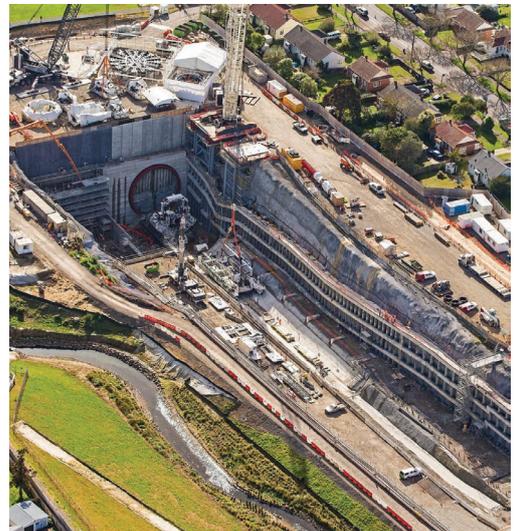




Property Council  
New Zealand



SUBMISSION ON THE PRODUCTIVITY  
COMMISSION ISSUES PAPER:  
*BETTER URBAN PLANNING*

## Introduction

Property Council New Zealand (Property Council) welcomes the opportunity to submit on the Productivity Commission's issues paper, *Better Urban Planning*.

### Who Property Council is

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.

### Context – Rural and Urban Areas

Urban and rural areas are fundamentally different from an environmental perspective and require different needs and priorities.

In rural areas the economy is closely linked to the environment (primarily water and soil) as it contributes directly to economic production. Rural activities have a direct impact on the environment and protection of the environment and its carrying capacity is an important component of rural economic activity. The link is important even in rural urban areas as most economic activity is set-up in support of agricultural activity, whether that be directly through rural services companies or providing basic services, social and culture activities to service the rural population. For rural areas (as for natural areas) a planning system focussed on avoiding, remedying or mitigating environment harm makes sense.

In contrast, major urban areas' economies are driven by services (business, finance, education, government, tourism etc.). These all require a heavy concentration of population to realise the benefits

that agglomeration brings. The connection between economy and environment, while still relevant, is more muted. Arguably much of the 'original' environment in urban areas has already been changed almost beyond recognition. Cities like Auckland and Wellington have reclaimed substantial parts of the coastline for economic development and growth. Any further change required to accommodate growth could therefore be considered minor (except in some major greenfields sites). A planning regime that enables growth and development (with certain environmental parameters) would be more suitable to one primarily focussed on the environment.

Issues in urban centres can be of national importance because of the large size (in terms of both population and economic weight) of those urban areas. These can be geographically specific to a particular city (e.g. Auckland housing and infrastructure, Christchurch rebuild). There can therefore be an argument for greater central government interest and involvement in the urban planning process.

## Context – Comments on current planning system

The resource management system is complex. It encompasses the Resource Management Act 1991 (RMA), the Local Government Act (LGA) and the Land Transport Management Act (LTMA)<sup>1</sup>, but these just represent the legal footprint of the system. The actual system is much larger and more complex.

The system can also be seen as the interaction of its various functions:

- **Rules and processes:** as set out in the Acts, case law and subsequent practice
- **Implementation:** how the administrators and users of the system have interpreted and practiced the methods and policies in the system and overlaid with their personal views, biases and politics
- **Governance:** the structure of decision making, who makes the decisions, how the decisions are made and what influences those decisions. This includes not only the structure of local and central government but also how they interact, their roles, and their respective interests and incentives
- **Funding:** effective management and implementation needs money – where that comes from and how easy (or not) it is to get impacts the decisions that are made and the incentives on decision makers. If growth and development are not funded the system cannot work.

In this system there are many 'levers' that can be pulled to perturb the system to change the outcomes it is delivering. Moving one lever will impact on all of the others in quite an uncertain way. The advantage is that there are multiple 'settings'/answers to provide a desired outcome. The disadvantage is that it is hard to know how to move all these levers and there are many more 'settings' that will produce unintended (and uncertain) outcomes.

