Overview of Flood Management Legislation in New Zealand

by:

Johnson McSweeney Ltd

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Written by: John McSweeney
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The analysis and conclusions reached in this report are the views of the author, and do not represent the views of the Ministry for the Environment.
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Executive Summary

Project Context
Severe flood events in recent years and the resultant loss of property and disruption to communities have prompted the Government to review current approaches to river control and flood risk in New Zealand. This cross government review is being led by the Ministry for the Environment. One of the key issues is to assess whether the existing legislative framework provides central and local government with the means to effectively carry out its flood management responsibilities.

The purpose of this report is therefore to:

*Provide a broad overview of the legislation applying to flood management in New Zealand, and assess the strengths and weaknesses of this legislative regime.*

This overview has involved reviewing the following statutes:

- Resource Management Act 1991;
- Building Act 2004 (and Building Code 1992)
- Local Government Act 2002
- Land Drainage Act 1908
- Soil Conservation and Rivers Control Act 1941
- Rivers Board Act 1908
- Civil Defence Emergency Management Act 2002

A number of other statutes also influence to a lesser degree flood management. An overview has therefore been undertaken of the Public Works Act 1981, the Local Government Official Information and Meetings Act 1987, the Earthquake Commission Act 1993, the Environment Act 1986, and the Local Government (Rating) Act 2002.

This overview has involved a desk top review of the legislation and relevant flood management research and reports, and discussions with Ministry for the Environment officials. This has been confined to providing an overview of flood management legislation and not flood management practices.

Purpose of the ‘Flood Management’ Statutes
The statutes (listed above) allow for a wide range of approaches to managing flood risk. These relate to:

1. *Hazard Control* measures such as the provision of stopbanks, channel maintenance and clearance, dams, etc. The Local Government Act 2002, the Soil Conservation and Rivers Control Act 1941, and the Rivers Board Act 1908 are the main acts which allow for these works to be undertaken. The Land Drainage Act 1908 and a number of localised drainage acts allow waterlogged land to be drained for food production and urban purposes. The drainage schemes also contribute to modifying flood events.
2. **Flooding information and education** is provided by a number of agencies. This includes scientific and practical information about flooding and ways to minimise the impacts of flood events. Specific mechanisms such as land information memoranda (LIMs’) pursuant to the Local Government Official Information and Meetings Act 1987, provide the means by which members of the public can access site specific flooding information from territorial authorities (where this is available).

3. **Flood hazard preparedness, response and recovery** measures are authorised principally under the Civil Defence and Emergency Management Act 2002. It provides the legislative framework for national, regional and local communities to prepare for, and respond to, flooding.

4. **Flood loss insurance and financial assistance** is principally provided by the Earthquake Commission under the authority of the Earthquake Commission Act 1993. Government can also provide disaster relief funding to assist local communities after large scale flood (and natural disaster) events.

Historical context

Flood management legislation has evolved since the Rivers Board Act 1908 was enacted to address different aspects of flood management. As a consequence there is no single flood management statute in New Zealand. From the 1940s to the 1980s Central government had an important role to play in setting policy and providing funding assistance to Catchment Boards in particular. The local government and resource management law reforms of the late 1980s and early 1990s devolved most of the flood management policy and works to Regional and Territorial Authorities.

Flood preparedness, response and recovery is supported through a national strategy and plan provided by the Ministry of Civil Defence and Emergency Management. Regional groups made up of regional and territorial authorities provide local responses to managing flood risk.

Comprehensive range of flood management tools

The analysis undertaken in this report shows that the existing flood management statutes provide a range of mechanisms to address the risks presented by flooding. This includes the following:

National policy guidance

1. The RMA enables Central Government to provide national direction to Local Government on managing flood risk in the context of the sustainable management of natural and physical resources. This can include national policy statements, national environmental standards, and best practice guidance. Since 1987, following the withdrawal of central government from funding of flood control schemes, no such statements, standards or guidelines have been provided. These national instruments could assist in providing further clarity and direction to local government in the way flood risk is addressed in regional policy statements, regional plans and district plans. This remains an option open to the Government as part of this flood management review.

2. The provision of various flood mitigation works are more appropriately managed under the Local Government Act 2002 and the Soil Conservation and Rivers Control Act 1941. There are no national statutory policy instruments available to Central Government to promote certain flood mitigation works or outcomes by Local Government. There are however powers for Ministers to intervene in local decision making, and to appropriate funds to facilitate or
undertaken flood mitigation works. It is debateable whether this lack of ability to promote certain outcomes through promulgating national policy is a ‘weakness’ in the flood mitigation regime. This issue cannot be adequately addressed in this report, but is worth considering as part of the overall review of flood management.

Ministerial powers of intervention
3. All flood management statutes, except the Rivers Board Act 1908 (RBA) and Land Drainage Act 1908 (LDA), allow ministerial intervention into local decision making. Works undertaken pursuant to the RBA and the LDA are however subject to the provisions of the RMA, which in turn is overseen by the Minister for the Environment. The day to day implementation of these acts are also undertaken by local government, which is subject to ministerial overview by the Minister of Local Government.

Roles of Central and Local Government
4. Consistent administration of the “flood management” acts is facilitated by regional councils and territorial authorities having the primary responsibility for setting regional and local policy and ensuring it is implemented.

Local Government decision making
5. Under the RMA and the LGA local authorities set regional and local policy through their LTCCPs, regional policy statements (RPSs), regional plans and district plans.
6. In addition to RMA plans, LTCCP policies and initiatives are also given effect to through asset and flood management plans and through the provision of flood and river management, stormwater and drainage infrastructure.
7. Environmental and safety issues associated with the provision of flood and drainage works provided by local authorities and private landowners are also controlled through the resource and building consent regimes.

Funding assistance mechanisms
8. The Soil Conservation and Rivers Control Act 1941 enables Government to directly fund landowners activities to address soil conservation and flood management issues. In practice these funds were directed through catchment authorities who for the most part initiated, designed, arranged local funding and implemented the schemes of work. Since 1987, as a result of a change in Government policy, funding and assistance to landowners is now provided by local authorities.
9. The Government may also make appropriations at any time. Since 1987 this has usually been for flood emergency disaster relief.

Administration of flood management statutes
10. Over the years many of the provisions in the ‘older’ statutes have been repealed as the flood management and local government/central government administrative arrangements have changed, and been superceded by provisions in the ‘modern’ statutes. Whilst the retention of these older statutes is legislatively ‘untidy’, it does not hinder the ability of central and local government to employ a range of tools to manage flood risk.
Jurisdictional responsibilities

11. There is confusion in many parts of NZ over the separation of powers relating to drainage and flood management due in part to the lack of legislative clarity. This can create uncertainties at the boundaries. That is, at what point should the regional council address flooding issues which may be exacerbated by development occurring at a local level. While there are a number of mechanisms in the RMA to require information sharing and ensure a consultative approach between Regional Councils and Territorial Authorities, there is evidence that this is not always being effective, and on occasions requiring decisions by the Environment Court.

12. There is also an ability to delegate and transfer statutory responsibilities between the local authorities where this is considered necessary.

Conclusion

The twelve ‘flood’ management statutes analysed in this report cover a broad range of private property and public good issues relating to land development and management, land use controls, flood management and its funding, flood emergency response and recovery, and flood protection insurance. Each of the statutes perform a distinct and important role in managing this flood risk. This analysis has shown that these acts provide a range of legislative mechanisms to enable effective flood management across local and central government.

There are however no national statutory policy instruments available to Central Government to promote certain flood mitigation outcomes by local government. This matter should be considered as part of the wider flood management review.

Given the different intent and purpose of the acts and the age and “remnant” nature of some of the legislation, it is not surprising that some of the legislation is difficult to understand and that inconsistencies exist. If government decided to undertake a legislative review at some stage in the future, it would be present a useful opportunity to address these administrative issues.
1. Introduction

Johnson McSweeney has been contracted by the Ministry for the Environment to review the legislation applying to flood management in New Zealand. This report presents the findings of this review as follows:

1. Background information on the purposes of the legislative review.
2. A brief history of the evolution of flood management in New Zealand since the turn of last century.
3. A summary of the provisions in each of the acts as they relate to flood management (Appendix 1)
4. A description of the existing flood management regime and the respective roles of central government, regional councils, and territorial authorities.
5. A legislative ‘gap’ analysis.
6. Conclusions based on the gap analysis.

2. Purpose and scope of report

2.1 Purpose

To provide a broad overview of the legislation applying to flood management in New Zealand, and assess the strengths and weaknesses of this legislative regime.

2.2 Scope of report

This report provides a broad overview of the legislative mechanisms available to local and central government in managing flood risk in New Zealand. This desk top analysis has not involved a detailed analysis of specific provisions in each of the acts and does not provide answers on how the legislation could be amended. Any such recommendations should come after the findings of the various work streams constituting the flooding management review.

Secondly, the report has not been informed by how the ‘flood management’ legislative provisions are being implemented, and the problems and issues that are being encountered. For some readers, particularly practitioners working in the flood management field, this could be seen as a weakness of this report. However, this report needs to be seen as the first stage in identifying what flood management mechanisms are available and what gaps currently exist. Further work is being undertaken by the Ministry for the Environment on identifying current practice issues. Together these pieces of work will help form a picture which will guide decision makers on how the whole flood management regime can be improved.

Given the size of the project, and the brief for this work, a legislative assessment of flooding controls on the conservation estate has not been undertaken. This review also does not include financial asset...
management issues around flood management structures and the requirements of the Public Finance Act 1989.

Lastly, the author of this report is not a lawyer, but a policy adviser with local and central government experience in environmental policy. This report should not therefore be read as a review of the legislative integrity of the ‘flood management’ statutes.

