority deciding not to use the new processes, but the Government seemed keen to enable rather than compel acquiring authorities.

Political and legal outlook

The amendments were supported by the opposition Labour Party, and this level of bipartisan support means that the new process may well survive any change in government. The scheduled statutory review mid-way through the next parliamentary term would provide the kind of long-term policy consistency that our infrastructure delivery needs.

The new submissions process should deliver significant time and cost savings, as long as landowners do not resort to judicial review to challenge compulsory acquisitions, now that they will have no recourse to the Environment Court. The Government dismissed claims that the submissions process lacked independence, and emphasised that judicial review remained an option for disgruntled landowners. That is probably only an option for the more motivated and well-resourced landowners, but it would be counterproductive if these amendments saw one court process exchanged for another. This would be unlikely in the majority of cases, so there will still be time and cost savings.

A step toward certainty

The new payments are helpful, and address some of the inadequacies of the current "additional compensation" payments under the PWA. The additional 20% that is available to landowners who sign before the compulsory process commences should operate as a genuine and effective incentive to reach agreement sooner. With bipartisan support and a framework designed to accelerate delivery, these amendments represent a meaningful step toward addressing New Zealand's infrastructure deficit – provided the balance between efficiency and fairness is maintained.

Resource management reform – where are we up to and how will it impact infrastructure?

The Government's three-phase work programme to reform the resource management system is proceeding at speed. Our infrastructure insight from April 2025 described each of the three phases, and detailed those aspects of Phase 2 which were underway in April – being the Resource Management (Consenting and Other System Changes) Amendment Bill (RM Amendment Bill), and changes to national policy statements and national environmental standards (together referred to as "national direction").

So, where are we up to now? In short, Phase 2 of the reform programme is about to finish up, and Phase 3 (the long term replacement for the RMA) has been promised in time for Christmas.

How does Phase 2 impact infrastructure?

The Government described Phase 2 as being targeted fixes with a short to medium term effect. For infrastructure, these fixes are contained in:

- The RM Amendment Bill, which was passed into law in August this year. The version which is now law is referred to below as the RM Amendment Act.
- A new National Policy Statement for Infrastructure, and amendments to other national direction relating to energy generation, electricity transmission and distribution, and telecommunications.

RM Amendment Act – faster decisions, fewer plan changes, and possible Ministerial intervention

When the RM Amendment Bill was introduced, it contained a range of changes aimed at assisting infrastructure and energy development.

These included:

- Changes to the designation process, which network infrastructure providers often use to authorise their activities (instead of resource consents from district or city councils).
- Longer default consent durations and lapse periods for renewable energy and long-lived infrastructure.
- A one year time limit for determining resource consent applications for renewable energy consents.

The Select Committee report recommended some technical improvements to these changes, for example to allow electricity substations (rather than just lines) to benefit from the changes relating to long-lived infrastructure. The report showed Labour Party support for those aspects of the RM Amendment Bill relating to infrastructure and energy, the Labour Party minority report related only to water discharges and freshwater farm plans. Given the political backwards and forwards on resource management legislation over the last five years, the stability provided by cross-party agreement is welcome.

A number of amendments were made to the RM Amendment Bill after the Select Committee process, and some of these have the potential to impact infrastructure development and operation. These changes have also been strongly criticised by non-Government political parties. The changes include:

- The ability for the Minister for the Environment to make regulations modifying district or regional plan provisions if the Minister considers those provisions negatively impact economic growth, development capacity or employment. This power could provide a release valve for infrastructure which is struggling to obtain consent. However, there is also a risk that infrastructure may be unintentionally compromised by other developments which are given a hand up by these regulations. The consultation requirements in the RM Amendment Act do not specifically require

the Minister to consult with infrastructure providers before making the regulations. The processing of large developments under the Fast-track Approvals Act has demonstrated the extent to which infrastructure can either be undermined by, or be inadequate to support, unanticipated land development.

