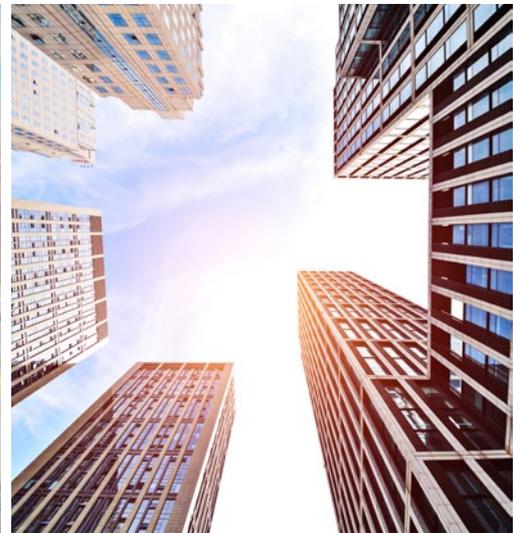
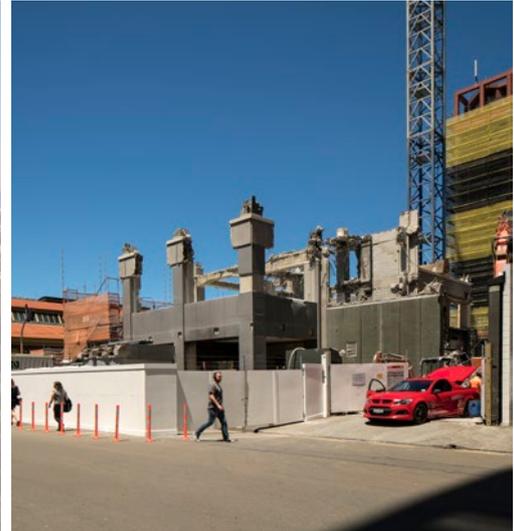


Property Council
New Zealand



SUBMISSION ON THE PRODUCTIVITY
COMMISSION DRAFT REPORT:
BETTER URBAN PLANNING



Introduction

Property Council New Zealand (Property Council) welcomes the opportunity to engage on the Productivity Commission's (the Commission) draft report on *Better Urban Planning*.

New Zealand's planning system is overly complex, cumbersome and cannot meet the growing economic and social policy issues confronting our urban environments. Property Council welcomes the Commission exploring how legislative and structural reform of the planning system can achieve better outcomes for New Zealand's cities.

This submission is divided into three sections:

- Section one outlines Property Council's broad and strategic responses to the draft report; particularly the:
 - aspects of the draft report we support
 - areas of the planning system and local governance structures that need further investigation by the Productivity Commission
- Section two outlines Property Council's opinion that the planning system must take a holistic approach to urban planning.
- Section three details our responses and key positions on the questions asked in the draft report.

About Property Council

Property Council is a member-led, not-for-profit organisation representing the country's commercial, industrial and retail property owners, managers, investors, and advisors. Our primary goal is the creation and retention of well-designed, functional and sustainable (including economically) built environments which contribute to New Zealand's overall prosperity. Furthermore, Property Council supports the formulation and implementation of statutory and regulatory frameworks that enhance (and do not inhibit) productivity-driven economic growth and development. To achieve these goals, our advocacy and research focuses on urban strategy, infrastructure, compliance, legislation and capital markets. Over the years, Property Council has built and maintained good rapport with central and local government agencies and is often relied upon for advice, comments and feedback on matters of local, regional and national importance.

Property Council members are significant users of the resource management system, particularly in urban areas. Our members drive economic and social growth. We are the infrastructure that houses business and the commercial property sector. Our tenants include central and local government, corporates, small to medium business and retail. Property Council members are involved in residential development and infrastructure development and construction. Our members' activities span all aspects of the built environment, therefore, the resource management system.

Section One: General comments on the draft report

Property Council views the current planning system as failing New Zealand's urban environment. The Resource Management Act (RMA) is moving beyond its original intent and becoming a handbrake on the development our cities need. Property Council are firm supporters of the original intention of the RMA set out by then Minister of the Environment, Simon Upton in 1991:

The Bill provides us with a framework to establish objectives with a biophysical bottom line that must not be compromised. Provided that those objectives are met, what people get up to is their affair. As such, the Bill provides a more liberal regime for developers.

Unfortunately, the planning regime has not taken up this "liberal regime", nor is it providing balanced bottom lines or fairly managing trade-offs to mitigate the effects of development. Instead urban development is often hamstrung by a complex and vexatious approach to consenting by councils. This approach uses subjectivity, instead of objectivity, in determining the bottom lines and trade-offs when assessing whether a development can or cannot go ahead.

This has become so dysfunctional that the Crown has been obliged to enact alternative mechanisms to by-pass the RMA to achieve development outcomes. The Housing Accords and Special Housing Areas is a prime example (see Appendix A).

Moving beyond the scope of the RMA, efficient urban planning also requires effective local governance, infrastructure and appropriate funding. This requires a level of co-ordination and sophistication in aligning the RMA with the Local Government Act (LGA) and the Land Transport Management Act (LTMA), which in the current context fails to occur. This makes planning for urban environments particularly complex.

Property Council is pleased that the Productivity Commission report clearly identifies the need to have a planning system that works for New Zealand cities and affirms that the current system is not working.