3. Project context

Two major floods in 2004 highlighted that the current approach to flood protection in New Zealand may not be sustainable, with potential high future costs for the country. The Ministry for the Environment has been tasked with leading a cross government programme to review current approaches to river control and flood risk in New Zealand. It is anticipated that the outcome of the review will improve New Zealand’s flood risk management, and be adaptable to local and regional councils and their particular circumstances and communities.

One of the key issues is to assess whether the existing legislative framework provides central and local government with the means to effectively undertake their flood management responsibilities. This report presents the findings of a legislative review of the following statutes:

- Resource Management Act 1991;
- Building Act 2004 (and Building Code 1992)
- Local Government Act 2002
- Land Drainage Act 1908
- Soil Conservation and Rovers Control Act 1941
- Rivers Board Act 1908
- Civil Defence Emergency Management Act 2002

A number of other statutes also influence to a lesser degree flood management. A review has therefore been undertaken of the Public Works Act 1981, the Local Government Official Information and Meetings Act 1987, the Earthquake Commission Act 1993, the Environment Act 1986, and the Local Government (Rating) Act 2002.

4. Project Methodology

4.1 Project approach and scope of work

A review of all relevant and available information relating to the acts referred to above was undertaken as set out in section 9 ‘Bibliography’. Discussions have also been held with relevant Ministry for the Environment staff prior to writing the report, including:

- Brent Limmer, Acting Manager, Liaison, - Project leader of the flood risk management review
- Trecia Smith, senior adviser, Liaison
- Craig Mallett, Manager, RMA Implementation
Christina Wells, Senior Adviser, RMA Implementation

This final report incorporates feedback provided by Brent Limmer and Trecia Smith on two draft reports, and a peer review by Jeff Jones (consultant). The report has not had a legal review by the Ministry for the Environment.

A review of the following papers and reports has also been undertaken:

- cabinet papers and minutes prepared as part of the Resource Management Law Reform process in the late 1980s and early 1990s prior to the introduction of the Resource Management Act 1991;
- cabinet papers prepared as part of the review into flood risk management in New Zealand;
- reports on flood management in New Zealand (a full list is contained in the Section 9 Bibliography).

5. Brief history of flood management legislation

5.1 Control of localised flooding and land drainage

Early attempts at controlling flooding in the 1800s and early 1900s were piecemeal and often involved individual actions to protect homes and properties. This typically involved building stopbanks that sometimes deflected river flow onto neighbouring properties. Given these concerns, the River Boards Act 1908 was enacted which allowed local river boards to manage certain rivers and river systems. The approach was to protect private property rights based on common law principles.

A number of provisions in the Rivers Board Act 1908 have not been repealed. They relate to the ongoing use and management of river boards (see Appendix 1) and their roles and responsibilities. The functions of River Boards and river districts were taken over by catchment boards which in turn were generally taken over by regional councils (under local government re-organisation reforms in 1989).

The Land Drainage Act 1908 was enacted to allow poorly drained land to be developed into productive farmland. Drainage boards were given the necessary powers to organise farmers/landowners into collective action, and, if necessary coerce individuals who held out against the collective ambition. It included the power to undertake and maintain drainage works on private property.

5.2 Integration of flooding and soil conservation

In 1941 the Soil Conservation and Rivers Control Act (SCRCA) was passed to achieve more coordinated flood and erosion control within catchments, and was a response to public concerns over dramatic erosion caused by significant land clearance in New Zealand. The SCRCA’s overriding purpose is to:

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1 A number of drainage acts have been enacted over the years to address localised drainage problems. These include (amongst others), the Taupiri Drainage and River District Act 1929, the Christchurch District Drainage Act 1956, the Rangataiki Land Drainage Act 1951, and the Auckland Metropolitan Drainage Act 1960
make provision for the conservation of soil resources;
prevent damage by erosion; and
to make better provision for the protection of property from damage by floods.

The Act set up a national council (the Soil Conservation and Rivers Control Council) and a number of local catchment control bodies (either Boards or Commissions). Members were either elected locally (Boards) or were appointed by the territorial authorities within the Board’s district (Commissions). All had members appointed by Government. These were usually the senior representative of the Government Departments dealing with public works, lands, agriculture and forests. A supervisory national committee was also established, the National Water and Soil Conservation Organisation (NWASCO) which was serviced by the Water and Soil Division of the Ministry of Works and Development (MWD).

“[The Soil Conservation and Rivers Control Act] was considered a far sighted Act as it established a framework for regional government management and the principle of a required partnership between local, regional and national interests was clearly established. The Act also introduced the concept of integrated rivers control and soil conservation.”

Catchment authorities were funded from local rates and government subsidies allocated through the national council. Catchment authorities embarked on major river control schemes and flood protection works (channels, stopbanks etc.), on occasions, with the technical assistance of the Water and Soil Division of the Ministry of Works and Development, who also effectively imposed minimum standards for such works as the technical overseer (and approver) on Governments behalf, of funded proposals. Most river control and catchment control schemes, dealing with nearly every major catchment/river system in the country were designed and constructed by the Catchment Authorities.

Catchment authorities also used these funds to assist local landowners to carry out flood protection works, river control work, and soil conservation works.

### 5.3 Integration of water and soil management

By the late 1960s and early 1970s public awareness of environmental issues in New Zealand were raised with high profile campaigns against hydro development (i.e. the raising of Lake Manapouri), the clearfelling of indigenous forests, water pollution of urban beaches and harbours etc. The growing pressure for better environmental protection was reflected in a series of new laws, including the enactment of the Water and Soil Conservation Act 1967 (WSCA).

The WSCA took the integrated management approach to water and soil conservation contained in the SCRCA further. It eliminated common law rights on the use of natural water by vesting all rights in the Crown and established a regulatory regime for the administration and control of water resources. An individuals right to use water was now limited to obtaining a water right under the Act. The power

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3 This is information was obtained from State of New Zealand’s Environment 1997, Ministry for the Environment, 1997) http://www.mfe.govt.nz/publications/ser/ser1997/html/chapter8_8.html
4 Other acts included the Clean Air Act 1972, the Town and Country Planning Act 1977 (which reformed earlier Acts), the National Development Act 1979 and so on.
to allocate the use of water was vested in regional water boards, who were generally defined to be the existing catchment authorities, except for Wellington where there was no such body.

The WSCA was the first attempt in NZ to regulate the taking, use, damming and diversion of natural water and the discharge of pollutants into watercourses using a public consultative process, recognising that the whole community had an interest in the outcome and therefore had the right to have a say.

This act was repealed with the enactment of the Resource Management Act 1991 (RMA). The water conservation order provisions contained in the WSCA were transferred into the RMA (see Part 9 Water Conservation Orders) and water rights became water permits.

5.4 Land use planning

The Town and Country Planning Act 1977, whose purpose was the wise use and management of New Zealand’s resources, replaced the Town and Country Planning Act 1953. Conservation and management of natural resources were for the first time given greater weight. District and regional planning was mandatory. Local authorities were able through these statutory mechanisms to place land use controls on development in areas prone to flooding.

5.5 Integrating land, water, soil and air management

The law reforms of the late 1980s and early 1990s culminated in the Resource Management Act 1991. This involved the repeal of 78 acts and regulations, and amendments to numerous others, to provide a single piece of legislation for the management of land, water, soil and air throughout New Zealand. This included the repeal of the Town and Country Planning Act 1977, the Clean Act 1972, the Noise Control Act 1982, the Water and Soil Conservation Act of 1967, and the repeal of certain provisions in the Soil Conservation and Rivers Control Act 1941.5

During this reform process, a number of concerns were raised about the existing approach to natural hazard management. These concerns were summarised in a report titled Natural Hazards Reduction6 as follows:

- a perceived lack of coordination between central government, catchment and other local authorities;
- fragmented and independently developed legislation that contributed to a lack of institutional cohesion and integration; and
- existing agencies not taking full account of all available scientific and practice information.

Natural hazard management was considered to be too focused on event modification initiatives (e.g. physical works such as stopbanks) and loss sharing (insurance), rather than on hazard reduction initiatives such as constraints on land use development in flood prone areas. The paper recommended that a central government unit be set up that would be responsible for coordinating natural hazard management.

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5 Some significant resource management activities are however outside the jurisdiction of the RMA, or have overlapping management regimes. These include the harvesting of fish, shellfish and seaweed stocks which are managed under the Fisheries Act 1996, the logging of indigenous forests on private land which are also managed under the Forests Act 1949, and marine pollution from ships and offshore structures which is also managed under the Maritime Transport Act 1994.

6 This section is based on an analysis undertaken as part of the Resource Management Reform – Phase 2, titled Natural Hazards Reduction, by J Campbell, 30 September (year unknown)
management, and that functions be split between the new regional and district councils. This would involve the development of regional hazard management plans, and registers; and district natural hazard management plans, maps and registers. These mechanisms would be the basis for implementing land use legislation and building codes.

Treasury however held an alternate view on the role of central government in natural hazard hazards management. This involved avoiding government interventions and giving decision making powers to those who are ‘closest to the action’. The setting up of a central government unit was not therefore supported. This view prevailed when the RMA was enacted, with limited central government direction provided except in the area of emergency preparedness and disaster recovery through the existing Civil Defence Act 1983 (which was later repealed and replaced by the Civil Defence and Emergency Management Act 2002).

6. Description of the current flood management regime

6.1 General overview of flood management approaches

There are a number of approaches that can be taken to address flooding risk. These approaches are described below.

Hazard Control

Stopbanks, channel realignment, clearance, and maintenance, designation and/or construction of ponding areas, including flood detention dams, etc. are employed by local government to control flood hazards. The Local Government Act 2002, the Soil Conservation and Rivers Control Act 1941, and to a lesser extent the Rivers Board Act 1908 are the primary acts allowing for physical flood management works to constructed. The Land Drainage Act 1908 and a number of localised drainage acts7 have as their primary purpose to drain land to enable/increase its capability for food production. The drainage schemes also contribute to modifying flood events.