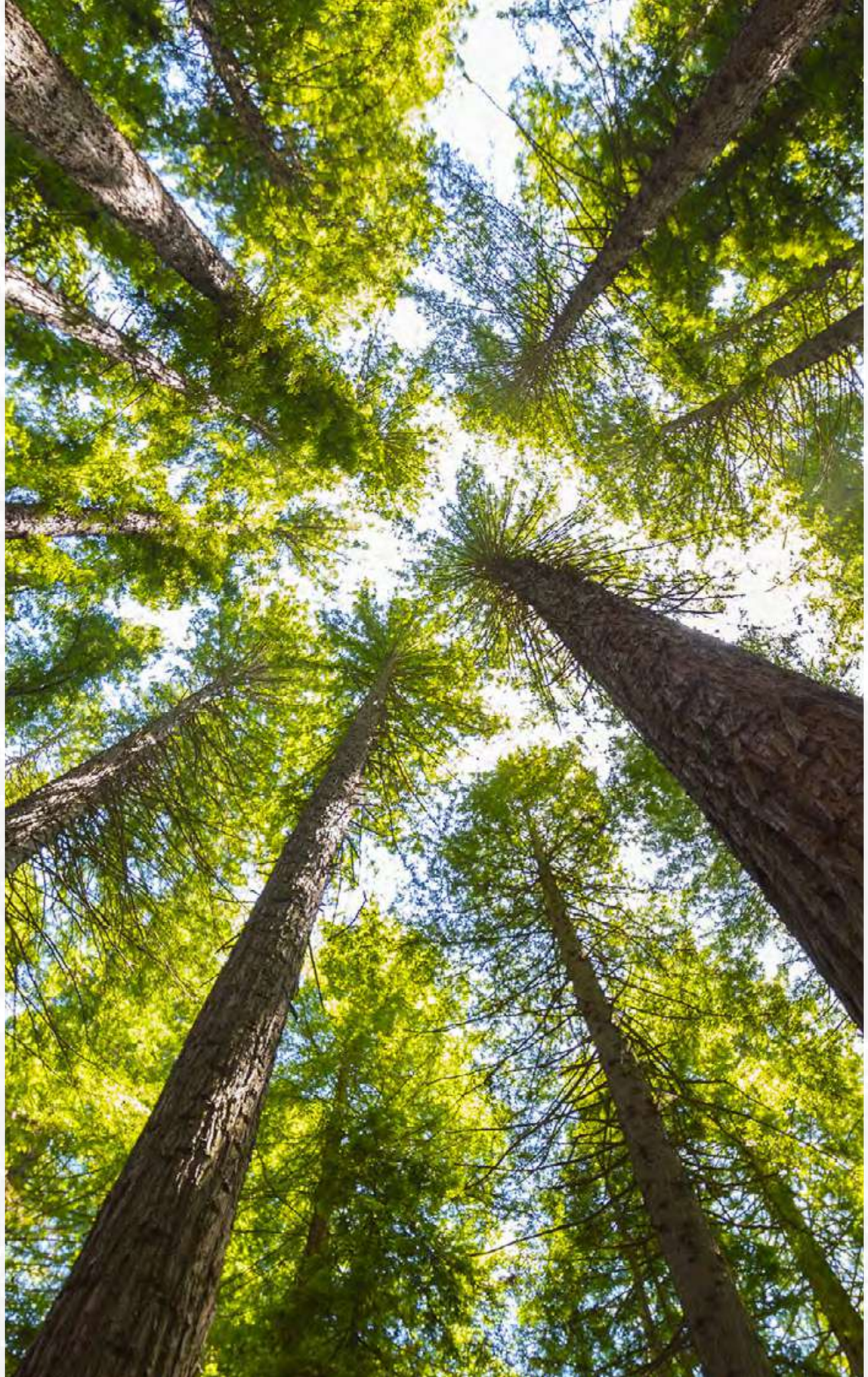
- A ban on council plan changes (with some exceptions) until 2028. Infrastructure providers often engage in planning processes to ensure their assets are protected and that the policy and rule framework supports their activities. Private (non-council) plan changes are not banned, so infrastructure providers which service land development (e.g. three waters, land transport) or are affected by land development (e.g. airports, quarries) will still need to engage on these private plan changes.
- Applying the one year decision-making timeframe to thermal electricity generation, in addition to renewable energy generation.

National direction – consultation period has just finished

National direction plays an important role under the RMA and can be a key determinant of whether resource consents are granted or not.

In May and June 2025, the Government commenced consultation on four packages of changes, one of which related to infrastructure and development. This package included a new National Policy Statement for Infrastructure, as well as changes to existing national policy statements. The package also included environmental standards relating to renewable electricity generation, electricity transmission and distribution, and telecommunications.

The period for providing feedback ended in August 2025, and Ministry officials will be providing advice on the documents to Ministers in September. Officials have also signalled that there might be another round of public consultation and submissions on freshwater national direction later this year. The Government has previously stated that it intended to have the revised national direction in place by the end of 2025.



Once the national policy statement changes are finalised, councils must change their planning documents to give effect to them. However, some parts of the policy statements will directly impact the consenting of infrastructure activities. Rules in national environmental standards will directly regulate infrastructure activities which they apply to.

Phase 3 – saying goodbye to the RMA

Phase 3 of the reform programme involves replacing the RMA with two new pieces of legislation:

1. A Natural Environment Act focused on the use, protection and enhancement of natural resources such as land, air, freshwater and the coast – resources currently managed by regional councils.
2. A Planning Act focussed on land use planning and regulation, including enabling urban and infrastructure development. This role is currently carried out by city and district councils.