Key aspects of the draft report Property Council supports

Property Council supports the following key aspects of the draft report:

- The planning system should facilitate and enable growth.
- The need for councils to better understand the cost and effect of their planning rules.
- The need for greater central government direction and involvement in the planning process for our urban environment.
- Greater and more formal use of spatial planning as a tool to guide and coordinate growth and development.
- The proposal to establish a permanent independent hearings panel to consider district plans.
- The proposal to make better use of metrics, such as land price, and create automatic links to zoning and other planning decisions. Property Council believes the concept of metrics could be expanded (see below).
- Addressing funding of infrastructure, Property Council believes that this focus should be expanded and broadened to encompass local government funding in general. This is a vital component of growth-centred planning.

Property Council expands on these points in answers to the relevant questions the Productivity Commission has asked in its draft in section three.

Areas for further investigation

There are a number of areas that Property Council thinks should be addressed (or addressed more fully) in the final report. These are:

- The draft report does not address the role that local government structure plays in urban planning. Cities like Wellington, Christchurch and Hamilton (and their satellite towns or growth nodes) often straddle multiple local government boundaries. A city might be an economic unit, but the governance is not and different councils can compete against each other. This makes coordinated and cohesive urban planning difficult at best.

Property Council recommends the Productivity Commission further investigate, and include commentary and recommendations in their final report around local government structure and its impact on urban planning.

- There is a marked degree ‘conflict of interest’ for councils, in that they are both the regulator (in setting and operating the plan) and a user of the plan through provision of infrastructure, its CCOs, and the other services it provides. This is further complicated with the different roles (and capability) between regional and city/district councils.

Property Council recommends the Productivity Commission expand its commentary around the roles of different levels of local government (and consider how it fits with increased central government involvement and the proposed greater use of spatial planning).

- While the draft report rightly identifies capability of local government staff, particularly with regard to policy, Property Council believes it would be useful to single out the importance of greater capability of councils regarding the economics of their particular city and demographic trends. In Property Council’s view a key failing of local government in the planning process is, they do not fully understand the cost and effects of the rules and planning processes they put in place. Property Council recognises that recommendation 12.1 identifies the need for more rigorous analysis of policy options and planning proposals, but believes this aspect should be expanded on in the final report.

Property Council recommends that the Productivity Commission include greater emphasis and detail on urban economic and demography skills and regulatory impact analysis.

- The report recommendations around automatically linking zoning decisions to land price metrics are good. Property Council is aware of the National Policy Statement on Urban Development Capacity exploring pricing metrics and signals as triggers for releasing more land for all property development typologies. Further consideration should be given to other metrics relating to infrastructure and/or transport services. Metrics might include significant changes in transport travel times (private individuals and commercial use) and significant changes in trip distance travelled. Both metrics could indicate either the need to provide better infrastructure or transport services or provide more business/industrial land to reduce travel distances.

Property Council recommends that the Productivity Commission consider other metrics that might be useful for urban planning decisions and include discussion of them in its final report.

Section Two: A holistic system approach to urban planning

New Zealand needs an enabling planning system that aspires to create a quality built urban environment, which in turn drives economic and social prosperity. The critical component in this enabling is objectively and successfully balancing the trade-offs between the built and natural environments. Property Council supports a planning system that acknowledges, enhances, protects and values the pivotal role the urban environment plays in New Zealand.

If New Zealand's cities and towns are to achieve their economic and social potential, the planning system must be dynamic, data and evidence based and flexible for urban development now and in the future. Property Council supports the Commission's focus on a planning system that is open to change and growth, provides sufficient development capacity to meet demand from households and businesses as well as accessibility by residents to jobs and other activities.

A key problem with New Zealand's current resource management system is that, while the RMA is primarily seen as an environmental statute, in practice it is used to manage/control issues well beyond the environment. Implementation of the RMA, particularly in urban areas, is used for urban design and to drive economic and social outcomes. As RMA plans and rules are not necessarily the best tools to achieve those economic and social outcomes, there has been a tendency to use prescriptive rules that create huge inefficiencies and internalised costs.

When thinking about an ideal urban planning system, it is useful to consider what components that system needs. In Property Council's view, the system needs to:

- Have **tightly focussed environmental provisions** that focus only on environmental outcomes (such as water quality, soil health, land stability and air quality) rather than broader amenity.
- **Treat rural, town and city urban areas uniquely**, according to their circumstance and issues.
- Separate **tools to guide and drive economic growth**, with metrics and funding mechanisms that enable and reward growth.
- Clear **infrastructure planning that is funded/fundable** and flexible to respond quickly to new opportunities or patterns of development different than expected.
- Separate **tools to achieve desired social and community outcomes**.
- **Methods and plan mechanisms** that can integrate all of the above, over the short, medium and long term (for example integrated annual and long-term plans alongside spatial plans)
- **Governance arrangements** that provide incentives for longer-term holistic thinking. This might include:
 - moving away from the current ward based local government political system which encourages NIMBYism and the interests of existing residents over future population growth
 - rethinking local government boundaries (since most of New Zealand's metro urban areas span several jurisdictions)
 - rethinking the roles of local, regional and central government (including consideration of more responsibility to regional government)

- **Funding mechanisms** that reward growth and/or are linked to growth rather than the current rating system (with rates set to match the Council's budget regardless of what Council's set that at).

Property Council recommends that whatever urban planning systems the Productivity Commission considers that it cover all of the above issues (in some form).

Property Council's answers to the draft report's questions in the next section should be considered in the context of the comments above.