Land use controls

Reducing flood risk can be achieved through preventing or placing controls on certain land uses in flood hazard areas and he contributing catchment, and employing soil conservation practices such as afforestation measures in erosion prone catchments. The main acts responsible for employing land use controls are the RMA, the Soil Conservation and Rivers Control Act 1941, and the Building Act 2004 (and Building Code 1992).

Flooding information and education

A number of agencies provide scientific, practical and educational information about flooding and ways to minimise the impacts of flood events. Specific mechanisms such as land information memoranda (LIMs’) pursuant to the Local Government Official Information and Meetings Act 1987, provide the means by which members of the public can access site specific flood information from territorial authorities (where this is available).

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7 A number of drainage acts have been enacted over the years to address localised drainage problems. These include (amongst others), the Taupiri Drainage and River District Act 1929, the Christchurch District Drainage Act 1956, the Rangataiki Land Drainage Act 1951, and the Auckland Metropolitan Drainage Act 1960.
Flood hazard preparedness, response and recovery

The Civil Defence and Emergency Management Act 2002 provides the legislative framework for national, regional and local communities to prepare for and respond to flooding. A national civil defence emergency plan is required by legislation, as well as regional civil defence emergency management groups consisting of representatives of the relevant regional council and territorial authorities.

Flood loss insurance and financial assistance

The Earthquake Commission under the authority of the Earthquake Commission Act 1993 administers and collects fees from insured people (via their insurance company). This fund of money provides financial assistance to those insured individuals who suffer property damage in a flood event (and any other natural hazard). Individual landowners can also insure their home and contents above the maximum EQC coverage level on a voluntary basis with their insurance provider.

It has been shown that where there are higher levels of insurance and funding put into disaster relief, there is often less incentive for communities to want to invest in expensive flood hazard reduction measures, such as rebuilding away from flood risk areas.\(^8\) This is referred to the *moral hazard*.

6.2 The Role of Central Government

The overview of flood management responsibilities undertaken in the following sections (sections 6.2, 6.3 and 6.4) shows how each of the approaches outlined in section 6.1 above have been applied to central and local government’s respective policy, administrative, and flood mitigation responsibilities. This descriptive analysis enables areas of overlap and inconsistency to be identified and where gaps might exist. Section 6.5 provides a table summary of the analysis undertaken in sections 6.1 – 6.4.

A list of the statutory provisions in each of the ‘flood management’ statutes is contained in Appendix 1.

National Policy

The Ministry of Civil Defence and Emergency Management performs an important role in promoting reduction of risks from natural hazards including flooding and effective and efficient emergency readiness, response and recovery. All Ministers and government agencies have a general responsibility to monitor the implementation of the ‘flood management’ statutes which come under their responsibility. In particular, s24(f) of the RMA requires the Minister for the Environment to ensure the effective implementation of the Act. The Ministry for the Environment (MfE) under the Environment Act 1986 is also required to provide advice to the Government, agencies, and other public authorities on “The identification and likelihood of natural hazards and the reduction of the effects of natural hazards” (s31(c)(iv)).

Whilst the MfE has a general duty to provide advice on flood management issues, there is no central government agency directly responsible for providing policy direction to regional and territorial authorities on flood hazard and land use control measures (which includes wider natural hazards management).

Notwithstanding this, the RMA contains a number of mechanisms through which Central Government can influence and direct the way flood management is implemented by local government. This

\(^8\) Referred to in *Natural Hazards Reduction*, page 5, by J Campbell, 30 September (year unknown)
national guidance must be within the context of the sustainable management of natural and physical resources, and can include national policy statements and national environmental standards. To date neither of these mechanisms have been employed by the Minister for the Environment.

Regulations covering a wide range of technical and administrative issues can also be imposed through orders-in-council. No regulations relating to flood management have been implemented to date.

Government agencies also play an important role in assisting local government and other service providers with managing flood risk. This includes provision of guidance material, training and assistance programmes by the MfE, the Department of Internal Affairs, the Ministry of Civil Defence and Emergency Management, and the Department of Building and Housing (for the recent amendments to the Building Act (2004).

**Ministerial powers of intervention**

The most recent amendments to the RMA (in 2005) further increased the powers available to the Minister for the Environment to address RMA implementation issues. This can include the power to investigate and request information from local government, require a natural resource (regional) plan\(^9\) be produced, or in extreme cases, take control of the RMA functions of a local authority. A local government review function is presently being developed which is likely to use a range of methods to assist local government (and specific local authorities) to improve their RMA performance.

Under section 129 of the Soil Conservation and Rivers Control Act 1941 the Minister of Local Government has the ability to inspect any works, papers or activities etc undertaken by regional councils (formerly Catchment Boards). The Minister has not done so to date, possibly because the Act does not specify what power the Minister has to take further action, if it is deemed necessary.

There is no provision under the Local Government Act 2002 (LGA) for central government to promulgate national instruments. The Act confers on local government a general power of competence to ‘govern’ within its city/district/region provided it does not contravene any statutes. Accordingly, the Minister of Local Government cannot direct local government policy from a national level. The Minister of Local Government has wide powers to intervene if there is a performance issue with a local authority\(^11\).

The Ministers responsible for the Soil Conservation and Rivers Control, Building, Land Drainage, Civil Defence and Emergency Management and Earthquake Commission Acts’ can also intervene in local decision making to varying degrees. There are no ministerial powers of intervention for the Rivers Board Act. In the case of LGOIMA, the Office of the Ombudsman can investigate complaints made about the implementation of the Act by local authorities.

The Office of the Auditor General is responsible for auditing central and local government performance with respect to effectiveness and efficiency, compliance with statutory obligations, waste,
probity and financial prudence. This is a broad enquiry role which could involve inquiring into the way flood management issues are being addressed by a particular agency.

**Direct financial assistance**

The Soil Conservation and Rivers Control Act 1941 provides the means by which grants and loans can be made to local government or private landowners to undertake works for soil conservation and flooding mitigation purposes. As discussed in section 5.2, these transfers enabled catchment boards’, together with local landowners’ to protect land from flooding and erosion. This is the only ‘flood management’ act which provides for this.

As a result of a change in Government policy in 1987, Government ceased providing these direct soil conservation subsidies and grants, continuing only with existing commitments to approved but partially completed schemes such as the Waikato Valley, and the Kaituna Catchment Control Schemes. The Government can and has however appropriated funds at any time to respond to flooding issues such as emergency flood relief (see under ‘Emergency Response to Flooding’ below).

**Monitoring and Research**

The Foundation for Research, Science and Technology (FRST) invests in research, science and technology on behalf of the Government. In its 2005-2008 Statement of Intent, FRST identifies research into “[understanding] and responses to risks faced from New Zealand’s physical hazards,” as one of its work priorities. The extent to which FRST has undertaken research work to meet this priority and address information gaps in flood management is unknown, but not believed to be significant.

One example of flood monitoring is the work undertaken by NIWA. They have established a national Water Resources Database which contains information on lake and river water levels, river flows and sediment loads (NIWA). In collaboration with regional councils, NIWA has developed new techniques for forecasting floods using computer models of atmospheric conditions and river catchments. NIWA also carries out research on climate change and long-term climate cycles and this information is contained in a Climate Change database.

**Emergency Response to Flooding**

The Ministry of Civil Defence and Emergency Management (MCDEM) provides important policy direction and advice to regional and territorial authorities on flood emergency preparedness, response and recovery. The MCDEM becomes involved in emergency response when more than one region is involved, international co-ordination is required or national or central government resources (such as the NZ Defence Force) are required. The Department of Internal Affairs administers funding for emergency expenditure related to accommodating, transporting, feeding and clothing emergency evacuees.

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12 The Officer of the Auditor General operates under the Public Audit Act 2001
14 The National Institute of Water and Atmospheric Research (NIWA) is a Crown Research Institute, which was incorporated as a company on 1 July 1992. Ownership is held equally between two shareholding Ministers (Minister of Crown Research Institutes and Minister of Health).
The MCDEM may appoint a disaster recovery coordinator to work with affected communities and coordinate the necessary programmes of disaster recovery implemented by local authorities, other infrastructure providers and social agencies. The Department of Internal Affairs assesses proposals for recovery funding, making recommendations to central government.

The Ministry of Social Development can also provide assistance to people affected by floods. For example, residents affected by the Manawatu floods were provided with:

- emergency payments for food, clothing and bedding needs;
- reimbursements for items not covered by insurance including food or damaged property;
- payment for hotel, motel accommodation for people evacuated;
- financial assistance for people who have been evacuated and lost their livelihood; and
- Taskforce Green assistance to help with clean-up operations.

**Flood Insurance**

The Earthquake Commission (EQC) is a Government-owned Crown Entity. It collects premiums from insured people and pays out on claims from New Zealand residential property owners for damage caused by a natural hazard. There is currently around $4.73 billion in the Fund, and the Government Guarantee ensures that EQC will always be able to meet its obligations, regardless of the circumstances.

The EQC also encourages and funds research about matters relevant to natural disaster damage and it educates and informs people about what can be done to prevent and mitigate damage caused by natural disasters.15

**6.3 The Role of Regional Authorities (Regional and Unitary Councils)**

**Policy and Regulatory Framework**

*Long Term Council Community Plans (LTCCPs)*

Policy and funding priorities across regional councils are set out in 10 year strategic planning documents called (LTCCPs). Decisions about what flood management schemes and works will be provided within this 10 year period are set out in this document. How they are to be funded each year through the annual plan process from rates, or from other funding mechanisms, should also be set out in the LTCCP.

*RMA Plans*

Regional policy statements (RPSs) and regional plans are two policy tools which enable LTCCP work and funding priorities to be given effect to. The RPS must identify the significant resource management issues for the region. Section 62(1)(i) requires that the RPS state which local authority or authorities within its district is/are responsible for specifying the objectives, policies and methods for the control of the use of land to “avoid or mitigate natural hazards or any group of hazards”. This could include specifying what river or catchment area is to be under the control of a territorial authority(ies).