What is more certain is that simply moving one lever (such as only tweaking the RMA) is very unlikely to lead to the desired outcome because of the flow-on interaction with the other levers and functions outlined above. This is best illustrated by the constant tweaking of the RMA while it has made some

improvements to the systems, new issues and problems have emerged and it is struggling to deal with the scale and pace of current environmental and development issues, particularly in urban areas.

The introduction of the RMA fundamentally changed the foundation of New Zealand's resource management system to focus on outcomes rather than inputs, activities and outputs. Property Council wholeheartedly supports the 'outcomes' approach and does not want to see that philosophical foundation changed.

However, two things have happened that has hampered the shift:

- the focus on outcomes was about avoiding negative environmental outcomes, under the assumption that without controls on activities the 'market' would deliver optimal positive outcomes within environmental limits. These positive outcomes have not materialised in an optimal way.
- The shift to outcomes focus was not complete in that many aspects of the old Town and Country Planning Act (as embodied in various plans made under that Act), particularly in regard to urban planning were rolled over so the culture and practice of activity control and intervention by planners and decision makers continued.

Property Council supports the continuation of a focus on avoid, remedy and mitigate negative environmental outcomes and effects, but that the system also needs to include a more **positive approach** on enabling positive economic and social outcomes (i.e. growth and prosperity). This focus on achieving positive outcomes should be embedded in legislation, but will also require a cultural shift by decision makers and administrators of the system to one of facilitation and collaboration rather than the current regulator/ 'gatekeeper' mentality.

### Lack of alignment between the planning acts

Property Council believes there is limited alignment between the RMA, LGA, and the LTMA through the Regional Policy Statements, Long Term Plan, Regional Land Transport Plan, and National Land Transport Programme development processes. This alignment is limited and cumbersome. Firstly, there are too many different plans. This can cause confusion for the private sector and challenges around the complex layers of bureaucracy for the public sector. As a 2010 discussion paper by the Ministry for the Environment highlights; the "three planning acts were never designed to work together as a complete urban planning system. Each act, its plans, and decision-making are all subject to different legal purposes, processes, and criteria".

We note that local government has also criticised the limited alignment between the acts and their inability to work together as an urban planning system, Waikato District Council in their submission to the Productivity Commission on *Using Land for Housing* stated, "trying to co-ordinate these three pieces of legislation in facilitating development often makes the process slow and inefficient".

Property Council advocates for streamlining these acts and their plans so that there is more certainty for infrastructure capital investment and land use planning. Streamlining will also provide greater levels of co-ordination, flexibility, effectiveness, and efficiency in the planning system.

Furthermore, we support greater integration and partnership amongst and between local councils in future-proofing infrastructure and land use planning. For example, we are supportive of the forward planning approach that SmartGrowth has undertaken in the Western Bay of Plenty sub-region. SmartGrowth provides an opportunity for the property sector to work in conjunction with local councils in how future commercial and residential development will occur in the Western Bay of Plenty.

For other high-growth areas like Auckland, which needs significant commercial and residential property development over the next 30 years the challenge is to make sure that Auckland Council, the council-controlled organisations, and central government are working in partnership to provide the best infrastructure and land use outcomes to meet the growth challenges ahead. We envisage this streamlining of the acts and greater partnership between local and central government to provide additional confidence and certainty for the property sector.

Property Council is advocating for substantial reform of our resource planning system in order for New Zealand to meet our growing environmental, housing and infrastructure crises in a more effective, efficient, nimble and robust way.

