Planning Under
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Planning Paradise with the Cheshire Cat: Governance Problems under the RMA

by

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A Key-note address to
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During a radio interview last year, Kim Hill observed that the RMA was "sitting like a blob in the middle of the New Zealand psyche". Much has, of course, been made of compliance costs to business and the need to process consents with all the haste of a March hare. In my view, this obsession with compliance misses the fundamental problem of implementing the RMA — shortcomings in governance. My intention today is to shed some light on this pervasive problem. I want to do this by first characterizing RMA within the theoretical range of national mandates, and then deal in turn with governance issues at each level in the intergovernmental hierarchy of partnerships established by RMA and LGA. I will conclude with brief mention of long-term council community planning, because it too is at risk if governance is not improved.

In general, national mandates range from *prescriptive and coercive* — driven from the centre — to *co-operative and facilitative* — driven through intergovernmental partnerships. A co-operative mandate aims to *devolve* or *decentralise* decision-making to the local level close to where problems need solving.[1]

There are important assumptions underpinning national mandates of any kind. A *co-operative and facilitative* mandate, like the RMA, assumes that local government will comply with the mandate, but may not have the capacity to do so. A *prescriptive and coercive* mandate assumes the reverse; local government might well have the capacity to comply, but lacks the commitment to do so; hence the stick from the centre. Employing the prescriptive approach is likely to result in a much quicker and more uniform uptake of the legislation. Employing the carrot-like approach of a co-operative mandate will be much slower, resulting in uneven implementation across the nation — witness the RMA.

Under a co-operative intergovernmental mandate, it is Government's responsibility to ensure that its own central agencies as well as sub-national government (i.e., regional and local councils in the case of New Zealand) have the *capability* to implement it. Capability is composed of commitment and capacity. *Commitment* is

[1] A co-operative and facilitative mandate may be truly *devolved,* so that local government enjoys powers of competence for making laws and raising taxes, or it may be *decentralized*, so that while the main decisions over resource management are taken locally, rather more control remains with Government to ensure that its economic goals for the nation are not compromised. The RMA is a hybrid reflecting Labour (devolution) and National (decentralisation) imprints on its creation. There is a little swing back towards devolution in governance, as seen in the new Local Government Act 2002.

the willingness of key people in national, regional and local agencies to promote the legislative goals, while *capacity* is having resources in those agencies to do so.

Other things held equal, high capability in the agencies of Government, and thereby capacity-building in councils, should result in excellent implementation of its mandate.

Salient RMA Planning Outcomes

Government engineered "system change" in the late 1980s, in order to create the intergovernmental hierarchical structure necessary for implementing its new RMA, including a new central administration (MfE, DoC, and PCE) and amalgamations to increase the capacity of regional and local councils to comply. (See Annex 1 for more details on the Intergovernmental System for environmental planning.)

There were "great expectations" for the success of the RMA. National policies and standards would emerge through MfE and DoC that would help guide local government in their preparation and implementation of policy statements and plans. Innovative plans managing environmental effects would be more permissive than their predecessors, but there would be more rigour through research and policy analysis, and implementation through resource consents would ensure quality environments resulted.

Our research into planning and governance under the RMA shows that there is cause for concern for our environmental futures (Outputs from the research programme on Planning Under a Co-operative Mandate (PUCM) can be found on www.waikato.ac.nz/igci/pucm.) I do not wish to dwell on our plan quality and plan implementation results, since most have been presented in workshops at previous NZPI conferences. (Salient features of the plan quality and implementation research are summarized in Annex 2.) Suffice it to say that the plans were of only good to poor quality and there is a worrisome implementation gap: environmental policies in plans tend not to be mirrored by techniques used in resource consents. This suggests that current plans alone are unlikely to yield the quality of environmental outcomes sought by the RMA. This is not so much the fault of the RMA, although some key provisions in the Act still need to be clarified. Nor was it so much the performance of hard-pressed planners in the councils. Rather, these results can be sheeted home primarily to failings in governance, at both the central and local level. Let me touch on some of the key issues with respect to each partner in the intergovernmental planning system, by starting at the centre.