The Cabinet objectives and Government principles for the new system were described in our April Infrastructure Insight. Both of these statutes will impact the construction and operation of infrastructure, so it is crucial that the infrastructure sector understands these impacts, and contributes to legislative development.

The Government has said that it intends to introduce the two bills in late 2025 and pass them into law in mid-2026. This is a very short time frame, given how extensive the changes are expected to be and the lack of pre-introduction public consultation and engagement. The Government has signalled that it expects the Select Committee process to be the main mechanism for public consultation, but this process provides little scope for two way dialogue and joint problem-solving. We recommend the infrastructure sector plan ahead for how it can best engage on the new bills in the available time.

Powering the future: Will we see a bipartisan energy strategy in New Zealand?

New Zealand stands at a critical juncture in its energy future. Globally, energy transition is emerging as not only a climate necessity, but a driver of regional development, technological and industrial innovation and long-term economic growth. In New Zealand, recent industrial closures and energy supply shortages have fuelled demands from industry for a bipartisan energy strategy. In this article, we look at lessons from overseas and assess the potential for genuine bipartisan energy policy in New Zealand.

Central to this transition was bipartisan support that created political stability...

Lesson learned from Denmark and Uruguay

The experiences of Denmark and Uruguay offer case studies which could (and in our view, should) inform New Zealand's energy transition. Each of these jurisdictions share common threads of long-term vision, bipartisan consensus and clear regulatory frameworks that have turned ambition into action.

Denmark's journey shows how a small country can transform an energy crisis into an economic strength. Triggered by the 1973 oil crisis, Denmark shifted from near-total reliance on imported oil to generate electricity to sourcing over 88% of its electricity from renewables by 2024, with wind power alone making up around half. Central to this transition was bipartisan support that created political stability, and practical incentives that sparked grassroots innovation. Tax breaks in the 1980s helped households form wind cooperatives – 2,100 by the mid-1990s – laying the foundation for Denmark's world-leading wind industry. Denmark also invested in district heating and diverse generation sources, building resilience and keeping consumer costs lower than they might otherwise have been. Today, Denmark not only exports turbine technology worldwide but also attracts significant international capital into its offshore wind sector. Crucially, the Danish model demonstrates that decarbonisation can fuel job creation, export growth and national energy security if clear targets, cross-party commitment and smart market design are in place.

Uruguay's example offers a compelling case of how a small economy can pivot rapidly by framing decarbonisation as an economic opportunity. With a geography well suited to hydro, wind and solar, Uruguay has leveraged political stability, cross-party backing and investor-friendly rules to generate 98% of its electricity from renewables. Its Energy Policy 2005–2030, ratified by Parliament in 2010 as a State policy, gave legal certainty across election cycles. Tax incentives, equal treatment for foreign investors and bankable feed-in tariffs unlocked billions in private capital while encouraging public-private partnerships. A unique element of Uruguay's system is its state-owned transmission and distribution monopoly, which maintains network reliability and negotiates stable contracts for private generation – providing both scale and certainty in a small market.

With a geography well suited to hydro, wind and solar, Uruguay has leveraged political stability, cross-party backing and investor-friendly rules to generate 98% of its electricity from renewables.

Bipartisan energy policy in New Zealand

These lessons (and the benefits) are well recognised by the private sector. Recently, an open letter call for urgent reform of the electricity sector and the blueprint for New Zealand's energy sector were released by the BusinessNZ Energy Council.

Whether our politicians can establish a genuine bipartisan energy strategy remains an open question. Unfortunately, the "we are happy to work together where it makes sense" sentiment often seems to land hard up against "we can't compromise on this issue". However, we think there are areas where a consensus could be reached and there are a few promising signs.

- Bipartisan energy and infrastructure policy was a key talking point and feature of recent industry lead conferences.
- The gas shortage has been widely reported and is now acknowledged as a clear and impending risk to our energy system. Expanding reserves, particularly offshore, is a difficult issue. However, we believe some alignment on the strategic use of existing reserves is achievable.
- At the 2025 New Zealand Wind Energy Summit, Minister Hon Simon Watts indicated that the Government is seeking advice on changes to the Offshore Renewable Energy Bill at second reading to address priority and competing legal rights issues in the same area (e.g. seabed mining rights versus an offshore wind permit in South Taranaki). Hon Dr Megan Woods made comments along the lines that this was "good to hear".
- Both major parties appear aligned on enabling the fast-tracking of renewables (the current Government with its Fast-track legislation and former government with the COVID-19 Recovery (Fast-track Consenting) legislation.) However, the degree to which environmental protection is prioritised in any framework could be a point of divergence – with Labour unlikely to support RMA reform which "sacrifices" the environment.