Section Three: Responses to questions

Chapter 7 – Regulating the built environment	
Q7.1	<p><i>Would it be worth moving to common consultation and decision-making processes and principles for decisions on land use rules, transport and infrastructure provision? How could such processes and principles be designed to reflect both:</i></p> <ul style="list-style-type: none"> ▪ <i>the interest of the general public in participating in decisions about local authority expenditure and revenue; and</i> ▪ <i>the particular interest of property owners and other parties affected by changes to land use controls?</i> <p><i>Do the consultation and decision-making processes and principles in the Local Government Act adequately reflect these interests?</i></p> <p>Common consultation requires a number of trade-offs by communities. In many cases council consultation can be dominated or captured by particular interest groups. This situation can create an environment where individuals are reluctant to voice opinions, are critical of the consultation process or see the consultation being hijacked by the “squeaky” wheel. While Property Council is a firm supporter of public consultation and council consultation processes, the Auckland Unitary Plan consultations highlight how vocal minorities can hijack the process to advance their own set agendas, to the detriment of the wider population.</p> <p>An inverted pyramid approach to public consultation, reflecting the nature of council plans and strategies would provide a balanced approach to consultation and reduce the risk of the “squeaky wheel”. For broad plans like spatial plans, regional land transport plans, annual plans or long term plans, with regional or city-wide implications (spatio-temporal land release strategies, revenue and expenditure budgets), consultation process should involve the entire community.</p> <p>However, for district plans and plan changes with their associated land use rules and provision of infrastructure and transport, Property Council supports a narrower approach. Individuals and organisations should be able to submit on district plan high-level strategic themes, policies and citywide provisions. However, they should not be able to submit on specific land use rules, decisions, or infrastructure and transport projects that are outside their geographic area of residence or work. Arguably, there is minimal value to be gained of a layman who lives or works in Mount Eden being able to influence land use rules in Albany.</p> <p>This pyramid becomes more narrowly defined when it comes to specific land use outcome decisions. Property Council supports the Commission’s assertion that the future planning system “would operate more effectively and efficiently if appeal rights were confined to affected parties and</p>

	<p>consultation requirements focused more on outcomes than process”. Extensive appeal rights can often be litigious, expensive and vexatious for those seeking to develop.</p> <p>The consultation principles and processes of the LGA provide a strong platform for community consultation. However, as the Commission notes, the LGA does not provide councils with clear definitions, purposes and roles regarding the urban environment. Property Council recommends that councils are given clear guidance from central government in how to use the LGA consultation principles and principles when consulting on decisions, policies or plans that may affect the urban environment. Consultation councils take under the LGA cannot be challenged by the public in the same way that they can be with consultation under the RMA.</p> <p>However, the use of IHPs would mitigate this legislative consultation inconsistency through a focus on upfront, expert review of proposed plans, informed by public submissions, panel members with significant expertise and experience and a focus on removing excessive regulation. The IHP process has the potential to impartially reflect the needs of the general public and those of specific property owners and parties.</p>
<p>Q7.2</p>	<p><i>Should all Plan changes have to go before the permanent Independent Hearings Panel for review, or should councils have the ability to choose?</i></p> <p>Property Council supports the establishment of a permanent IHP to review all district plans of councils that Statistics New Zealand identifies as high or medium urban growth areas with contiguous populations of over 30,000. Our high and medium urban growth centres are facing a number of detrimental economic and social issues and it is crucial that plans are developed, using the best available expertise and skills, that can best alleviate these and meet the potential of communities and urban areas. This approach provides positive signals to the development community that central government is serious in addressing the issues facing the urban environment.</p> <p>For smaller or rural councils, IHPs should be an optional vehicle for councils to utilise. The issues facing these councils are often unique and very different to councils with large urban populations.</p> <p>Establishing a standing review panel to review new Plans, Plan variations and private Plan changes is also required. However, this panel needs to work closely with councils. It is crucial that while the panel would provide a consistent approach to similar issues across the country, these are balanced against the individual and specific localised experience and knowledge that councils have.</p>

	<p>To reinforce consistency in decision-making, all IHPs need to be run the same way utilising identical policies, processes and strategies. A common complaint about the Christchurch City Council Replacement Plan IHP was that the process was run more like a criminal court hearing instead of a district plan hearing.</p>
<p>Q7.3</p>	<p><i>Would the features proposed for the built environment in a future planning system (for example, clearer legislative purposes, narrower appeal rights, greater oversight of land use regulation) be sufficient to discourage poor use of regulatory discretion?</i></p> <p>While Property Council believes that these features would go some way to discourage and alleviate poor council regulation, they will not be able to deter it completely. Regulatory discretion often seeks to provide subjective social or amenity outcomes through a planning system that should, but does not fully utilise objective analyses, data and evidence.</p> <p>Requiring councils to develop regulatory impact statements would provide a means to ascertain either a true or estimated cost of their proposed regulations on the community and private sector. Requiring the IHP process to undertake a cost benefit analysis of proposed district plan rules would also drive greater awareness of the unintended economic cost of council regulation. As outlined in 7.1, only those who are directly affected by a resource consent application should be notified by it, and/or have appeal rights. This narrowing will reduce the risk of cumbersome and expensive conditions for a development being put in place by councils.</p> <p>Property Council supports the overall argument in 7.3. However, for economic and social prosperity, urban forms must have amenity and vibrant centres or suburban centres that draw people and business into specific places. Urban renewal projects like the Britomart Precinct or the urban rejuvenation occurring in Wynyard Quarter, in Auckland, are examples of positive regulatory intervention. In general, the success of centres often depends on balancing competing economic, environmental and social factors. Therefore, the issue is finding the necessary bottom lines and trade-offs that councils and their communities are willing to negotiate on for wider betterment. As a case in point, while ‘big box’ retail stores are often criticised for their lack of amenity or urban design, they do serve a positive economic and social function for the wider community.</p>
<p>Q7.4</p>	<p><i>Would allowing or requiring the Environment Court to award a higher proportion of costs for successful appeals against unreasonable resource consent conditions be sufficient to encourage better behaviour by councils? What would be the disadvantages of this approach?</i></p>