Governance at the Centre

From the very beginning, MfE did recognize its capacity-building responsibility. Consistent with the principles of a devolved and co-operative mandate, its approach to the RMA was to encourage and facilitate planning in councils, rather than to impose and coerce — this in the belief that innovative planning might emerge locally. Its capacity-building intention is clear from its proposed *Resource Law Transition Plan*, which contained a range of activities to help ensure the efficient and effective transition from old to new resource planning regimes. It was costed at a very modest $2.2 million, but Government rejected the transition strategy because money already ear-marked for developing the RMA had run out (about $3 million), and there was a view in the new National Cabinet that with the Act in place it was up to the newly reformed councils to implement it. Naively, too many local politicians agreed, with a "leave it to us, we can do it" attitude. Others, however, report disappointment that promised resources from the centre never came.

Denying MfE its transition strategy contravened the most basic assumption of Government's co-operative and facilitative mandate — to ensure councils had the capacity to comply with its goals. Indeed, our research shows that the larger wealthier councils have better RMA policy statements and plans and implementation processes, than smaller poorer councils — evidence that capacity matters. Since the small councils make up the large majority of councils, the *amalgamations* of the late 1980s did not go far enough. Further reform is needed, although that does not obviate the need for central government to do capacity-building.

The poor start to capacity-building by Government was made all the worse by severe budget cutting, signalled in the 1991 "Mother of All Budgets" of Finance Minister Ruth Richardson.[2] The annual cuts that followed for several years not only pruned what little perceived fat there might have been in the system, it cut deep into the bone.

From the outset, MfE and DoC were much too under-funded for effectively performing their functions, including building capacity in councils under the RMA. Budget-cutting simply made a bad situation worse. As a senior manager in MfE quipped in the mid-1990s, "our budgets are anorexic" and a DoC conservator lamented "a poverty mentality pervades us".

To underscore this dereliction of responsibility by Government, consider if you will the following. The MfE budget for operations and personnel fell by 10 percent to $10 million in 1991 — the year of the RMA.[3] Although one of the better funded units in MfE, the Resource Management Directorate, which was responsible for implementing the RMA, had on average only about $1.9 million per year to work with through much of the 90s. DoC — in poverty mode recall — had nearly four times more money for its RMA work on the coast than MfE had for the rest of the RMA and the whole of the country.

By the time policies and plans were tumbling out of councils for MfE to review in 1995, the Resource Management Directorate's staff had almost halved since 1991 to 22 FTE, including its regional offices, and it remained at that level into this century. Little wonder that MfE had a high staff turnover of around 24 percent of total each year throughout the decade. MfE could not avoid having young and inexperienced staff carry out roles that one would expect more senior staff to do, including dealing with plan-makers in councils struggling to make sense of effects-based planning and key provisions in the Act that were to most of them unclear — provisions that successive amendments have failed to address.

Thus, in the first six years or so under RMA when MfE ought to have had the capacity to provide councils with policy direction, methods, and data for matters of national importance, it was struggling to cope. For the most part, MfE was forced by Government's mean-fistedness into being a reactive rather than proactive capacity builder.

Centre to Periphery

Let me move from centre to periphery where councils that prepared effects-based plans got public stick over matters of national importance. That happened in part because there was a lack of policy direction, methods, and data from Government. In spite of section 6, not one NPS has been produced, apart for the coast, to provide

[2] Alluding to the "Mother of All Wars" proclaimed earlier in the year by Iraq's President Saddam Hussein during the Gulf War.

[3] It fell in successive years before rising to $11 million in 1995, as in 1990, then $15 million in 1998.

councils with policy direction. There was also an absence of methods to help councils identify matters of national importance in their areas, many of which are in small low-capacity rural councils

This meant that councils were left to work it out for themselves in 86 different ways around the country — an absurd, time-wasting and costly process economically, socially, and emotionally, as planners in those councils that produced good effects-based plans will attest. The hands-off approach from the centre aimed at fostering local innovation at the periphery was well-intentioned, but could only succeed if accompanied by higher level policy direction and well-funded capacity-building activities. Neither happened and the consequences were, in my view, appalling.

Whether we were examining outstanding landscape values in Queenstown-Lakes District, significant natural areas in the Far North District, or iwi interests in Tasman District, the result was much the same. Having been left in a policy vacuum and without inducements from the centre, the councils struggled when dealing with matters of national importance, and in all three cases there was a great deal of ratepayer discontent over provisions included in the plan, even though they scored well as effects-based plans.