- New Zealand has yet to explore incentives such as feed-in tariffs or Government backed CfDs, which are commonly used overseas to incentivise emerging or renewable technologies. Whether one agrees such measures are needed, they have proven to be politically difficult to implement in New Zealand. Hon Dr Megan Woods indicated that price stabilisation, such as strike prices, must be considered – suggesting that this door may open under a future government.
- The Government has confirmed that further announcements on the electricity market review, led by Frontier Economics, are expected soon. Policy backed by a credible and objective review can only assist with launching a bipartisan energy strategy.

Final comments

Examples from overseas show that energy transition can succeed, even in response to energy crises, when communities, industry and government share a common goal and deliver it over decades, not just election cycles. The chorus of industry voices is getting louder for such an approach in New Zealand, and we are confident there are several critical areas of overlap where the politics could be removed in favour of clear, long-term, bipartisan policy.

Water services reform: Local Water Done Well begins now

It has been well documented that New Zealand's water infrastructure has faced long-standing challenges, including underinvestment, funding constraints and water quality issues. The previous government's "Affordable Water" reforms proposed the creation of ten large water entities with mandatory council participation.

The current Coalition Government's "Local Water Done Well" (LWDW) programme takes a different approach, offering councils flexibility in structuring water services. Broadly, the options include continuing to provide water services directly, or different permutations of "water organisations", which can be owned by one or more councils, and/or by consumer trusts.

The reforms also establish a long-term regulatory framework for water services, including governance, economic regulation and consumer protections.

The third and final stage of these LWDW legislative reforms has now been completed, with the Local Government (Water Services) Act 2025 and the Local Government (Water Services) (Repeals and Amendments) Act 2025 (the Acts) both coming into force on 27 August 2025. We summarised these Acts, including the changes recommended through select committee, in our recent article here.

The next step after these Acts being passed was councils submitting "Water Service Delivery Plans" (WSDPs) to the Department of Internal Affairs (DIA) for review by 3 September 2025.

Next steps

If, or when, WSDPs are approved, councils will set about implementing them. In many cases this will involve setting up new council-controlled "water organisations", and then transferring water-related functions and responsibilities to them via "transfer agreements". These processes are likely to take at least another year and, from work that we have undertaken in this area, this process is likely to be complex.

There is now a relatively clear picture emerging of which councils are choosing to pair or join up with their neighbours to create a multi-council Council-Controlled Organisation (CCO), and which are choosing to go it alone (at least initially). It looks like just over half of councils will be joining with one or more neighbours, with another third retaining services in-house, and the remainder setting up standalone CCOs. It remains to be seen if all of these proposals will receive DIA's blessing, and whether the Minister will have cause (or appetite) to use the "back-stop" powers provided in the legislation.

Beyond the question of whether or not to join with others, there is a further level of detail to work through in terms of how any new water organisations are structured. This includes which responsibilities are transferred to them, for example to what extent they will be responsible for stormwater services. We explored some of those options in our article here.

Wider implications for the sector

The meandering reform process has resulted in a period of uncertainty for the sector, and likely a reluctance to commit to new capital projects before it became clear who would be funding them and how. On that front, new financing arrangements are intended to allow water service providers to borrow and otherwise obtain money for water infrastructure in a financially sustainable way.

While the new legislative framework is a significant milestone, uncertainty remains. At a project level, there is likely to be significant change arising depending on how water services will be transitioned from old entities to new. The mechanism of transition will impact both ongoing and new projects. Depending on how new entities are structured and how transitions from old to new entities are effected, existing contracts may (or may not) be transferred to the new entities and there may (or may not) be attempts to amend existing contracts as part of the transition. New contracts will also be negotiated in a different commercial landscape.

In particular, suppliers may face more pressure on their pricing and terms from newly established larger water entities, who will be keen to demonstrate value for money. This may lead to complex and time consuming negotiations. Changes to ownership of assets will also change the nature of negotiations and introduce different commercial considerations on the part of the entity (such as insurance and financing requirements).

The passage of the Act is a significant milestone but there is still a lot of work to be done. The submission and approval of Water Services Delivery Plans is the big next hurdle, and then the mechanics of the transition to the new entities will need to be sorted out. Finally, the inevitable teething problems of the new entities will need to be dealt with as they arise. That said, having the legislative framework confirmed is a welcome step forward in the progression toward a more sustainable water infrastructure system in New Zealand.

Health and safety – it's everyone's responsibility

The framework under the Health and Safety at Work Act (HSW Act) emphasises shared responsibility for safety in the workplace, which is a principle echoed in most health and safety policies. In recent months, the regulators have made it clear that health and safety responsibilities and the potential liabilities that come with them, extend to everyone involved.

The 2019 Whakaari volcano eruption was a devasting event that resulted in 22 fatalities and 25 serious injuries. In 2020, WorkSafe filed charges against 13 parties that they considered did not meet their obligations under the HSW Act.