	<p>There is a strong possibility that this approach will encourage better behavior by councils, making them more aware of the “costs” associated with their decisions. A higher chance of being awarded costs might encourage a greater challenge of council decisions, but this is still costly and uncertain to the appellant, so it is unlikely to have a broad impact.</p> <p>The other disadvantage is that when the Environment Court awards costs against a council, the costs fall onto the ratepayer to pay. Under the current local government funding policies, the disproportionate burden of this extra cost would fall to commercial property ratepayers when council strikes the rates for the following financial year.</p>
<p>Q7.5</p>	<p><i>Would it be worthwhile requiring councils to pay for some, or all, costs associated with their visual amenity objectives for private property owners? Should councils only rely on financial tools for visual amenity objectives, or should they be combined with regulatory powers?</i></p> <p>While the RMA does not define visual amenity, it does define amenity value as being “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.” Arguably, within an urban environment, the idea of amenity has hijacked the RMA. It is common for councils to place onerous and often complex financial and regulatory visual amenity conditions on development consents. Councils often have no understanding of the true financial cost of these and the impact on development viability for a project.</p> <p>The Commission does not define visual amenity in its report. Property Council uses the Ministry for the Environment’s <i>Technical Paper Number 63: Urban Amenity</i> in defining visual amenity as noise and vibration, nuisance effects, open space, urban density (including population and housing density), vegetation, landscape, urban design, cultural and heritage features, character of neighbourhoods, visual amenity and views, public and person safety and accessibility and a sense of well-being. Visual amenity is an important facet of a successful urban form.</p> <p>Visual amenity is subjective, it means different things to individuals and communities, and therefore if councils are to invest in it, consultation is required. Using the long-term plan and annual plan development and consultation process would provide an assessment as to how communities assess visual amenity alongside other more critical council investments and services.</p> <p>Another methodology is the contingent valuation methodology, as it can determine whether compensation needs to be offered to the developer, how much to offer (the value placed on the amenity by the community) and whether visual amenity objectives are worth protecting in a given</p>

	<p>community. This approach includes surveying local residents about how much they would be willing to pay for a specific amenity either upfront or through a targeted rate.</p> <p>Councils should seek to work proactively with developers during the consenting process to achieve positive, functional and cost-neutral urban design outcomes for their developments and the wider urban form. Working through the amenity issues this way is a more desired approach than through a regulatory framework. Auckland Council utilises an Urban Design Panel, which works proactively with developers to ensure best urban design practise is built into developments from the outset.</p>
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Chapter 8 – Urban planning and the natural environment	
Q8.1	<p><i>What should be the process for developing a Government Policy Statement (GPS) on Environmental Sustainability? What challenges would developing a GPS present? How could these challenges be overcome?</i></p> <p>Property Council is apprehensive about a GPS on Environmental Sustainability being developed as it is not clear what additional value it would bring over the current use of environment standards (bottom lines) and national policy statements (where these address clear environmental issues such as water quality, soil health, land stability and air quality).</p> <p>If the implementation of a GPS should proceed, it should strictly focus on core environmental issues and not overreach into how the urban environment looks and functions. The GPS would also need to be either flexible for regional variations or have sub-parts for each region to address issues specific to it. To avoid administrative and implementation confusion, a GPS should not duplicate any other planning instrument under the RMA, LGA or LTMA. There also needs to be clear and consistent linking to all relevant planning instruments. A GPS must also provide standardised methodologies and reporting processes on the natural environment and the interaction between the urban and natural environments.</p> <p>Property Council was instrumental in the establishment of the New Zealand Green Building Council. The Green Star rating systems and the NABERS energy rating systems continue to expand; and to date there is no evidence to suggest that the green buildings initiative is failing or that any alternative form of regulation is required.</p>

Q8.2	<p><i>Would a greater emphasis on adaptive management assist in managing cumulative environmental effects in urban areas? What are the obstacles to using adaptive management? How could adaptive management work in practice?</i></p> <p>Yes – the dynamic, complex and fast changing nature of cities make an adaptive management approach important. For example, in cities traditional point source pollution control mechanisms are less relevant. A first come first serve approach to pollution consents would likely deliver inequitable and un-dynamic outcomes favouring existing residents and businesses over new start-ups (which are a key feature of growing cities). A system that monitored the pollution load entering waterways and triggered actions to contain, mitigate or control pollution is needed.</p> <p>For adaptive management to work in practice councils need to have undertaken rigorous policy and regulatory impact analysis of their actions and rules that identified a range of options and solutions. They would also need regular monitoring and robust evidence of the impact of their decisions and actions. If monitoring showed those actions were not working or the system itself changed (because the city had changed rapidly) council can quickly implement new actions as it would have already done the thinking about other options it could use. (This is consistent with finding F12.7 and the concept of options analysis.)</p> <p>When considering adaptive management at a local government level it is important that only those environment issues that have a direct local cause and direct local effect (such as water pollution or particulate air pollution) be managed locally by local government. Issues that are either a local cause, but national effect (such as climate change¹) or national cause but with local effect should both be managed nationally.</p>
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Chapter 9 – Urban planning and infrastructure	
Q9.1	<p><i>Which components of the current planning system could spatial plans replace? Where would the greatest benefits lie in formalising spatial plans?</i></p> <p>The key benefit of spatial planning is that it lays out development expectations in an easy-to-visualise, easy-to-understand format. Importantly, it allows for integration across the various agencies responsible for different parts of the planning system. This includes district and city councils (of which there may be several in urban areas), regional councils, council controlled organisations (for non-roading infrastructure), and central government (including NZTA, education, health and where relevant economic development). Having these agencies/organisations put their plans</p>