To illustrate, let's take the Far North District Council, with its nationally unique biophysical environment containing many endangered species. It notified a good quality effects-based plan, just as the Minister wanted, but got into trouble, especially over the identification of SNAs and rules for them in the plan. A consultant was asked to look into methods for identifying SNAs. DoC was commissioned to help, but as neither DoC nor council could afford new aerial photography, old photos and rapid curbside surveys were done instead. Placed on topographical maps, the SNAs were found to be significantly in error when overlaid onto cadastral maps of property boundaries. Because councillors rushed the plan to notification — against the advice of their planning consultant and staff — insufficient time was allowed to test rules and consult on them and for careful review of information ahead of printing. The errors were discovered too late and the rest is history.[4]

As controversy escalated there were calls to "sack the council" and "can the plan". Eventually, the plan was re-written at a cost of $1.2 million on top of the $1.8 million for the first plan, this in a district which for the most part falls in the bottom three deciles of the New Zealand Index of Deprivation. The council was sacked, staff and consultants were put under great stress, and they too were replaced.

The irony in this case was that MfE encouraged, appropriately, through submissions on the evolving plan, use of an effects-based approach. Later, its submission on the plan was not overly critical. The Minister would surely endorse the notified plan, because he had frequently complained that too many councils up and down the country were producing activities-based plans — a comment he made just four months before the FNDC got into trouble with rate-payers. But when 3,000 of them wrote requesting the Minister intervene, he went north to scold the Council and would not support its wish to continue with the statutory hearing process — as many Far North constituents wanted — thereby ensuring the plan would indeed be canned.

[4] This and other governance problems caused an outcry from many of the 2,200 affected property holders, some of whom marched on town hall. In addition to poor quality data, rules in the plan were property-specific instead of generic — because staff did not have detailed SNA data in relation to properties ahead of making the rules. What is more, land owners had not been consulted about the rules, even though DoC said in letters to them, and in the local newspaper, they would be, and had urged council to ensure that that would happen.

This Far North problem occurred to a greater or lesser degree around the country, especially where effects-based plans emerged. I contend that none of this had to have happened had Government funded MfE to prepare clear policies and methods on matters of national importance for councils to use within the context of their local circumstances, and had been given reasonable statutory deadlines to do so. How would councils even know what is nationally important without input from the centre? And even if they did, why should councils bear so much of the burden when implementing the Government's mandate? Taken further, why should a farmer with nationally significant wetlands pay the cost of their protection on behalf of the wider community? Or, why should the council pay for any of it without inducements from Government?

Let's take a much more positive case, to further highlight this governance thesis. We found that where higher level policy was in place, such as for the coast, planning outcomes appeared to have been much better. In Bay of Plenty, we found a very good alignment between the coastal hazard policies in the *Tauranga District Plan* of Tauranga District Council (TDC) the *Coastal Environment Plan* of Environment Bay of Plenty (EBOP), and the *New Zealand Coastal Policy Statement* of Government. This was not only due to having the policy ducks in a row, but also co-operation between staff in the two councils in seeking a sound scientific basis for their methods and rules. We went on to compare policies under the old TPCA and new RMA, and found considerable policy improvements in the district plans — as intended by the law reformers. The new policies focused on risk management through zones denoting degrees of risk accompanied by a programme of managed retreat over the long-term where development already existed. The old district schemes focused on avoiding council liability and used blunt policy, like public acquisition of land that had not already been developed.

In short, on the coast there was no policy vacuum from the centre; MfE did a good job helping TDC planners develop an effects-based plan; EBOP helped with capacity issues by contributing data, photos, and expertise; TDC did good research that helped to identify the key issues and develop robust objectives, policies and methods; and all this good work helped the plan to withstand challenges in the Environment Court and High Court.

The Regional and District Partners

I want to move on to talk briefly about the regional and district partnership for implementing the RMA. Here we found another major gap in the intergovernmental hierarchy, the above case notwithstanding.

The main reasons for having a regional tier of governance anywhere are to identify significant regional issues that transcend the boundaries of local councils, fashion regional plans that promote integrated management across environmental media, provide technical assistance and advice to local councils (i.e., capacity building), and support consensus-building to ensure regionally responsible decisions by the local councils.