These prosecutions presented WorkSafe with a number of challenges. This included the question of whether third parties (such as the National Emergency Management Agency (or NEMA), which provided advice and information to the public, owed duties under the HSW Act to communicate to the public the risks posed by volcanic activity. NEMA did not carry out any work on Whakaari, did not send workers to Whakaari and never placed anyone on Whakaari. The District Court said that agencies only owe duties to ensure the health and safety of "other persons" (i.e. people that are not workers) is not put at risk from work carried out as part of the conduct of the business or undertaking. Importantly these duties relate to their "work activity" itself, not their "work product". However, more recently the courts have cautioned this.

Earlier this year, Safe Business Solutions (SBS), a health and safety consulting firm, were in Court facing charges for their role in a worker of one of its clients (Westown) being hit by a car on a site. Neither SBS or its workers were involved in the accident, instead WorkSafe charged them for their role in creating (or more precisely, not creating) a traffic management plan (TMP) which it was engaged by Westown to provide. SBS was the first health and safety consulting firm to be charged and convicted by WorkSafe in New Zealand.

The Court held that s 36(2) (the duty to ensure the health and safety of "other persons") can apply to health and safety service providers. The HSW Act makes it clear that it is intended to apply broadly, to cover a wide variety of relationships and actors in a workplace. SBS agreed to provide a traffic management plan to Westown as a service. It had its own duty under s 36(2) arising from its work to provide the TMP (separate to Westown's own duties). That duty was breached.

While the TMP itself was seemingly a "work product", the Court held that the terminology of "work product" and "work activity" from the *NEMA* decision is complicated and unhelpful. The Court rejected the contention that the duties under s 36(2) are limited to those risks faced by the PCBU's own workers, also noting that the reality of the work of a business in the 21st century is that the duty may not be limited to the PCBU's own physical workplace, nor limited to physical work.

The case is a great reminder for those providing health and safety advice – their liability isn't just to protect their own workers preparing the advice, but also those that the advice is meant to keep safe in the first place.

Maritime NZ has also been busy reminding CEO's that they are not beyond reach of prosecution. Late last year, Tony Gibson, the former Chief Executive Officer of Port of Auckland Limited (POAL), was found guilty of health and safety breaches in relation to the death of a stevedore, Pala'amo Kalati, on 30 August 2020.

The Court found that Mr Gibson failed to discharge his duty to exercise due diligence, exposing workers to a risk of death or serious injury. There were shortfalls in POAL's management of the key hazards when working under cranes through using exclusion zones, and the Court held that a reasonable CEO would have recognised this and ensured POAL utilised appropriate resources and processes to address them.

The regulators have relied on these obligations before (pertaining to the due diligence duties of "officers"), but never in relation to an officer of a large company who was not personally involved in the accident. The judgment has been appealed and we're still waiting for that decision. In the meantime, this decision confirms that company officers and senior managers must take an active and careful role when setting and resourcing health and safety policies – the fact that they are not directly involved will not protect them from criminal prosecution.

These cases demonstrate the breadth and flexibility that the HSW Act offers. Liability can extend far beyond just those directly in charge of or involved in the work. However, both cases being "first of their kind" almost 10 years after the enactment of the HSW Act shows the complexity of the Act. Ordinarily we would expect that these cases would open the gates for similar cases to be brought. However, new reforms on the horizon suggest that the officer due diligence duties may be scaled back.

Licence to track? Privacy law implications of vehicle monitoring technology

The New Zealand Government has recently announced plans to roll out road user charges (RUCs) for all vehicles, based on distance travelled. But how will the Government reliably keep tabs on how far a vehicle has travelled?

A technological solution such as a transponder or tracker may be a "smart" solution for keeping tabs on how far the country's estimated 4.5 million-strong fleet travels, and preserving the government's tax take from road users.

About vehicle tracking technology

Vehicle tracking technology is not new. Many vendors have developed fleet-tracking technology for RUC monitoring, fleet management and safety purposes, and many company fleets are the subject of monitoring. Insurance companies use telemetry devices to monitor driving behaviour and adjust premiums. Toll road operators provide drivers with electronic transponders that communicate with sensors on the toll gantry, allowing for seamless passage and automatic payments.

Is information about a vehicle's movements personal information?

Information about where a car is, where a car has been and how a car has been driven is almost certainly "personal information" for the purposes of the Privacy Act. Even if an individual is not generally identifiable with reference to the licence plate of a vehicle alone, it is almost certain that someone will have access to other information, which they can piece together with information collected about that vehicle. Together, that information can be linked to an identifiable individual.

Licence to track

Public acceptance of tracking activity is crucial where the use of technology is mandated rather than voluntary: a "social licence" to track. A failure to ensure the security and integrity of tracking information and any loss of confidence in the systems used to track are likely to result in a loss of the "social licence" to track. Without that social licence, individuals may look for ways to circumvent the legal requirements, or will resist them altogether.