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15 Further information about the role of the Earthquake Commission can be found at: [http://www.eqc.govt.nz/abouteqc.aspx](http://www.eqc.govt.nz/abouteqc.aspx)
The 2005 amendments to the RMA now require regional and district plans to ‘give effect’ to the RPS (see reference to sections 67(3) and 75(3) in Appendix 1). Prior to this amendment, regional and district plans were only required to be ‘not inconsistent with’ RPSs’. This less directive requirement meant that TAs’ could use different approaches which were not necessarily inconsistent with the often generalised objectives and policies contained in RPSs. It is expected this amendment will enable more effective and integrated regional planning alongside amendments allowing a more sustainable approach to natural resource planning (particularly in the area of water use and allocation).

Regional plans can be developed for any significant resource management issue. A regional coastal plan is however mandatory. No regional council has produced a plan specifically relating to natural hazards, but most plans have sections devoted to natural hazards planning, often including specific flood management provisions. The specific role of district plans is discussed in section 6.4 of this report.

The administration of regional and district plans must balance the often conflicting demands of land use and development in flood hazard areas, the need to provide for flood management works, and the effects of these developments on the environment both within and downstream of the development.

**Delegation and Transfer of Powers**

Section 33 of the RMA allows regional councils to delegate or transfer a function power or duty under the Act to another public authority (which includes a territorial authority, an iwi authority, a government department etc).

It is unlikely that a regional council will delegate a ‘responsibility’ where an integrated approach to flood management and land use controls across territorial authorities is required to effectively address an issue such as flood risk.

Similarly, section 17 of the Local Government 2002 allows regional councils to transfer one or more of its responsibilities under the act to a territorial authority.

**Building Consents**

Regional Councils are now responsible for issuing building consents and Project Information Memoranda (PIMS) for dams. This function also involves monitoring and enforcement powers with respect to dams.

**River and Flood Mitigation Works**

The Soil Conservation and Rivers Control Act 1941 (SCRCA) includes provisions for “the prevention of damage by erosion” and “the protection of property from damage by floods”. Within the general powers (Section 126) of this Act, the principal function of every catchment board is “to minimise and prevent damage within its district by floods and by erosion”. These powers were conferred on regional authorities when they assumed the powers functions and responsibilities of catchment authorities in 1989.

SCRCA allows regional councils’ to maintain and improve watercourses to avoid flooding and erosion, and the power to plant trees etc for soil conservation purposes. The Public Works Act 1981 can be used to compulsorily acquire land for a flood management scheme, soil conservation reserve or other related work. Private landowners can seek financial compensation under the act.
Land Drainage
Regional Authorities also largely inherited the powers functions and responsibilities of land drainage boards and now administer ‘drainage areas’ constituted under the Land Drainage Act 1908 and Local Government Act 1974. Some District Councils are responsible for ‘drainage districts’. There may be a number of drainage districts contained within a wider ‘drainage area’.

There are no joint responsibilities between regional and territorial authorities for land drainage functions. Service delivery functions may be contracted out, but responsibility for any particular area remains with the local authority concerned. Regional authorities can also make bylaws to protect drainage works under the LGA02 (s517).

An amendment to the Land Drainage Act 1908 requires that any actions undertaken pursuant to the Act must comply with the requirements of the RMA.

Monitoring and emergency response
Regional emergency management is the responsibility of a Civil Defence Emergency Management Group (CDEMG). The CDEMG consists of representatives from all territorial local authorities in the region, and the Regional Council. The CDEMG also work with the Police, Fire Service, lifelines organisations and other emergency providers. More information on the role of territorial authorities is set out in 6.4 below.

Regional authorities monitor rainfall, river flows and lake levels, and maintain flood protection works. Council staff also determine the likely rises in river and lake levels downstream, and supply warning information to communities.

Both regional and territorial authorities are required to monitor the state of the environment. Every five years Councils must make available to the public the results of its monitoring of the effectiveness of its plans. Resource consents must also be monitored. This monitoring ensures that plan policies and rules remain effective in addressing issues such as flood management.

Floodplain/catchment management
Regional Authorities can use other non-statutory mechanisms such as development and implementation of floodplain management plans prepared in accordance with Councils LTCCP’s. This mechanism allows for the integration of flood management activities across statutory and administrative jurisdictions.

Advice and Education
Regional Authorities can provide guidance, training and assistance programmes to promote good flood management practices and raise community awareness. Regional Authorities must share information with district/city councils to help them manage development in known flooding areas.

6.4 The Role of Territorial Authorities

Policy and Regulatory Framework
Similar to Regional Authorities, territorial authorities (TAs) are required to identify their policy and funding priorities in their LTCCPs, and give effect to them through the annual plan process.
One of the RMA tools to give effect to flood management policy is the district plan. In developing
district plans, TAs must also give effect to national and regional policy, the latter as expressed through
the RPS, the Regional Coastal Plan and any other proposed or operative regional plans. In doing this,
TAs can employ a range of land-use controls to address flood management issues. This can include:

- identifying areas prone to flooding on planning maps and restricting land use development in
  these areas;
- requiring building setbacks and minimum floor levels in excess of the Building code
  requirement (refer to Clause E1); and
- requiring earthwork controls, site bunding and adequate drainage.

Where resource consents are required by the district plan, TAs’ can use a number of mechanisms to
avoid, remedy or mitigate flooding effects, and alert future owners of the flood risk. This could
include one or more of the following:

- conditions of consent (minimum floor levels, siting requirements, earthworks etc.)
- consent notices on subdivision consents;
- financial contributions (under the RMA) or development contributions (under the LGA02);
- bonds requiring certain development to be undertaken;
- a covenant or memorandum of encumbrance on a certificate of title alerting the owner and
  future land owners to flooding issues;
- a requirement to provide an esplanade reserve or esplanade strip adjacent to a river, lake or the
  coast; and
- monitoring and review conditions

**Urban stormwater and land drainage**

TAs manage a large network infrastructure for disposing of stormwater. Under the Local Government
Act 2002 (LGA) (which has retained the urban stormwater provisions contained in the LGA74 (see
sections 446-517)). TAs can unblock and modify existing public and private stormwater drains or
require that these works be undertaken by the owner or occupier where there is a drainage nuisance, or
where there is likely to be one. The act also allows TAs to construct new stormwater drains on public
and private land, if required. Private landowners can also be required to put in stormwater drains. The
stormwater drains could be within a drainage area or not.

Territorial authorities can also make bylaws to protect drainage works under the LGA (s517).

Under the Land Drainage Act, TAs have similar powers to maintain and construct new drains. This is
primarily to allow the draining of wet land to enable land to be used for farming and urban purposes.

Under both acts, landowner compensation can be payable (pursuant to the Public Works Act 1981)
where private land has been taken for stormwater or drainage purposes.
**Building Act 2004**

The controls within the Building Act 2004 ensure new development is compatible with the prevailing flood hazard, and that the overall level of flood damage will not be increased significantly. Examples of the types of controls include:

1. restrictions on new buildings in flood and erosion-prone areas. The building restrictions are registered on the certificate of title (sections 72-74)
2. requiring building works to address on-site stability and drainage issues
3. requiring minimum floor levels (clause E1 (Surface Water) of the Building Code), and includes:
   - ensuring all building on land that is being subdivided complies with the Building Code 1992
   - requiring development contributions be paid prior to issuing a code compliance certificate for a building; and
   - preventing the issue of building consents before a resource consent has been obtained.

If a landowner wants to undertake work on a building they can request any relevant information held by the local authority about the building. The information will be provided in *project information memoranda* (PIMs) and could contain (among other things) details of existing stormwater or wastewater utility systems on, or adjacent to, the site of the proposed building work. A PIM must be issued with every building consent.

**Information on flooding**

*Land Information Memoranda* (LIMs)\(^{16}\) allow members of the public to obtain any information a territorial authority may have on flooding (amongst other things) with respect to a particular site or sites. The territorial authority may request or obtain flood management information from a regional authority to enable this function to be undertaken. LIMs are commonly sought when a member of the public is purchasing a property.

Territorial authorities are also an important source of advice and guidance on flood management issues.

**Monitoring and Emergency Response**

The state of the environment and district plan monitoring requirements specified in s35 of the RMA are the same as outlined for Regional Councils above in section 6.3.

As mentioned in 6.3 above, every territorial authority is part of a Civil Defence Emergency Management Group (CDEMG). A flood can become a local civil defence emergency if the person appointed by the CDEMG considers that an emergency has occurred.

Most TA’s have an important role in civil defence emergencies and work with the Regional authorities’ and emergency services, essential service providers (for example, communication and electricity suppliers), volunteer organisations’ and people with specialist information (such as the MetService, or the Regional Council Flood Protection Group).

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\(^{16}\) See Appendix 1 - section 44 of the Local Government Official Information and Meetings Act 1987
6.5 **Summary of the flood management legislation and roles**

The tables below provide a summary of the analysis presented in 6.1 – 6.4, based on functional responsibilities required under each of the main ‘flood management’ acts. They have been grouped together according to which government ministry or department is administratively responsible for the act.