Under New Zealand's devolved mandate, these responsibilities called for a co-operative partnership between the district and regional councils to facilitate preparation of high-quality plans. Initially, this was fostered by financial inducements or grants from Government to help regional councils to prepare their regional policy statements and coastal plans (including iwi input into them) within their two-year statutory deadline. Significantly, the level of grant was based on the ability of a regional council to perform: poor councils got more than wealthy ones. Even though

the grants overall were modest, it was good capacity-building stuff from the centre. Unfortunately, it ceased after two years, and the grants were never extended to district councils.[5]

Our statistical modelling of data gathered during Phase 1 of our PUCM research showed that regional councils had limited influence in enhancing the capacity of local councils and the quality of their plans. Planning in regional and district councils through the 1990s was operating largely independently of each other, with only weak inter-organisational relations and little integration of policies in plans — except perhaps for some metropolitan areas like Auckland and Wellington and perhaps the coast.

Our evidence suggests that lack of staff and financial resources, turf protection, and conflict generated by uncertainty in roles at each level of government were key reasons for this disconnection. That is, a lack of commitment to the mandate. These findings are of great concern and have important practical implications for achieving the goals of the RMA — quality environments. They further illustrate problems of governance under the RMA.

District Councils

What of governance in district councils? The cost-cutting in central Government was mirrored in local government. Thus, too often inadequate resources were made available by councils for developing plans under the RMA. For example, over one-quarter of district councils employed less that one FTE staff for preparing the district plan, and another one quarter between one and two FTEs — staffing levels that were wholly inadequate.

But mostly, the problems of resourcing council planning — other than those associated with central Government — had to do with the role of councillors in the planning process. While many local politicians were well informed and worked very hard to meet the demands of the RMA, far too many were not. Often councillors enter local government on narrow, single purpose tickets — such as reduce rates; get rid of this or that; or to cut planning. The consequences of this show up when plans are prepared and implemented. I indicated as much for the Far North. But let me touch on another council — Tasman District — as it will also enable me to comment on the Māori partnership, which is also a matter of national importance.

The Tasman planners were pressured by councillors to meet unrealistic deadlines and with much the same consequences as the Far North. Like the Far North, Tasman did a good job of consulting Māori and had iwi representatives help draft relevant sections of the plan. But the ink was hardly dry when, to appease a vocal minority of property owners, many of whom had marched on town hall, the rules for iwi interests (and other matters of national importance) were being taken out of the plan by way of a Variation. This was political pandering at its worst, just like in the Far North. For planners, it was another case of “get out the plan or off with your heads”.

The Council’s action placed its Māori consultants in an invidious position. Because of the historical Māori distrust of Pakeha governance, it had taken a great deal of effort by them to convince kaumatua (elders) from the six iwi that they should join the consultative process for preparing the plan. In their submission to council, an Iwi Trust wrote:

[5] Both regional and district councils could, however, compete for resources from the Sustainable Management Fund, administered by MfE.

> … the decision to remove [rules from the plan] was taken without consultation with tangata whenua … In its peremptory decision … Council gave in to unseemly mob rule, exacerbated by certain statements and actions of a small number of councillors who had not participated to any noticeable extent in the public consultation processes which had preceded drafting the [Tasman Resource Management Plan] and who chose subsequently to distance themselves from it. … Acceding to pressure from a very vocal minority was an abdication of democratic principles…. We find the implications of Council's behaviour quite frightening – not for the actual decision that was taken, but for *the process* which Council allowed itself to follow. (Ngati Tama Manawhenua Ki Te Tau Ihu Trust, 27 February 1997).

In less extreme cases elsewhere, the council-iwi partnership was hindered by councillors who failed to appreciate that the foundation for a good relationship has to start at the top — between senior politicians and staff (e.g., Mayor and CEO) and senior kaumatua in hapū and iwi. Only then will other means, like iwi liaison officers, standing committees, etc., lead to meaningful outcomes for council and Māori. That, of course, requires political commitment.