¹ For example, controlling GHG emission in one part of New Zealand will have no effect on climate change, if another part of New Zealand raises its GHG emissions by the same amount. The only fair and practical way to ensure national emissions go down is to manage it at a national level.

and thinking about a city's development on the same 'piece of paper' informs each other's thinking and planning. It also gives signals to private sector developers about areas to consider and hopefully identifies gaps and inconsistencies at an early stage.

In essence, spatial plans lay out the bones of the city's future development, the provision of local and central government infrastructure, and services for individual developers, residents and entrepreneurs to fill out the body of the city over time.

Key things a spatial plan should cover are:

- Identify patterns and areas of likely future growth and quantify that growth. Different scenarios should be explored and recorded so that if growth does not follow the 'chosen' scenario, then ready information is at hand to quickly update the spatial plan.
- Identify major infrastructure corridors and the type of infrastructure that might be required in those corridors (recognising that the corridors should factor in staged growth and not preclude other options should growth occur differently than expected²).
- Identify likely locations for residential, commercial, mixed-use and industrial land, as well as variations of where they might be located.
- Identify possible locations for parks, schools, hospitals and other public service 'infrastructure'. Instead of exact locations, these should be a general indication of location and size to ensure central government is also planning to provide its services.

Spatial plans should not just consider land use and infrastructure. They should be set in the context of a city's natural environment, urban form and economic and social aspirations and objectives. For ease of use, the spatial plan should be a single document that integrates all of those objectives (as was done with the Auckland Plan). However, we do acknowledge that a spatial plan can be hard wired into district/city and regional council policy statements, plans (annual, long-term, district, regional) and strategies (economic development, future growth models etc.). There must also be a link into how various parts of the plan might be funded (or at the least, it should be shown that the plan is fundable).

Spatial plans are guiding documents, not 'set-in-stone' blueprints. It is crucial that spatial plans are flexible and are able to change over time because development is very unlikely to occur exactly as set out in the plan. They need to be adapted when development occurs in an area earlier than expected or occurs in an unexpected area. In particular, funding for infrastructure, schools, hospitals etc. needs to be nimble. If funding cannot be flexible, the spatial plan will not be adaptable. It is important when councils are developing their spatial plans that they use options analysis to be able to adapt and modify the plan quickly as circumstances change.

².For example even if only a 2 lane road is likely to be needed in based on likely projects, consideration might be given to a corridor that could accommodate either a 4 lane road or the addition of bus transit lanes or light rail.

	<p>Spatial plans can come in many different shapes in sizes. For a New Zealand context, we recommend the Productivity Commission investigates in more detail the advantages, disadvantages and unintended consequences of spatial plans and whether they are best used at a regional, sub-regional or city level.</p> <p>In Property Council’s view, spatial plans would fill a key gap in the current planning system, being high-level integration. Therefore, in a sense spatial plans would not necessarily replace part of the current system.</p> <p>It is important that if spatial plans are in place there needs to be thinning of prescriptive rules in lower order planning documents, especially district/city plans. Spatial plans provide guidance about growth and development (and by necessity need to be flexible). We believe that the benefit of spatial plans would be lost if prescriptive rules tried to dictate fixed ideas about development at the micro level.</p> <p>Further commentary on spatial plans is provided in Appendix B.</p>
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Chapter 10 – Infrastructure: funding & procurement	
Q10.1	<p><i>Is there other evidence that either supports or challenges the view that “growth does not pay for growth”?</i></p> <p>The current mainstay of local government funding is rates. Rates are expected to cover councils’ operating expenditure, fund depreciation, pay interest and repay debt (often taken out for capital investment). Rates are set based on the size of the council’s budget. In other words, councils set their budget and then levy rates at a level to generate funding equal to the budget. Rates are therefore not a pool of funds that grow as the city grows, rather they grow when the budget grows – the two are not necessarily connected.</p> <p>In that sense growth does not pay for growth. Take for example, a \$10m building that currently attracts rates of \$30,000/yr. If a developer upgrades the building to a \$50m building, which would attract rates of \$150,000, the rates pool does not increase by \$120,000 because the council’s total budget has not changed. Because rates intake has to match the budget, it in effect means is that the other say 100,000 ratepayers need to pay \$1.20 less – hardly noticeable on their rates bill.</p>

One way councils make 'growth pay for growth' is through charging development contributions. The LGA states that the purpose of development contributions (DCs) is to enable councils to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

The reality of development contribution funding is that only a small portion can be recovered from each development and that full recovery of the capital costs of the infrastructure takes time as developments come on stream. There are risks if further developments do not materialise or materialise on timframes different to what a Council expected, as both Hamilton and Tauranga City Councils experienced during the Global Financial Crisis.