**KEY**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>RMA</td>
<td>Resource Management Act 1991;</td>
</tr>
<tr>
<td>SCRCA</td>
<td>Soil Conservation and Rovers Control Act 1941</td>
</tr>
<tr>
<td>LD Act</td>
<td>Land Drainage Act 1908</td>
</tr>
<tr>
<td>LGOIMA</td>
<td>Local Government Official Information and Meetings Act 1987</td>
</tr>
<tr>
<td>RB Act</td>
<td>River Boards Act 1908</td>
</tr>
<tr>
<td>CDEMA</td>
<td>Civil Defence and Emergency Management Act 2002</td>
</tr>
<tr>
<td>EQC Act</td>
<td>Earthquake Commission Act 1993</td>
</tr>
</tbody>
</table>

The symbols mean the following

- ✓ the act provides central government, regional or territorial authorities with the legislative authority to undertake a certain action.
- ✗ the Act could potentially have provided for this authority but has not.
- n/a means that this authority is not provided and given the purpose of the Act, is not relevant.
### Central Government Flooding Roles and Responsibilities

<table>
<thead>
<tr>
<th>Function/Mechanism</th>
<th>RMA</th>
<th>SCRCA</th>
<th>BA &amp; Code</th>
<th>LGA02</th>
<th>LD Act</th>
<th>LGOIMA</th>
<th>Rivers Board Act</th>
<th>CDEMA</th>
<th>EQC Act</th>
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<td>Dept of Building &amp; Housing</td>
<td>Dept of Internal Affairs</td>
<td>Min of Civil Defence &amp; Emergency</td>
<td>Earthquake Commission</td>
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### Regional Government Flooding Roles and Responsibilities

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<th>LGA02</th>
<th>LD Act</th>
<th>LGOIMA</th>
<th>Rivers Board Act</th>
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<td>Design build and maintain flood and catchment control schemes and works</td>
<td>Provide &amp; maintain soil conservation reserves</td>
<td>Issue PIMS &amp; building consents for dams; code compliance certificates; certificates of acceptance</td>
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### Regional Government Flooding Roles and Responsibilities

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### Territorial Authority Flooding Roles and Responsibilities

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<th>BA &amp; Code</th>
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<td>4. Compensation</td>
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<td>5. Enforcement Powers</td>
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<td>✓</td>
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</table>

- TAs and Regional Councils must have civil defence emergency (group) plan.
- Provide resources and services in civil defence emergency.
- As part of the CDEMG.
7. Gap Analysis

7.1 Comprehensive basket of flood management tools

There is no single statute managing flood risk in New Zealand. Flood management is part of an overall response to addressing natural hazards in New Zealand. It encompasses issues from land development and management, land use controls, funding of flood management and control works, emergency response and recovery, and flood protection insurance.

The descriptive analysis undertaken in section 6 shows that flood management is largely controlled by the Resource Management Act 1991, the Soil Conservation and Rivers Control Act 1941 (SCRCA), the Local Government Act 2002 (LGA), the Building Act 2004, and the Civil Defence and Emergency Management Act 2002. Most of the provisions in the Rivers Board Act 1908 have been repealed or the functions superceded by subsequent legislation. As a consequence it now has little practical application.

These acts are all subservient to the provisions of the RMA. Reference to the Public Works Act 1981 has also be inserted into these acts, thereby enabling private land to be acquired (and compensation sought) for flood management purposes. The primary role of the Land Drainage Act 1908 is to allow land to be drained for food production and ‘urban’ purposes. However, the many drainage schemes which currently operate in New Zealand also play an important part in controlling flooding given that in extreme flood events, lack of drainage leads to flooding of the subject land.

Together these statutes provide a range of flood risk management policy and implementation tools as follows:

National Policy Guidance
1. The RMA enables Central Government to provide national direction to Local Government on particular aspects of flooding. However this guidance (both statutory and non-statutory) can only be provided within the context of the purpose and principles of the RMA, which relates to managing flood risk in the context of the sustainable management of natural and physical resources. This can include national policy statements, national environmental standards, and best practice guidance. These are options open to the Government as part of this flood management review.
2. The provision of various flood mitigation works is more appropriately managed under the Local Government Act 2002 and the Soil Conservation and Rivers Control Act 1941. There are no national statutory policy instruments available to Central Government to promote certain flood mitigation outcomes.
3. There are however powers for Ministers to intervene in local decision making, and to appropriate funds to facilitate or undertaken flood mitigation works. It is debateable whether this inability to promote certain flood management outcomes through promulgating national policy is a ‘weakness’ in the flood mitigation regime. This issue cannot be adequately addressed in this report, but is worth considering as part of the overall review of flood management.

Funding Assistance Mechanisms
4. The SCRCA enables Government to provide funding to address soil conservation and flood management issues, either directly to land owners or through regional authorities (catchment authorities. Since 1987, most direct funding/assistance to landowners have been provided by regional authorities.
5. The Government may also make appropriations at any time, particularly for emergency flood relief assistance.

Local Government Decision Making

6. Flood management policy responsibilities have largely been devolved to local government under the RMA, and the LGA. These acts require local authorities to set local and regional policy through their LTCCPs, regional policy statements (RPSs), regional plans and district plans.

7. The 2005 amendments to the RMA have strengthened the role of RPSs with respective to providing more effective regional planning. This could include more direction to territorial authorities on flood management.

8. LTCCP policies and initiatives are also given effect to through asset and flood management plans and through the provision of flood and river management, stormwater and drainage infrastructure.

9. The provision of these flood and drainage works by local authorities and private landowners are controlled through the resource and building consent regimes.

7.2 Ministerial powers of intervention

It is common for more recent legislation to contain provisions allowing ministerial intervention as a matter of course, or where it is deemed necessary due to performance related issues. The Rivers Board Act 1908 and Land Drainage Act 1908 do not however provide this legislative authority to Ministers of the Crown. This possibly reflects the prevailing nature of government in the early 1900s, in that central government did not have the resources or desire to intervene and take over local authority functions.

Secondly, they were constituted to, among other things, act as a conduit for central govt funding to enable the “works” to provide the then perceived “national” benefit. Local authorities (including drainage boards) were therefore given quite significant operational powers to go about their activities without the need to either consult or seek the approval of central government.

This gap in responsibility is not a significant issue as all actions under both acts are subject to the RMA, which in turn is overseen by the Minister for the Environment.

7.3 Ensuring consistency between different statutes

Section 5 of this report gives a broad overview of the evolution of flood management legislation in New Zealand. It shows how flood and natural hazards management has advanced over the years from protecting private property from flooding (Rivers Board Act 1908) to sustainably managing public and private use of land, water and soil resources to minimise the impact of flooding on the environment (RMA). Given this legislative ‘evolution’, it is not surprising that the ‘old’ and the ‘modern’ flood management acts have different legislative intents. More recent acts allow a greater range of policy and implementation mechanisms to be employed based on:

- a consultative approach to finding solutions and agreeing outcomes (eg RMA and LGA);
- less prescriptive and more enabling provisions;
- less direct government funding (eg SCRCA) and more emphasis on local communities funding and making the decisions that affect their communities; and

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• a balanced approach to assessing the impact of new flood management schemes and works on the 
environment by taking into account biophysical considerations etc under the RMA.

Important amendments have also been made to all of the main flood management acts, including the 
Drainage Board Act 1908 and the Rivers Board Act 1908, to require any actions undertaken in accordance 
with the Act to also comply with the requirements of the RMA.

7.4 Separation of functions

Flood Management
Under the RMA, regional councils’ have the primary responsibility to manage the effects of flooding and 
natural hazards. Regional councils in consultation with territorial authorities, must specify in the Regional 
Policy Statement which authority is responsible for avoiding or mitigating natural hazards or any group of 
hazards. Section 33 of the RMA allows regional councils to delegate or transfer a function power or duty 
under the Act to another public authority (which includes a territorial authority, an iwi authority, a 
government department etc).

Stormwater Drainage
Territorial authorities undertake the majority of the stormwater works within urban areas through the 
provision of drainage infrastructure, including pipes, connections and disposal systems. This is one of 
their functions conferred on territorial authorities by the Local Government Act 2002 and the Health Act 
1956. Territorial authorities usually require land developers to install the infrastructure and connect to the 
public drains when land is being subdivided in accordance with the district plan. If a resource consent is 
not required, the building consent process ensures that buildings and sites are adequately provided with 
drainage and connections to the urban stormwater network (B1.3.3 and B1.3.7 of the Building Code 
19912).

Urban streams and open drains which run through many urban areas, and are not part of any river or 
catchment scheme are the responsibility of regional councils’. However, regional councils’ may transfer 
responsibility for the ongoing use and maintenance of these drains and watercourses to territorial 
authorities.

Land Drainage
Local authorities also manage large drainage schemes (Regional Councils) and drainage areas (Territorial 
Authorities) established under the Land Drainage Act 1908 and under the Local Government Act 2002. 
These schemes are designed to keep land freely drained to ensure land can be developed and used for 
productive purposes.

Jurisdictional responsibilities
This separation of powers relating to drainage and flood management can however create uncertainties at 
the boundaries. That is, at what point should the regional council address flooding issues which may be 
exacerbated by development occurring at a local level. There are a number of mechanisms in the RMA to 
require information sharing and a consultative approach between local authorities. There is also an ability 
to transfer statutory responsibilities between the local authorities where this is considered appropriate (as 
referred to above). The legislative mechanisms are therefore there to ensure integration across local 
government. Whether this occurs, or how successful this might be, is more likely to be a practice rather 
than a legislative issue.

18 One example of this has occurred in Wellington, where the Wellington Regional Council has transferred this 
responsibility to Wellington City Council. They have however retained control over Porirua, Karori and Makara 
Streams.
7.5 Administration of flood management statutes

Over the years many of the provisions in the ‘older’ statutes have been repealed as the flood management and local government/central government administrative arrangements have changed, and been superceded by provisions in the ‘modern’ statutes. Whilst the retention of these older statutes is legislatively ‘untidy’, it does not hinder the ability of central and local government to employ a range of tools (as discussed in 7.1 above) to effectively manage flood risk. This legislative untidiness could be addressed as part of any legislative rationalisation in the future.

There are a number of other issues which create legislative uncertainties.