For local politicians, the cases I have touched upon clearly show that it is sheer folly to not understand the mandates under which they operate, to be stingy with resources, to use election cycles to push staff unreasonably to produce complex plans to meet unrealistic deadlines, to fail in reviewing their plan adequately before public notification, and to not have the moral fibre to own their plan when negative reactions emerge from the vocal minority. These failings in governance at regional and district levels have contributed to public disappointment in the RMA. It also suggests a need for better professional development and training.[6]

Walking the Talk

So let's go back to the centre. The dilemma faced by councils in relation to Government and the RMA can be epitomised in this exchange (Lewis Carroll, 1947: 80-1):

> "Would you tell me, please, which way I ought to walk from here?"
> "That depends a good deal on where you want to get to," said the Cat.
> "I don't much care where-----" said Alice.
> "Then it doesn't matter which way you walk," said the Cat.
> "--------- so long as I get *somewhere*," Alice added as an explanation.
> "Oh, you're sure to do that", said the Cat, "if you only walk long enough!"

Government's representatives (both Minister and MFE staff) talked a lot in the 1990s about the need for effects-based planning. But its decision not to provide direction through national policy statements and methods for identifying matters of national importance and its failure to adequately build capacity in MfE and DoC did not help councils facing the challenge of dealing with the sustainable management of natural and physical resources. This failing cascaded down the intergovernmental planning

[6] MfE offers workshops for new councillors to help them understand aspects of the RMA. As well, many councils also run workshops on local government. Too often, however, senior management has difficulty obtaining funds for professional development from project-oriented councillors, while in other cases the courses come far too late in the 3-year election cycle. There must, therefore, be a good case for having all aspiring local politicians complete a course on local government prior to nominations to ensure that they are ready for office should they be elected. Such a course would include, for example: an understanding of the statutes under which councils operate; the organisation and administration of councils; the roles of councillors and staff in local government; and the ethics underpinning exemplary committee behaviour.

hierarchy into regional and district councils and onto Maori. When councils looked to the Government for help, it wasn't there — just like the Cat. It failed to walk the talk.

Implications for Future Planning and Governance

So what does all this mean for future planning and governance under the RMA and the new LGA? In the year 2000, Local Government New Zealand complained that Government had withdrawn or reduced services and funding in thirteen areas of activity, leaving councils to fill the gap. To this "unintended devolution," are added seventeen areas of activity where functions have been "formally devolved" to local government. Of these activities, seven are unfunded, five are funded (e.g., through local fees), and five are partially funded (including the RMA) through local sources.

Pushed along by the well-resourced "Big 10 councils", Government has foisted yet more functions onto councils with the new LGA and the requirement that they prepare and implement long-term council community plans, in order to promote environmental, economic, social and cultural well-being of their communities in the present and for the future as a means for achieving sustainable development.

Will the well-intentioned LGA experience the implementation difficulties of the RMA, or has there been sufficient policy-learning and professional development to avert this happening?

I think that you planners have learnt a great deal professionally and technically from the bruising experiences of the 1990s, and can proceed with preparing your second generation RMA plans with some confidence. As well, you have new methods for evaluating plan-making process and the plan as it evolves (See papers on www.waikato.ac.nz/igci/pucm.) Much the same can be said about plan implementation, where methods are now available for examining the linkage between policies in plans and techniques in resource consents. These skills and tools will no doubt be adapted by you when developing long-term council community plans.

However, all this planning takes place in a political context and it is with governance that I feel much less sanguine — given past experiences with the RMA. Under the new LGA, the spotlight falls even more brightly upon local politicians because they have to get good community buy-in to exercise powers of general competence with respect to relevant statutes — thus underscoring the importance of good governance. Councillors will have to justify what they are doing and why to their ratepayers. They will have to walk the talk. Councils and councillors will have to develop their own capacity to achieve this, including that needed to develop the capacity of Māori to participate in the process.

Just like the RMA, Government has prescribed a *process* for councils to follow, but leaves them to deal with the *content* of their long-term council community plans. From the RMA experience, this would suggest that capacity-building from the centre is essential if councils are to come to grips with this ambitious piece of legislation. Alas, Government has provided the Department of Internal Affairs (in association with Local Government New Zealand) with less then $1 million for implementation in the first year and no indication whether this will extend beyond the second year. This is half the amount provided to MfE annually for implementing the RMA throughout the 1990s. This wholly inadequate funding may well cause another unwelcome "blob in the middle of the New Zealand psyche".