Property Council's experience with councils' calculation of development contributions is that while most calculate development contributions well, a few do not. The problem is when councils use NPV modelling for development contributions. While the Productivity Commission modelling showed the cost of growth-related infrastructure is generally not fully recovered over a council's 10-year planning period, the reality is most of the assets funded by development contributions are significantly longer lived (25, 50, and 100 year). Property Council's analysis has found that for individual developments and over longer timeframes, the NPV model results in significant over-recovery because of the poor assumptions made. In this instance, growth is overpaying for growth. Property Council is willing to share this analysis and further thoughts on the NPV model with the Productivity Commission.

One of the other effects of development contributions is that they are capitalised into the original sale price of the house or building. While in some ways it makes sense to charge this capital cost upfront, it has a flow on effect for property price inflation (and housing unaffordability).

Targeted rates are one way to operationalise that capital cost (by putting it on the rates bill rather than the sale price). However, Property Council's experience of councils' use of targeted rates is that the purpose and level of the rates tend to 'evolve' over time, often losing their link to the original expenditure.

No funding model will be perfect as each will set up its own set of (perverse) incentives and have pros and cons. Property Council would like to see councils have a much wider range of funding tools available, especially ones that are explicitly linked (and vary) with growth. Funding models that give Councils a real share of economic growth (such as % GST growth, or ring-fencing rates from capital growth for capital investments only) would encourage councils to invest upfront and invest in good projects. Greater use of collaborating with private sector through PPP, co-investment in infrastructure and co-building are also worth pursuing.

<p>Q10.2</p>	<p><i>Would there be benefit in introducing a legislative expectation that councils should recover the capital and operating costs of new infrastructure from beneficiaries, except where this is impracticable?</i></p> <p>Property Council sees merit in doing so.</p> <p>Using development contributions to fund infrastructure works on the assumption that the ‘beneficiary’ of a development is either the developer or the first owner of the property (to whom the developer simply passes on the cost of the development contribution in the sale price).</p> <p>At best, this assumption has some limited validity in residential situations, where the homeowner gets the primary benefit from water and roading infrastructure to their door. That ignores that other existing residents might also use the new roads. Existing residents almost certainly will get benefit if the development contribution is used to pay for parks and other ‘public’ infrastructure.</p> <p>The case that the owner is the primary beneficiary is even shakier for commercial developments. Take for example a shopping mall. The development contribution would be paid by the developer/building owner. While some of that might be recovered in rent, the beneficiaries of that mall and the infrastructure around it are multiple, being shop owners, their employees, and the consumers who use the mall.</p> <p>Property Council thinks that councils do not have a good understanding of who the beneficiaries of their services are. For example, councils charge commercial property owners much higher rates (over three times higher in many cases) than residential owners. Although there is little or no evidence commercial buildings use more services than residential. Introducing a legislative expectation that councils should recover costs from beneficiaries should at least force councils to identify the beneficiaries and quantify their use of infrastructure and services. This information is an important precursor to councils undertaking robust policy and regulatory analysis of their policies and plans (and thereby supports the report’s recommendation R12.1).</p>
<p>Q10.3</p>	<p><i>Would alternative funding systems for local authorities (such as local taxes) improve the ability to provide infrastructure to accommodate growth? Which funding systems are worth considering? Why?</i></p> <p>Yes, Property Council believes so.</p>

	<p>Public private partnerships (PPPs) should be given favourable consideration. In addition to traditional build-operate-transfer models, we support options that look at co-investment and co-construction. For example, an arrangement could also involve councils rewarding a developer with higher density in return for the developer providing particular type of infrastructure. There have been comments that New Zealand is a relatively small user of PPP arrangements. It may therefore pay to group certain projects together as opposed to seeking PPP arrangements on a per-project basis.</p> <p>The current financial climate provides an opportunity to make bond financing go further. Ireland and Belgium issued 100 year bonds earlier this year at (initial) coupon rates of 2.35% and 2.3% respectively. 100 year bonds would allow costs to be recovered over the useful life of an asset as opposed to the current practise of recovering them over the capacity life of an asset (20-30 years). Given central government ‘balance sheet power’, central government may be best placed to issue “centennial” bonds.</p> <p>Property Council sees merit in considering:</p> <ul style="list-style-type: none"> ▪ municipal utility districts (which have worked very well in Texas, the United States) ▪ application of Goods and Services Tax on house sales in high-growth areas (on the face of it, the proposal has the benefit of managing housing demand and providing funds to provide infrastructure but would exacerbate housing affordability) ▪ central government sharing a percentage of GST growth in a city with local government ▪ local hypothecated taxes, such as a local petrol tax ▪ ring-fencing rates from new developments and/or capital growth for council capital investments only
Q10.4	<p><i>Would there be benefit in allowing councils to auction and sell a certain quantity of development rights above the standard controls set in a District Plan? How should such a system be designed?</i></p> <p>Property Council’s view is that plans should only contain prescriptive rules and restrictions on development where there is a demonstrable overriding public benefit (based on evidence and robust analysis). The restrictions are, in a sense overriding private property rights. To allow councils to auction and sell additional development rights is arguably appropriating private property rights and then selling them back to the rightful right holder.</p>

	Developments should be judged case-by-case on their own merits and on the benefits that they bring to the community and the city. Creating an auction of rights risks ‘extra-development’ rights being bought and held in an effort to stifle competition. This could be similar to practices previously seen under the RMA before central government rightfully legislated against it.
Q10.5	<p><i>Should a requirement to consider public-private partnerships apply to all significant local government infrastructure projects, not just those seeking Crown funding?</i></p> <p>Yes. However, the question is scale. Property Council believes that PPPs would be more successful in large urban centres on key pieces of infrastructure.</p>