1. The older acts provide local authorities with more powers to enter onto and use land for drainage and flood mitigation purposes than is provided for under the LGA.
2. Fines in the older acts are minor and do not act as a disincentive to prevent unlawful activities, whereas fines are more significant and comprehensive under more modern acts.
3. There are many redundant provisions which are superceded by later legislation. Other drafting errors/inconsistencies such as the reference to the Rating Powers Act 1988 in the Land Drainage Act are incorrect, as the act has now been replaced by the Local Government (Rating) Act 2002.
4. References to drainage boards, river boards and catchment boards in a number of acts are confusing as their functions/responsibilities are now vested in regional councils and territorial authorities.
5. The language in the older acts is often difficult to understand and the drafting is not consistent with modern conventions.
6. The large number of sections that are repealed in the Rivers Board Act 1908, Drainage Boards Act 1908, and the Soil Conservation and Rivers Control Act 1941 make them difficult to understand and read on their own and do not assist in an overall understanding of the integrated policy/structural approach that is required for sustainable flood management.

These issues are important, but they are not in themselves sufficient to warrant a legislative review being undertaken immediately.

8. Conclusion

Recent severe flood events and significant property loss and disruption to communities has prompted the government into considering whether flood protection in New Zealand is sustainable now and into the future. One of the key issues is to assess whether the existing legislative framework provides central and local government with the means to effectively carry out its flood management responsibilities.

The twelve ‘flood’ management statutes analysed in this report cover a broad range of private property and public good issues relating to land development and management, land use controls, flood management funding, flood emergency response and recovery, and flood protection insurance. Each of the statutes perform a distinct and important role in managing this flood risk.

The analysis shows that the existing flood management statutes provide a range of policy and implementation tools required to manage flood risk in New Zealand. In particular, the Resource Management Act 1991 provides the legislative mechanisms for Government to provide national guidance to Local Government on any particular aspect of flooding within the context of sustainable management.
This could include national policy statements, national environmental standards, and best practice guidance. These instruments could assist in providing further clarity and direction to local government in the way flood risk is addressed in regional policy statements, regional plans and district plans. This remains an option open to the Government as part of this flood management review.

There are however no national statutory policy instruments available to Central Government to promote certain flood mitigation outcomes. The Ministers of Local Government and the Environment can however intervene in local decision making, and to appropriate funds to facilitate or undertaken flood mitigation works (respectively). It is debateable whether this inability to promote certain outcomes through promulgating national policy is a ‘weakness’ in the flood mitigation regime. This issue cannot be adequately addressed in this report, but is worth considering as part of the overall review of flood management.

These statutes present a complicated and sometimes confusing legislative picture. Consistent administration of these acts is helped by regional councils and territorial authorities having the primary responsibility for setting regional and local policy and ensuring it is implemented. Central government has generally had a limited role in flood management over the last 15 - 20 years with guidance being mainly provided by the Ministry for the Environment as part of its responsibility to administer the Resource Management Act 1991, and the Ministry of Civil Defence and Emergency Management which administers the Civil Defence and Emergency Management Act 2002.

Given the different intent and purpose of the acts and the age of some of the legislation, it is not surprising that some of the legislation is difficult to understand and that inconsistencies exist. If government decides to undertake a legislative review at some stage in the future, it would present a useful opportunity to address these administrative issues.
9. Bibliography


14. Ministry for the Environment website [www.mfe@govt.nz](http://www.mfe.govt.nz)


Appendix 1

Summary of provisions in the ‘flood management’ statutes

Explanation
These summary tables contain information and references to sections of each of the acts as they relate to managing flood risk. They have been grouped according to which government agency is responsible for administering the particular act.

<table>
<thead>
<tr>
<th>Statutes Administered by the Ministry for the Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topic</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>Definition</td>
</tr>
<tr>
<td>Part II- Purpose and Principles</td>
</tr>
<tr>
<td>Adverse effects – general</td>
</tr>
<tr>
<td>Functions and powers of Minister for the Environment</td>
</tr>
</tbody>
</table>
| Functions of regional councils | s30 | Control the use of land for (among other things):-  
  • soil conservation purposes  
  • the avoidance or mitigation of natural hazards  
  Control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body  
  Manage the strategic integration of infrastructure with land use. |
| Functions of territorial authorities | s31 | Control of any actual or potential use, development, or protection of land, including for the purpose of (among other things)-  
  The avoidance or mitigation of natural hazards. |
| Monitoring | s35 | Duty to gather information, monitor and keep records on:  
  • the state of the environment  
  • the effectiveness of its plans  
  • the exercise of its functions, powers and duties under the Act  
  resource consents |
| National Environmental standards (NES) | s43-44 | The Minister for the Environment can prepare a rules based NES on any environmental matter, including natural hazards/flooding |
| National Policy Statement (NPS) | s45-55 | The Minister for the Environment can prepare a NPS to provide policy based direction to local authorities on a matters of national significance on any environmental matter, including natural hazards/flooding. |
| Regional Policy Statements (RPS) | s60-62 | Must state the significant resource management issues for a region, and the objectives, policies and methods for achieving them  
  Must state the local authority responsible for controlling the use of land to avoid or mitigate natural hazards. |
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Plans s63-70</td>
<td>Regional plans must give effect to a RPS. Regional council should consider the need to prepare a</td>
</tr>
<tr>
<td></td>
<td>regional plan based on (among other things) any threat from natural hazards, and the use of land</td>
</tr>
<tr>
<td></td>
<td>or water that has actual or potential adverse effects on soil conservation.</td>
</tr>
<tr>
<td>District Plans s72-77</td>
<td>District plans must give effect to a RPS (s75(3)). May impose more restrictive rules on the</td>
</tr>
<tr>
<td></td>
<td>protection of property from surface flooding than is provided by the Building Act.</td>
</tr>
<tr>
<td>Compensation s85</td>
<td>A person may challenge a plan provision which renders land incapable of reasonable use.</td>
</tr>
<tr>
<td>Compulsory acquisition of land s86</td>
<td>The Crown, local authorities or requiring authorities may compulsorily acquire land under the</td>
</tr>
<tr>
<td></td>
<td>Public Works Act 1981</td>
</tr>
<tr>
<td>Land subject to natural hazard s106</td>
<td>Local authority may grant or refuse subdivision consent where land is subject to a natural</td>
</tr>
<tr>
<td>Resource consent conditions, bonds and</td>
<td>Conditions may be imposed on consents to off-set adverse environmental effects. This also</td>
</tr>
<tr>
<td>covenants s108</td>
<td>includes the power to impose financial contributions, bonds and covenants on certificates of</td>
</tr>
<tr>
<td></td>
<td>title.</td>
</tr>
<tr>
<td>Ministerial powers of intervention s140-</td>
<td>The Minister may choose a number of different intervention options (s141A(4)) when a proposal</td>
</tr>
<tr>
<td>s150AA</td>
<td>is considered to be of national significance.</td>
</tr>
<tr>
<td>Designations s166-186</td>
<td>Local authorities may designate land. Regional Councils designate land for flood management</td>
</tr>
<tr>
<td></td>
<td>purposes. S186 allows compulsory acquisition of land under the Public Works Act 1981.</td>
</tr>
<tr>
<td>Water Conservation Orders s199-s217</td>
<td>Provides for the protection of any water body considered to have outstanding amenity or</td>
</tr>
<tr>
<td></td>
<td>intrinsic values. Controls can be placed on the quantity, quality, rate of flow, or level of the</td>
</tr>
<tr>
<td></td>
<td>water, maximum and minimum water levels, and the maximum allocation for abstraction etc.</td>
</tr>
<tr>
<td></td>
<td>These provisions were transferred from the Water and Soil Conservation Act 1967 (now repealed).</td>
</tr>
<tr>
<td>Conditions of subdivision consent s220 and</td>
<td>Conditions may be imposed to manage the risk of flooding and inundation. A consent notice may</td>
</tr>
<tr>
<td>s221</td>
<td>be placed on the certificate of title indicating the need to comply with a condition of consent</td>
</tr>
<tr>
<td></td>
<td>on an ongoing basis.</td>
</tr>
<tr>
<td>Esplanade reserves/strips, and local purpose</td>
<td>Reserves and esplanade reserves/strip may be taken at the time of subdivision to mitigate</td>
</tr>
<tr>
<td>reserves S229-s237, &amp; s239</td>
<td>against natural hazards (amongst others).</td>
</tr>
<tr>
<td>Compliance and Enforcement s314-s325, &amp;</td>
<td>Enforcement orders may be issued by a local authority or a private citizen against any person</td>
</tr>
<tr>
<td>343A-D</td>
<td>or organisation contravening the Act, a resource consent, a plan provision, etc.</td>
</tr>
<tr>
<td></td>
<td>An abatement notice can have more immediate effect and may only be issued by an enforcement</td>
</tr>
<tr>
<td></td>
<td>officer.</td>
</tr>
<tr>
<td></td>
<td>Infringement notices can be issued for a range of offences and involve a fine of between $300 -</td>
</tr>
<tr>
<td></td>
<td>$1,000.</td>
</tr>
<tr>
<td>Emergency works &amp; state of emergency s330-</td>
<td>Any local authority or consent authority (which includes a requiring authority and the public</td>
</tr>
<tr>
<td>s331</td>
<td>agency with financial authority for a public work), may undertake emergency works without</td>
</tr>
<tr>
<td></td>
<td>having the necessary resource consent.</td>
</tr>
<tr>
<td></td>
<td>The need for RMA authorisations does not apply to a person's exercising emergency powers under</td>
</tr>
<tr>
<td></td>
<td>a state of emergency.</td>
</tr>
<tr>
<td>Powers of entry s332-s335</td>
<td>An enforcement officer may (among other things) enter onto land or buildings to determine</td>
</tr>
<tr>
<td></td>
<td>whether any part of the Act, a rule in a plan, a resource consent etc is being complied with.</td>
</tr>
<tr>
<td>Consultation between Regional and territorial</td>
<td>Schedule 1, CI 3A Every 3 years local authorities in a region must agree a consultation process</td>
</tr>
<tr>
<td>authorities</td>
<td>for reviewing or making changes to a RPS.</td>
</tr>
<tr>
<td>Assessment of Environmental Effects</td>
<td>Schedule 4 Specifies what should be included in an Assessment of Environmental Effects (AEE).</td>
</tr>
<tr>
<td>(AEE)</td>
<td>This is required when submitting an application for a resource consent, designation etc.</td>
</tr>
</tbody>
</table>
### Soil Conservation and Rivers Control Act 1941