How do you instill confidence in a tracking system?

Preparation is key. Anyone implementing tracking technology should conduct a privacy impact assessment early in the project life cycle, design the tracking solution with privacy by default front of mind and engage early with experts and the regulator.

As part of preparation, the following key privacy concerns need to be addressed head on:

- **Purpose limitation:** Vehicle tracking information collected for one purpose (say, calculating RUCs) should generally only be used for that purpose, or a "directly related" purpose. The use of that information for other purposes should generally be avoided.
- **Data minimisation:** Organisations should consider whether it is necessary to collect personal information to fulfil the purpose of collection. If not, they should refrain from collecting it. For example, if the purpose of collecting is solely to calculate RUCs payable, then there is no need to collect information about the speed at which a vehicle is travelling.
- **Fairness:** Linked with the above concept of data minimisation, the method of collection should be as narrow as possible to achieve the desired purpose, so it intrudes to the least extent possible upon an individual's private affairs.
- **Transparency:** Individuals need to know what information is collected about them, how it will be used, and who will have access to it. Clear, concise notices are desirable. A person shouldn't need a degree in English literature to decipher how their personal information will be handled.
- **Storage and security:** The protection of personal information is paramount – cyber security and resilience should be front of mind. If the security and integrity of personal information is compromised, individuals will lose trust in the system, and the social licence to track will be eroded.
- **Legal disclosure:** Robust procedures in place for responding to requests to access information (including requests from law enforcement) are necessary to ensure that when tracking information is disclosed, it is disclosed on a sound legal basis.

The implementation of any sort of tracking technology is likely to be met with some resistance, as individuals seek to retain their ability to operate off the grid. However, the more that can be done to convince New Zealanders that the technology to be used to track their movements is necessary, not unduly invasive, and safe and secure, the smaller that group of "hold outs" will be.

Viewing the use of tracking information through the lens of privacy law provides a robust framework for assessing any new technology (regardless of whether the technology is mandated by law). It can go a long way towards reassuring everyday Kiwi that the collection and use of their information is not the first step towards becoming a "digital surveillance state" that is feared by some.

Africa's infrastructure outlook: Lessons for New Zealand

Dentons Africa Region Chairperson and South Africa Chairperson, Noor Kapdi shares his insights on infrastructure in Africa and what New Zealand can learn.

Infrastructure development is both Africa's greatest challenge and its greatest opportunity. Across the continent, the need for reliable transport networks, renewable energy, resilient water systems and digital connectivity has never been greater. The scale of investment required has encouraged governments, businesses and communities to think differently about how projects are financed, delivered and sustained. This has created a wave of innovation and collaboration that others, including New Zealand, can draw lessons from.

A central insight is the importance of partnership. Africa has learned that no single stakeholder, whether governments, the private sector or development financiers, can deliver on the scale required alone. Success comes when risks are shared fairly, communities are engaged early, and projects are designed with long-term resilience in mind. For New Zealand, where major projects must also be delivered in a fiscally constrained environment, this experience shows the value of creating stable frameworks that attract investment while ensuring projects meet community needs.