Annex 1

An Intergovernmental System for Environmental Planning

To gain immediate capacity, Government engineered "system change" in the 1980s by first creating a new environmental administrative structure at the centre (MfE, DoC, and PCE) and then reforming local government through amalgamation of many small councils into fewer and larger ones.[7]

The RMA, together with the Local Government Act, Environment Act and Conservation Act, indicated in broad terms how and why the nation's natural and physical resources should be managed and by whom.

MfE was given responsibility for implementing the RMA from the centre, and established a Resource Management Directorate and regional offices to do so, while DOC was to look after the coastal marine area through its conservancies. Regional and district councils were given various functions under the RMA; the former to ensure integration of resource management across jurisdictions in their areas; the latter to manage land use development in a manner that would protect or enhance the environment. All this was to be achieved in a co-operative partnership, stressed through amendments to the LGA in the late 1980s, and later endorsed by the Court of Appeal in the mid-90s. Environmental and other outcomes for Maori were also part of the deal, and hapū and iwi were encouraged to develop iwi management plans to help facilitate planning in councils.

At its heart, the RMA allowed for a resource consenting system in regional and local councils that would have individuals and groups internalize the environmental costs of their use and development of natural and physical resources, especially those of national and regional importance within the regions and districts, as indicated in Part II of the Act.

Given the administrative and structural reforms of central and local government in association with resource management law reform, it would be fair to say that there were "great expectations" for the success of its implementation. National policies and standards would emerge through MfE and DoC that would help guide local government in their preparation and implementation of policy statements and plans. Quality plans and quality plan implementation through resource consents would ensure quality environments resulted.

[7] To achieve desired policy goals, a Government can bring about "***system change***" for transferring authority among agencies, such as changing from a centralized to devolved planning regime. Second, Government can provide a new "***mandate***", like the RMA or LGA, the provisions of which aim at producing compliance by governing the actions of agencies and others in the system, such as through prescription or co-operation. Third, Government can provide "***inducements***" that transfer resources to agencies and others for actions aimed at fostering commitment and eliciting a desired level of performance, such as through the provision of technical advice or funding. The effectiveness of inducements increases when the capacity exists to produce things, like district plans or long term council community plans, that policy-makers value and have priorities supporting their production. Thus, fourth, Government has the task of "***capacity building***", the transfer of resources for the purpose of investing in material and/or human capital to achieve its policy goals. Capacity building is particularly important when introducing a new mandate, such for planning under the RMA or LGA. (See for example, McDonnell, L. M. and R. F. Elmore (1987) Getting the Job Done: Alternative Policy Instruments, *Educational and Policy Analysis*, vol. 9, No. 2, pp 133-152.)

Annex 2

Salient Results from Plan quality and Implementation Research: Planning Under a Co-operative Mandate (PUCM)

1. the quality of notified regional policy statements and district plans ranged from only good to poor, with most falling below a pass mark. (First PUCM Report to Government, 5 February 2001).

2. the statutory hearings process tended to improve the community acceptance of notified plans, but at the expense of their environmental fit. In other words, good effects-based plans got watered down to meet the demands of some property owners, while many councils avoided public back-lash by producing activity-based plans of old.

3. plans are ambitious in terms of objectives and policies, but these are not backed up by effective rules and/or assessment criteria. That is, the rules and/or assessment criteria undermine the policies or do not fully reflect their intentions. (Second PUCM Report to Government, 15 April 2003.)

4. even where plans had sound methods, there was a worrisome "implementation gap". Thus, low impact or environmentally friendly techniques and methods signaled in the plan were forsaken in favour of conventional techniques in the resource consents.

5. while there were good gains on paper for Maori because of their inclusion as statutory consultees, competing political ideologies of social democrats and liberal democrats in Government resulted in a lack of clarity on partnership, and gave licence to councils to do nothing or very little during plan preparation. Not surprisingly, we could not find enough resource consents in the councils studied in 2001 to draw a valid random sample to see how well councils considered iwi interests.

   These results suggest that plans alone are unlikely to yield the quality of environmental outcomes sought by the RMA. This is not so much the fault of the RMA, although some key provisions in the Act still need to be clarified. Nor was it so much the performance of hard-pressed planners in the councils. Rather, these disappointing results can be sheeted home primarily to Government failing to provide adequate inducements and capacity-building in the intergovernmental hierarchy of planning.

   See various references on the PUCM Website – www.waikato.ac.nz/igci/pucm.