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catchment Boards</td>
<td>Relevant sections repealed</td>
<td>Established Catchment Boards and Catchment Commissions. In 1989 under local government amalgamation and reform. Regional Councils are now deemed to be catchment boards.</td>
</tr>
<tr>
<td>Controls on soil conservation reserves</td>
<td>s16 &amp; s17 -</td>
<td>Regional Councils (RCs) are given the authority to “best conserve the soil of the reserve and prevent injury to other land.” A person is liable to a fine up to $1,000 for injuriously interfering with a soil conservation reserve (such as lighting fires and allowing stock in the reserve).</td>
</tr>
<tr>
<td>Compulsory acquisition of land for soil conservation reserves</td>
<td>s19</td>
<td>This refers to the powers in the Public Works Act 1981 to compulsorily acquire land and compensate the landowner for the taking of reserves for soil conservation purposes.</td>
</tr>
<tr>
<td>Ministerial grants and loans</td>
<td>s30</td>
<td>The Minister can provide grants and loans for soil conservation purposes and flood management.</td>
</tr>
<tr>
<td>Land improvement grants</td>
<td>s30A</td>
<td>Loans to improve soil conservation values may be made to individual landowners, with associated conditions. This agreement would be noted on the certificate of title.</td>
</tr>
<tr>
<td>Consideration of disputes</td>
<td>s33A</td>
<td>The Minister may hear matters referred to him/her, or appoint a tribunal. Decisions may be appealed to High Court on points of law.</td>
</tr>
<tr>
<td>General powers of regional councils</td>
<td>s126</td>
<td>RCs have the power to prevent flooding and soil erosion and promote soil conservation.</td>
</tr>
<tr>
<td>Ministerial powers</td>
<td>s129</td>
<td>Minister can require full information on any works, papers or matters undertaken by RCs.</td>
</tr>
<tr>
<td>General maintenance and works to watercourses</td>
<td>s133 &amp; s137</td>
<td>Power to maintain and improve watercourses to avoid flooding/erosion. Required to give one months notice to a local authority/drainage board and affected landowners of its intention to undertake the work. Disputes handled by an independent assessor. No rights of appeal. Emergency works not subject to these notification requirements.</td>
</tr>
<tr>
<td>Aforrestation</td>
<td>s134</td>
<td>Power to plant trees and other plants for soil conservation purposes, and may destroy animals which may damage the trees/plants.</td>
</tr>
<tr>
<td>Costs of capital works</td>
<td>s138</td>
<td>RCs may apportion costs of undertaking works to individual landowners.</td>
</tr>
<tr>
<td>Powers to approve Drainage and River districts</td>
<td>ss141 - 143</td>
<td>RCs can rationalise or abolish Drainage and River districts (subject to final approval by the Minister of Local Government. RCs have the authority to oversee operations of Drainage and River Boards.</td>
</tr>
<tr>
<td>Offences and Legal Proceedings</td>
<td>Part 9</td>
<td>Damages to water courses and works can result in fines up to $10,000.</td>
</tr>
</tbody>
</table>

### Environment Act 1986

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>General</td>
<td>Established the Parliamentary Commissioner for the Environment (PCE) and the Ministry for the Environment (MfE)</td>
</tr>
<tr>
<td>Definition of natural hazard</td>
<td>s2</td>
<td>Includes managing flooding.</td>
</tr>
<tr>
<td>Role of the PCE</td>
<td>s17</td>
<td>The PCE is established as an officer of parliament and therefore acts as an independent check on government. The Act requires that the PCE assess the capability, performance and effectiveness of NZ’s environmental administration.</td>
</tr>
<tr>
<td>Role of the MfE</td>
<td>s31</td>
<td>Amongst other things, the MfE must advise the Minister on the effective operation of the Acts it administers (including the RMA); and advise on the identification and likelihood of natural hazards and the reduction of natural hazards.</td>
</tr>
</tbody>
</table>

### Statutes Administered by Department of Internal Affairs

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic planning - community outcomes</td>
<td>s91</td>
<td>Not less than every six years a LA must identify in consultation with its community outcomes for the intermediate and long-term future of its district or region.</td>
</tr>
<tr>
<td>Strategic planning tool - LTCCP</td>
<td>S93</td>
<td>The Long term Council Community Plan (LTCCP) describes the activities of the LA over a 10 year period and how these activities are to be funded and implemented. This must be...</td>
</tr>
</tbody>
</table>
**Overview of Flood Management Legislation in New Zealand**

Ministry for the Environment

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>General</td>
<td>Enables drainage boards to be constituted and provided with powers to establish drainage schemes. This can be done through an Order in Council or under Part 29 of the LGA 2002 (see above). After the 1989 local government reforms many of the drainage boards, which are now drainage districts, became the responsibility of regional councils. Drainage areas came under the control of the relevant territorial authority. A number of provisions have been repealed including the ability of the Board to levy rates.</td>
</tr>
<tr>
<td>Link to RMA</td>
<td>s2A</td>
<td>Any actions under the Act must comply with the requirements of the RMA</td>
</tr>
</tbody>
</table>
| Powers of Drainage Board | s17 | LAs have the following powers:  
- to maintain, repair, deepen etc existing drains and watercourses or outfall for water in or beyond the drainage district  
- make any new watercourse needed to drain the district  
- take, purchase or hold land within or beyond the district to give effect to the purposes of the Act  
- Without payment or previous tender use land within the district for the purpose of taking earth, stone etc, and use any adjacent land for making temporary roads etc. |
| Rights to access land and undertake works | s17-s19 | LA has rights to enter onto land, undertake surveys and earthworks. “Reasonable compensation” must be paid for the use of the private land and for disturbance/damage caused. Any objections heard by a District Court Judge and two |

Bylaw making power for flooding and drainage works

- s145 - 149 (refer also to s517)
- Territorial authorities (TAs) have a general power to make bylaws to address nuisance, public health and safety and offensive behaviour.

Regional councils have narrower bylaw making powers. Specific reference is made to bylaws for flood protection and flood control purposes, and to protect its assets associated with managing this function.

Compulsory acquisition of land for public works

- s189 & s190
- LAs may take land and pay compensation to landowners (in accordance with the Public Works Act 1981) for public works such as flood mitigation works.

Enforcement powers

- Part 8 Subpart 2
- LAs have wide ranging powers to enter property, take enforcement actions, require problems are rectified or undertake work (and require repayment) to address the problem.

Development Contributions

- Part 8 Subpart 5
- TAs can require a financial contribution towards the cost of providing infrastructure, such as drainage and flood management systems. This can be taken through the resource or building consent processes, or through a service connection fee.

Ministerial powers of Intervention

- Part 10
- Minister has a range of powers to intervene and take control of a local authority’s functions.

**Parts retained from the Local Government Act 1974**

| Power to require drainage on private land | s446, & s459-462 | Where a nuisance is occurring due to flooding, pollutants etc on private property a local authority (LA) may:  
- enclose or alter any watercourse;  
- require a landowner to put in drains; and  
- make a private drain a public drain. |

Drainage powers and flood prevention

- Part 29 (s501F-s517ZM)
- Allows the establishment of drainage areas. TAs can undertake land drainage and river control works, including the removal of obstructions from drainage channels and watercourses from public and private land.

Bylaws to protect drainage works

- s517
- LAs may make bylaws to protect the ongoing use of drainage systems.

Links with RMA and SCRCA Acts

- s517A
- Ensure linkages are made between the Soil Conservation and Rivers Control Act and the RMA. Allows divestment of drainage and water race schemes to LAs.
### Overview of Flood Management Legislation in New Zealand

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>New drains in private land</td>
<td>s21 &amp; s29</td>
<td>LA can construct new drain on private land provided one month's notice given to landowner. Right of objection to the Board and then to a District Court Judge and two assessors. Compensation can be sought in accordance with provisions of the Public Works Act 1981.</td>
</tr>
<tr>
<td>Rights to use Board drain</td>
<td>s26</td>
<td>A fine of up to $66 must be paid by any landowner not authorised to use/damage a board drain.</td>
</tr>
<tr>
<td>Power of local authorities where there is no drainage district</td>
<td>s61 &amp; s62</td>
<td>LAs have the power to require owners or occupiers to remove any obstruction or potential obstruction to a water course or drain regardless of whether it is in a drainage district.</td>
</tr>
<tr>
<td>National intervention</td>
<td>s64</td>
<td>Government may require a local authority to construct new drains and/or take over the control of private drains.</td>
</tr>
<tr>
<td>Drainage works by private citizens</td>
<td>s67, s80</td>
<td>These sections allow landowners to negotiate and undertake drainage works and natural watercourse diversions where flooding on one property is being caused by neighbouring land uses.</td>
</tr>
</tbody>
</table>

**Rivers Board Act 1908**

**Administered by:** Department of Internal Affairs

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of River boards, river districts and Soil Conservation and Rivers Control Council</td>
<td>Relevant sections repealed</td>
<td>Most sections repealed by subsequent legislation. Retained powers relating to river boards. Most river boards became catchment boards, which then became regional councils.</td>
</tr>
<tr>
<td>Object of Act</td>
<td>s10</td>
<td>This relates to the promotion of soil conservation, erosion control and prevention of damage by floods</td>
</tr>
<tr>
<td>Link to RMA</td>
<td>s10A</td>
<td>Any actions under the Act must comply with the requirements of the RMA.</td>
</tr>
<tr>
<td>Formation of River Boards</td>
<td>s8-s11</td>
<td>The ability to form new river boards has been repealed.</td>
</tr>
<tr>
<td>Administering existing River Boards</td>
<td>s16-s72</td>
<td>If river boards still existed, these sections would allow for the running of them with respect to elections, board proceedings, elections, and powers and duties.</td>
</tr>
<tr>
<td>Powers to manage rivers</td>
<td>s73 – s86</td>
<td>These powers are similar to the powers contained in the SCRCA. They relate to river boards having control of all river, streams and watercourses in the district (which have transferred to regional councils).</td>
</tr>
</tbody>
</table>