Chapter 13 – A future planning framework	
13.1	<p><i>What are the strengths and weaknesses of these two approaches to land use legislation? Specifically:</i></p> <ul style="list-style-type: none"> ▪ <i>What are the strengths and weaknesses in keeping a single resource management law, with clearly-separated built and natural environment sections?</i> ▪ <i>What are the strengths and weaknesses in establishing two laws, which regulate the built and natural environment separately?</i> <p>Property Council views the two approaches suggested by the Commission as two ends of a spectrum of possible legislative frameworks. There are pros and cons of both the approaches. In reality the most practical and ideal solution probably lies somewhere in between the two approaches.</p> <p>In Property Council’s opinion, any legislative solution has to:</p> <ul style="list-style-type: none"> • acknowledge that while the urban and natural environments are interconnected, their functions and needs are unique and their issues are very different. • integrate development and infrastructure planning and financing, and support the city’s economic growth and community objectives • review local government roles, responsibilities and boundaries. For this to be fit for purpose there needs to be meaningful central government engagement and involvement. <p>Property Council is open-minded in how to achieve this. We would like to see a wider range of options considered by the Productivity Commission.</p>

Refined single resource management law

A refined single resource management law with a specific built environment section that provides more detail about the RMA's application in urban areas has the benefit of being easy to understand by the existing actors, could use existing (albeit cumbersome) consultation and other processes and would likely not require substantial amounts of new jurisprudence.

The key risk of this is a return to the status quo. Councils would likely try to repurpose the status quo plans. This will almost certainly not lead to a cultural change in the way councils and their officials view cities. A separate built environment section of the resource management law would not integrate the 'non-environmental resource' issues that are critically important to urban development such as infrastructure planning, funding and integrating with economic growth objectives. Refining the current law would also not deal with the overlap of 'multiple jurisdictions' that most of New Zealand's metro urban areas have.

Given Property Council's view that the wider system needs to be addressed, this option is unlikely to provide satisfactory outcomes unless the 'refined law' made substantial improvements. There would also need to be a concurrent, significant revision to the LGA, Local Government (Rating) Act, and LTMA.

Separate planning and natural environment laws

Separating out planning and environmental laws has the advantage of allowing a law to focus on real environmental effects, unlike current implementation of the RMA in urban areas, which stretches well beyond environmental issues into urban form and social issues at the expense of private property rights. It could have the desired effect of better integration between urban development, infrastructure, funding and economic and community objectives, provided it contained new options for funding infrastructure and development (i.e. revision of the Local Government (Rating) Act) and replaced or overrode parts of the LTMA and the LGA.

A downside is the act would still have to deal with rural, town and metro urban (big city) issues all in one act when, in reality, the issues are quite different. For example, rural development is far more likely to have effects on the natural environment whereas these effects tend to be secondary or tertiary in urban environments. Metro urban areas are likely to have rapid change issues that require quick or even automatic action (as proposed in the report) that might be difficult to include for rural and town areas.

The key risk in moving to such a separate approach is that all the current jurisprudence and practice would likely have to be set aside. There is a high probability of unintended consequences in drafting how the new laws will work. In the subsequent transition, the increased uncertainty could temporarily see worse outcomes for both the environment and development.

Middle Ground Options

There could be a number of middle ground options. The key to any solution is the need to integrate environmental issues, local government and governance issues, local government funding, infrastructure planning and funding (wider than just land transport), economic growth, and community objectives.

One option might be an ‘urban planning’ framework act that would apply to urban areas over a certain size. That act would describe how the various provisions of the RMA, the Local Government Act and the Land Transport Management Act would apply in those urban areas. The Act could also contain provisions for use in those urban areas that are not currently available in existing Acts.

The ‘provisions’ might include:

- special funding mechanisms (for example share of GST returns, local taxes)
- special housing areas
- ability to use certain central government powers (such as land acquisition)
- metrics and automatic zoning triggers, and/or
- mandatory spatial plans (as was the case in the Local Government (Auckland Council) Act).

Such an act could also set out how different councils must interact when a metro urban area straddles multiple boundaries.

Another option might be radical overhaul of the Local Government Act (and the Local Government (Rating) Act) to better align boundaries and local government’s roles and responsibilities with New Zealand’s current urban and rural landscapes. It could include different provisions for urban and rural areas. This act could make it much clearer that non-environmental issues currently dealt with under the RMA should be dealt with under the revised LGA. Property Council is open-minded in how to achieve this.

Property Council recommends that the Productivity Commission consider and include a wider range of legislative options in its final report.

Q13.2	<p><i>Which of these two options would better ensure effective monitoring and enforcement of environmental regulation?</i></p> <ul style="list-style-type: none">▪ <i>Move environmental regulatory responsibilities to a national organisation (such as the Environmental Protection Authority).</i>▪ <i>Increase external audit and oversight of regional council performance.</i> <p>Property Council believes that any thorough reform of the urban planning system requires a more in-depth review of the roles and responsibilities of district/city and regional councils and the role central government play. Any discussion about monitoring and enforcement of environmental regulation should best take place in that context.</p>
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Conclusion

Property Council is grateful for the opportunity to submit on the Commission's latest inquiry. We value our longstanding and close relationship with the Commission and appreciate the Commission continually seeking our inputs and feedback on matters of national significance. We look forward to engaging with the Commission further as part of this inquiry.