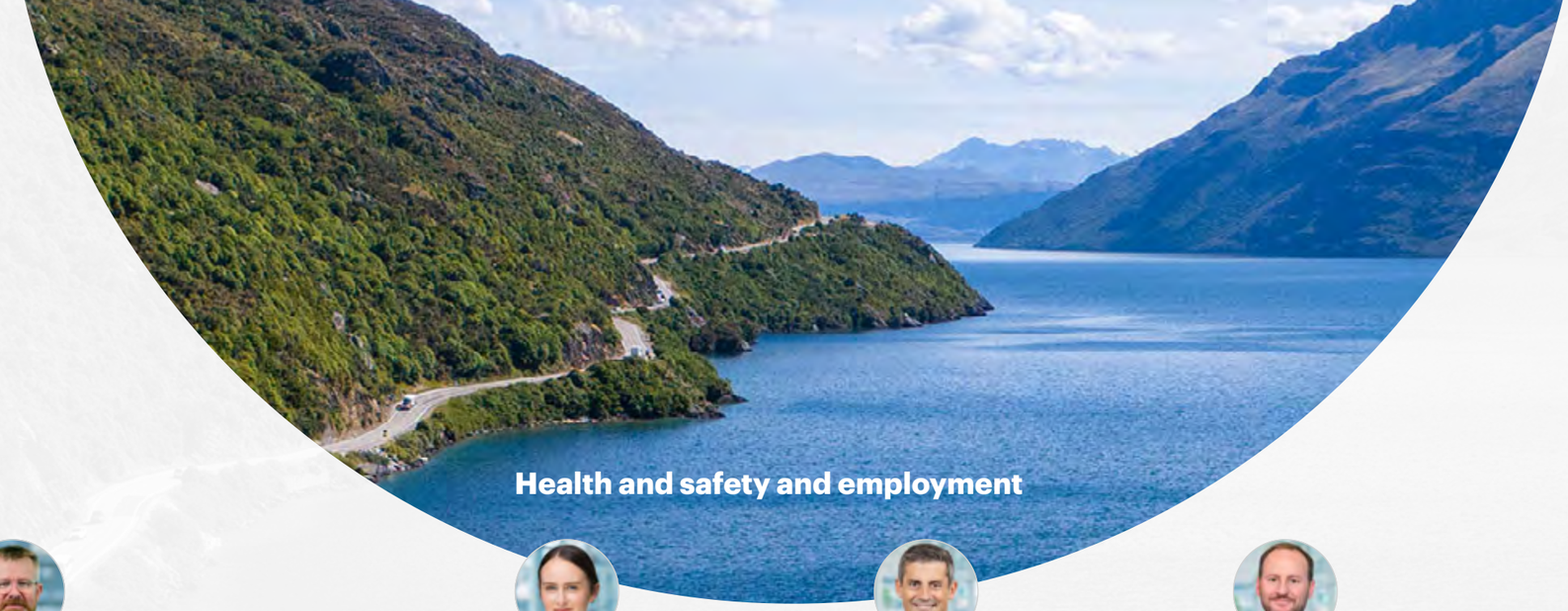
At the same time, there are lessons in what is not working. Too often, infrastructure projects in Africa falter because of fragmented regulatory environments, shifting political priorities and inadequate long-term planning. Projects are sometimes launched without stable funding pipelines or without fully engaging the communities they are meant to serve. This leads to delays, stalled delivery or infrastructure that fails to meet real demand. Corruption and governance weaknesses can also undermine confidence, discouraging both local and international investors. The clear message is that delivery frameworks must be predictable, transparent and resilient to political cycles if infrastructure is to succeed.

Another lesson is the role of sustainability. Africa's infrastructure is constantly tested by climate shocks such as droughts, floods and extreme weather events. The projects that endure are those that embed sustainability and ESG principles from the outset, whether through renewable energy corridors, climate-smart water systems or green building practices. These attract global financing, but more importantly, they provide lasting value for communities. In New Zealand, where resilience is an equally pressing concern, the African experience underscores that sustainability is not an afterthought but a foundation.

Finally, technology is allowing Africa to leapfrog traditional models. Mobile banking, smart metering and digital infrastructure have expanded access to services far beyond what was once possible with conventional networks. This "do more with less" approach is particularly relevant for New Zealand, where geography and resources demand efficiency and innovation. By embracing digital tools alongside traditional infrastructure, both Africa and New Zealand can deliver infrastructure that is not just functional, but transformative.

As both regions look to the future, our shared challenge is to build infrastructure that is resilient, inclusive and forward-looking. By learning from each other's experiences, Africa and New Zealand can shape infrastructure that does more than meet today's needs – it can unlock sustainable growth for generations to come.

Our infrastructure specialists



Major projects and construction

Brendan Cash
Partner
D +64 4 915 0780
brendan.cash@dentons.com

Katrina Van Houtte
Partner
D +64 9 375 1142
katrina.vanhoutte@dentons.com

Stuart Robertson
Partner
D +64 9 375 1151
stuart.robertson@dentons.com

Paul Buetow
Partner
D +64 9 375 1114
paul.buetow@dentons.com

Sara Cheetham
Partner
D +64 9 909 6352
sara.cheetham@dentons.com

Environment and planning

Christina Sheard
Partner
D +64 9 375 1185
christina.sheard@dentons.com

Nicky McIndoe
Partner
D +64 4 915 0818
nicky.mcindoe@dentons.com

Ezekiel Hudspith
Partner
D +64 4 498 0849
ezekiel.hudspith@dentons.com

Health and safety and employment

Renee Butler
Partner
D +64 4 915 0795
renee.butler@dentons.com

Greg Cain
Partner
D +64 4 916 0963
greg.cain@dentons.com

James Warren
Partner
D +64 9 375 1199
james.warren@dentons.com

Real estate

Matthew Ockleston
Partner
D +64 9 915 3350
matthew.ockleston@dentons.com

Oliver Hobbs
Partner
D +64 4 915 0822
oliver.hobbs@dentons.com

Technology and privacy

Campbell Featherstone
Partner
D +64 4 498 0832
campbell.featherstone@dentons.com

Hayley Miller
Partner
D +64 9 915 3366
hayley.miller@dentons.com

Corporate and commercial

Chris Parke
Partner
D +64 9 375 1157
chris.parke@dentons.com

Gerard Dale
Partner
D +64 9 375 1152
gerard.dale@dentons.com

Wook Jin Lee
Partner
D +64 9 375 1174
wookjin.lee@dentons.com

Peter Callus
Senior Associate
D +64 4 498 0834
peter.callus@dentons.com

Litigation and dispute resolution

Hayden Wilson
New Zealand Chair & Global Vice Chair
D +64 4 915 0782
hayden.wilson@dentons.com