**Local Government Official Information and Meetings Act 1987**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to flood hazard information held by territorial authorities</td>
<td>s44</td>
<td>Upon request, a member of the public can obtain a Land Information Memorandum (LIM) which contains all known information relating to a property on a territorial authority’s files. (Regional Councils are not required to issue LIMs) This would include (among other things) any information on flood hazards, public and private sewerage and stormwater drains, any consents etc affecting the land or any building on the land previously issued by the territorial authority.</td>
</tr>
<tr>
<td>Review of Decision</td>
<td>Part 5</td>
<td>Any decision made under this act can be reviewed on request by the Ombudsman’s Office.</td>
</tr>
</tbody>
</table>

**Civil Defence and Emergency Management Act 2002**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>s3</td>
<td>• To improve and promote reduction of risks through community partnerships, reduction of community disruption from avoidable hazards and risks, the reduction of fiscal risks from the costs of disruption, more effective and efficient emergency readiness, response and recovery, encourage/enable people to undertake risk management.  • Require local authorities to manage and coordinate emergency management activities at the local level  • Provide the means to integrate national and local emergency management planning</td>
</tr>
<tr>
<td>Powers of Director of Civil Defence Emergency Management</td>
<td>s8-s9</td>
<td>Sets out broad ranging powers to act under a state of emergency</td>
</tr>
<tr>
<td>Civil Defence Emergency Management Groups</td>
<td>s12-s24</td>
<td>Local authorities to establish civil defence groups for each region.</td>
</tr>
<tr>
<td>National strategy</td>
<td>s31-37</td>
<td>Civil defence emergency management strategy must be developed and set out the Crowns goals and objectives</td>
</tr>
<tr>
<td>Compulsory national plan</td>
<td>s39-s47</td>
<td>Must develop a civil defence emergency plan identifying and...</td>
</tr>
</tbody>
</table>
### Overview of Flood Management Legislation in New Zealand

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compulsory group plans</td>
<td>s48-s57</td>
<td>Each civil defence emergency group must have an civil defence emergency plan.</td>
</tr>
<tr>
<td>Emergency declarations and powers</td>
<td>s66-s104 and s25</td>
<td>Emergency declarations and powers to enter and seize property, and take enforcement action.</td>
</tr>
<tr>
<td>Emergency works</td>
<td>s111</td>
<td>Section 330B of the RMA provides for emergency works to be undertaken without the immediate need for resource consents.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
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<tbody>
<tr>
<td>Purpose</td>
<td>s3</td>
<td>The Act allows LAs to assess and collect rates in a transparent and accountable manner.</td>
</tr>
<tr>
<td>Non-rateable land</td>
<td>s8 and Schedule 1</td>
<td>Land that is exempt from rates includes reserves and flood ponding, the beds of navigable lakes and navigable rivers, land used for conservation and preservation and soil conservation river control purposes.</td>
</tr>
<tr>
<td>Funding large capital projects such as flood management project</td>
<td>Part 4A</td>
<td>A capital funding project plan must be developed which sets out the methods for funding the work. This can be funded through general rates, a targeted rate, or other council funding sources.</td>
</tr>
</tbody>
</table>

### Statutes Administered by Ministry of Building and Housing

<table>
<thead>
<tr>
<th>Building Act 2004</th>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>s3</td>
<td>Regulates building work through the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings. Amongst other things, standards are set to ensure buildings are safe and encourage healthy living and contribute to the wellbeing of people and promote sustainable development.</td>
<td></td>
</tr>
<tr>
<td>Role of Regional Councils</td>
<td>s14</td>
<td>Can only issue and monitor/enforce building consents for dams. Requires territorial and regional authorities to work closely together when issuing consents for building works associated with dams.</td>
<td></td>
</tr>
<tr>
<td>Building consent</td>
<td>s35, s37</td>
<td>A building consent must (amongst other things) have the PIM attached, development contribution notice and a Certificate under section 37 that a resource consent is required (if any). A building consent authority can prevent the issue of a building consent on the grounds that a resource consent is required.</td>
<td></td>
</tr>
<tr>
<td>Buildings on hazard prone land</td>
<td>s72-74</td>
<td>Building consents may be issued on land which is subject to a natural hazard provided it would not accelerate or worsen an existing natural hazard. This must be registered on the certificate of title.</td>
<td></td>
</tr>
<tr>
<td>Dangerous, earthquake prone and unsanitary buildings</td>
<td>s131</td>
<td>Flooding could render buildings unsafe and unsanitary. TAs were required to have policy in place by May 30th 2006 to address these matters.</td>
<td></td>
</tr>
<tr>
<td>Accreditation</td>
<td>Part 3</td>
<td>Building consent authorities and practitioners must be accredited and licensed.</td>
<td></td>
</tr>
<tr>
<td>Power to enter property</td>
<td>s204-207</td>
<td>Relates to warrants and powers to investigate, monitor and require action/compliance.</td>
<td></td>
</tr>
<tr>
<td>Enforcement powers</td>
<td>s229-231</td>
<td>Enforcement powers to issues infringement notices. The maximum fine for the most serious offence is $200,000.</td>
<td></td>
</tr>
<tr>
<td>Ability to promulgate regulations</td>
<td>S250</td>
<td>Regulations may be prescribed in relation to a range of matters.</td>
<td></td>
</tr>
<tr>
<td>Powers of the Minister of Building and Housing</td>
<td>s276–281</td>
<td>Power to appoint a person/s to act in place of a territorial authority if the authority is not properly performing its functions, duties, or powers under this Act.</td>
<td></td>
</tr>
<tr>
<td>Licensing of practitioners</td>
<td>Part 4 subpart 2</td>
<td>Practitioners must be licensed to undertake building works.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building Code 1992</th>
<th>Topic</th>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention of flooding - industrial and commercial land &amp; buildings</td>
<td>Clause E1</td>
<td>• Building floor levels must be above the water line of a storm event with a 10% annual probability (1 in 10 year occurrence).</td>
<td></td>
</tr>
</tbody>
</table>
Prevention of flooding - housing, communal, residential and non-residential buildings

Clause E1

• Building floor levels must be above the water line of a storm event of a 2% annual probability (1 in 50 year occurrence);
• Surface water shall be conveyed to an appropriate outfall.

Statutes Administered by Department of Land Information NZ

<table>
<thead>
<tr>
<th>Topic</th>
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</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td></td>
<td>The Act enables land to be acquired, either by agreement or by compulsion, for the construction of roads, railways and airports; the provision of services such as electricity and water supply, irrigation, drainage and flood management; and to build hospitals, schools and other public facilities throughout the country.</td>
</tr>
<tr>
<td>What agencies can acquire land under the Act</td>
<td>s2, s16</td>
<td>The Crown, local authorities and requiring authorities (which are approved network utility operators under the RMA (s167)) can use the Act to acquire land either voluntarily or compulsorily.</td>
</tr>
<tr>
<td>Note on certificate of title</td>
<td>s19</td>
<td>Where a local authority, crown agency or requiring authority seeks to take/use land and has entered into an agreement with a landowner, this compensation certificate must be noted on the title.</td>
</tr>
<tr>
<td>Notice of intention to take land</td>
<td>s23, s24</td>
<td>A public notification process is required for the compulsory acquisition of land, and objections are heard by the Environment Court.</td>
</tr>
<tr>
<td>Public notification of proclamation</td>
<td>s26</td>
<td>A proclamation describing the land, its legal boundaries and its transfer to the Crown/LA/RA, shall be publicly notified and gazetted.</td>
</tr>
<tr>
<td>Compensation</td>
<td>s60–s87</td>
<td>Compensation is payable to parties whose land is acquired, who suffers injurious affection or suffers any damage from the acquisition of the land. Sections 63-76 cover other circumstances where compensation may be payable and how this would be calculated. Valuation objections are assessed by the Land Valuation Tribunal.</td>
</tr>
<tr>
<td>Establishing an irrigation scheme</td>
<td>s197–208A</td>
<td>The Crown or local government may investigate, design and control any water supply works as part of an irrigation scheme. Where the irrigation scheme is considered “practicable and economic and would result in increased productivity of the land” the Minister may publicly notify a proposed irrigation district scheme. A poll of ratepayers must be taken. An order in council may reduce or abolish the irrigation scheme.</td>
</tr>
<tr>
<td>Charging for use of the irrigation scheme</td>
<td>s209-s221</td>
<td>The Minister has a number of powers relating to the setting of basic charges, water charges and so on.</td>
</tr>
<tr>
<td>Joint public work by Crown and Local authority</td>
<td>s224</td>
<td>A Crown agency and a local authority is may jointly investigate, acquire land, and develop a public work.</td>
</tr>
</tbody>
</table>

Administered by Earthquake Commission

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td></td>
<td>• EQC is a Crown entity and is run by a board. • Administers and collects the insurance against natural disaster • Facilitates research and education into natural hazards and hazard reduction</td>
</tr>
<tr>
<td>Funding</td>
<td>s23</td>
<td>EQC funded through premiums levied on insurance companies</td>
</tr>
<tr>
<td>Powers on investigation</td>
<td>Part 3</td>
<td>Powers to inspect and enter onto property, offences and fines</td>
</tr>
</tbody>
</table>