Yours sincerely



Connal Townsend
Chief Executive

October 2016

APPENDIX A: Example - special urban planning legislation and improved council coordination and capability

Case study: The Housing Accords and Special Housing Areas Act 2013 (HASHAA) and the Housing Project Office (HPO)

The HASHAA was enacted to enhance housing affordability by facilitating an increase in land and housing supply in certain districts and regions. In order to achieve its purpose, the HASHAA bypassed some normal RMA processes and streamlined plan changes and resource consenting in areas with high housing demand. These procedural changes resulted in the consenting processes being much faster for special housing areas (SHAs).

The HASHAA was considered an interim measure to help ease constraints on housing supply while longer term solutions were developed, particularly, Central Government's proposed changes to the resource management system through the introduction of the RLAB. The HASHAA was also enacted to bring forward the application of the Proposed Auckland Unitary Plan before it became operative.

To complement the HASHAA, Auckland Council opened the HPO in October 2013, a one-stop-shop that provided an end-to-end service for applicants and with consenting (including qualifying development consents), master-planning, urban design, policy and infrastructure capability in one place. The HPO's one-stop-shop innovative structure and the concentration of specialist technical knowledge gave the HPO the capability to assist applicants from master-planning to building consents (and everything in between) as well as achieve good design outcomes.

The HPO was made up of employees seconded from Auckland Council's resource consent, parks, libraries planning and stormwater units. Also represented within the HPO were officials from Auckland Transport and Watercare Services Limited (Watercare). This co-location of representatives with specialist technical knowledge helped create a positive culture and an efficient, unified approach. It also avoided the need to retrain staff (a salient point given a planning system that is significantly different to the current system could require the industry to retrain and acquire new knowledge).

The HPO and the work it undertook received positive feedback from stakeholders.

The HPO's existence influenced Auckland Council's decision to: establish the DPO as more of a business as usual approach in dealing with processing applications, and undertake the Consenting Made Easy programme, which is aimed to streamline resource and building consent applications.

The HASHAA and the HPO are good examples of how changing procedures/processes can result in superior outcomes, reduce the tensions, duplication, complexity and costs, and help to better achieve the effects-based approach that the RMA had envisaged.

APPENDIX B - Additional Information on Spatial Planning

The gap in our current system is a high-level integration. Such a gap could remain even if there are separate planning and natural environment laws. New Zealand's planning system has far reaching effects and this gap in integration will continue to have far reaching ramifications if left unresolved.

Property Council submits it is therefore essential to develop a strategy/approach that is holistic, all-encompassing and which integrates, not just the three planning Acts, but other factors that influence and are influenced by the planning system, including, council district plans, regional policy statements, regional land transport plans, annual plans, long term plans and development contributions policies.

Property Council thinks spatial planning is a key missing link in New Zealand's development system. As outlined above under section 3.1, Property Council supports the Commission's recommendation that spatial planning be made a standard and mandatory part of the planning hierarchy.

The Auckland Plan, for example, lays the platform for the city to achieve its vision of becoming the world's most liveable city by 2040. It sets out a high level strategic direction for the city over the next 30 years, particularly in relation to transport, land use, housing and economic development. It contemplates how growth will be accommodated while having regard to the need to protect the natural environment and urban amenity that are highly valued by the community³. The buy-in to the Auckland Plan has resulted in a city-wide mind-set that the Auckland Unitary Plan, the Regional Policy Statement, the Regional Land Transport Plan, and Auckland Council's, Auckland Transport's and Watercare's long term plans should all be geared towards achieving the vision.

We agree with the Ministry for the Environment's description of spatial planning, that is:

A 20–30 year strategy that sets the strategic direction for a community and which serves as the basis for the coordination of decision-making, infrastructure, services and investment. It is a means of aligning other council plans. A spatial plan provides a visual illustration of the intended future location and mix of residential, rural and business areas, along with the critical infrastructure required to service those areas and any relevant environmental constraints (for example, hazards or areas that need to be protected from development). (MfE, 2010, p. 72)

Property Council agrees that spatial plans would have the most benefit where they:

- focus on the types and locations of the land-based public assets needed for effective urban development (for example, roads, the "three waters", public open spaces, rail corridors, reserves, and conservation areas) and natural hazard management (for example, identification of "no development" or high-risk areas, and development of flood barriers)
- lay out a vision for the city's development over time, so as to enable councils to act ahead of demand to identify (and secure) essential corridors (see below)
- understand and reflect the costs and topographical, geographic and engineering challenges of installing new infrastructure

³ Jennifer Caldwell, Partner at Buddle Findlay in an article for the Australasian Legal Business Magazine (issue 11.07, August 2013).

- are hardwired to the strategies and budgets that each local authority allocates to its infrastructure and other public developments
- integrate with central government planning, funding and decision making, especially around infrastructure, schools and health care facilities.

The Commission has gone to say that given the uncertainty involved in the development of cities, spatial plans would not seek to set or predict in detail where private sector activities or services would locate (for example, they would not attempt to set zones or land use rules) but would instead make some assumptions about likely future population and business growth, their needs for space and how this could best be met, and the sorts of infrastructure that would be needed to support households and business.

The Commission's position sits well with Property Council. Spatial planning would guide cities in taking a holistic approach to urban development (by including spatial prioritisation) and would provide better signals, not just to councils in providing necessary infrastructure to service growth, but also for central government in determining where and when to build its facilities, such as new/bigger schools and/or hospitals.

PROPERTY COUNCIL NEW ZEALAND

New Zealand's Commercial Property Voice

For more information contact:

Alex Voutratzis

09 300 9587

alex@propertynz.co.nz

www.propertynz.co.nz