Linda Clark
Partner
D +64 4 915 0862
linda.clark@dentons.com

David Campbell
Partner
D +64 9 375 1115
david.campbell@dentons.com

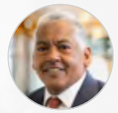
Kate Rouch
Partner
D +64 4 915 0828
kate.rouch@dentons.com

Nicole Thompson
Senior Associate
D +64 9 375 1129
nicole.thompson@dentons.com

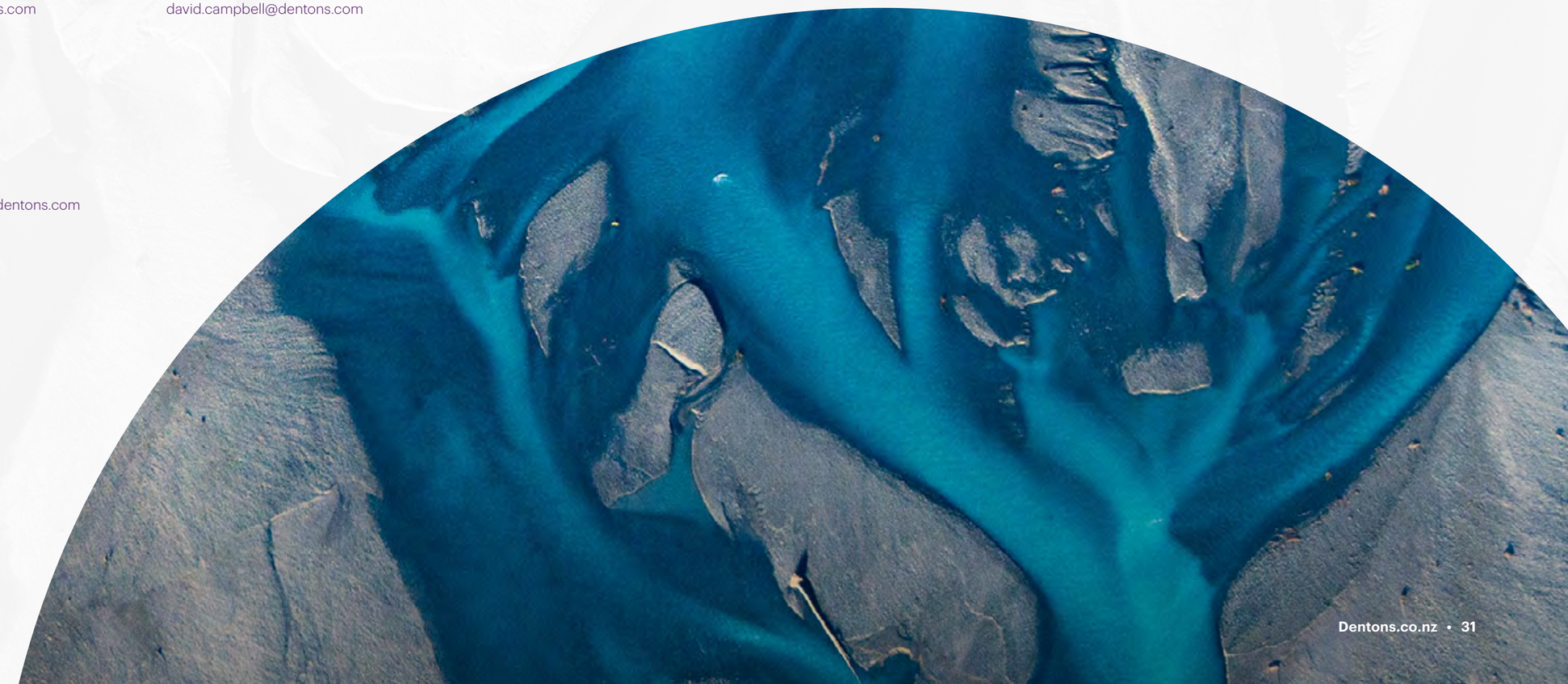
Climate change and ESG

Ana Coculescu
Senior Associate
D +64 4 496 5932
ana.coculescu@dentons.com

Africa region



Noor Kapdi
Africa Region Chairperson
and Chairperson South Africa
D +27 11 326 6257
noor.kapdi@dentons.com



ABOUT DENTONS

Redefining possibilities. Together, everywhere. For more information visit **dentons.co.nz**

CSBrand-178234-Infrastructure publication no.3-12 — 16/09/2025