## Questions and Property Council view

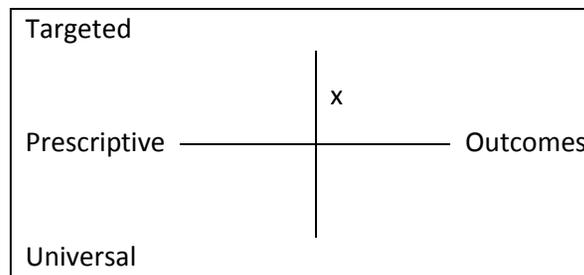
A rationale for planning	
Q1	<p><i>What is the appropriate scope of planning?</i></p> <p>The American Planning Association defines planning as helping to “create communities that offer better choices for where and how people live. Planning helps communities to envision their future. It helps them find the right balance of new development and essential services, environmental protection, and innovative change”.</p> <p>Within a New Zealand context, planning is also about finding positive balance between environmental protection and management and community growth and development. Within a New Zealand context, planning is often defined, rightly or wrongly, through the Resource Management Act, whose core principles include, but are not limited to, sustainable management and controlling the effects of activities on the environment, not controlling the activities <i>per se</i>.</p> <p>Within the urban environment context, Property Council views these principles as meaning the development of sustainable cities and communities, which take into account and mitigate their effect on the natural environment. These principles are also about providing a degree of balance between competing external forces centred on the urban and natural environments. These forces, which include high population growth, housing and infrastructure demands coupled with housing supply shortages, means that finding balance between the needs of the urban environment and the natural environment is often complex and fraught.</p> <p>We also believe that planning must take a holistic view and include all the required infrastructure from both a central and local government perspective to make sure that effective, efficient, interconnected and positive outcomes occur for communities and the natural environment. We recognise that the RMA, which is centred around the environment, may not be the best Act to do that so we support investigating other legislative vehicles to include the other pillars to enable a holistic sustainable development approach.</p>
Q2	<p><i>What is the appropriate role for planning in controlling land use for design or aesthetic reasons?</i></p> <p>Property Council also recognises that unfettered, unguided development can lead to perverse or undesirable outcomes, so there is a case for some guidance, boundaries and rules around urban development. Property Council supports a light touch approach to land use rules for</p>

	<p>design, amenity and aesthetic reasons, provided national planning templates and a National Policy Statement on Urban Development (NPS) are introduced. These would provide expectations, guidance, and directives, and also bring about consistency and thresholds in matters relating to controlling land use. We do not support excessive controls or cumbersome rules imposed by local government that can generate unnecessary costs onto the developments. As such, rules and requirements must be balanced and allow for flexibility to meet specific circumstances and the practicalities associated with development. Rules and requirements should also encourage innovation and lateral thinking.</p> <p>Where urban planning guidance/rules are used for design or aesthetic reasons there should be rigorous and transparent analysis as to why those rules are in the public interest and what the trade-offs are. Property Council supports the use of cost benefit-analyses, and public interest analysis (i.e. elucidation of what the public interest is and the advantages and disadvantages are) to support decision making on which rules are appropriate and needed. This could be modelled on the Regulatory Impact process required for central government policies. We also support the use of contingent valuation methodologies such as willingness to pay to assess the value of a public good. For example, this approach could be used to determine the community's support for a targeted rate in order to retain a heritage building.</p> <p>Property Council strongly supports and advocates for quality urban design, however rules must not be over prescriptive. Rules which are too detailed or rigid decrease innovation and result in reduced quality in design and delivery. Too much direction of development to follow a predetermined style and type will only benefit a certain number of sites, and will often be unrealistic or undeliverable. It thus decreases development opportunities and can negatively affect functionality. A quality urban form must always be functional.</p>
Q3	<p><i>Thinking beyond the current urban planning system, how could a new model best deal with the complex and dynamic nature of urban environments?</i></p> <p>Urban environments and cities experiencing high growth face unique challenges. Property Council believes that the universal rules and regulations approach that our existing planning legislation created and reinforces has led to a number of unintended consequences which have stifled urgently needed housing and infrastructure as well as adding substantial and often unnecessary financial impost on the private and public sectors.</p> <p>A new model must be flexible and resilient enough to meet the needs and aspirations of communities and the development community. It is important to realise that our high-growth cities are in a constant state of flux. The Auckland of today is very different city to the one of 10, 20</p>

or 50 years ago. The often bitter wrangling over the Unitary Plan development process over intensification shows that the planning system is too inflexible and static and is unable to meet the challenges facing high-growth cities.

Property Council believes there is merit in resetting the levers in the planning system. In Auckland, we believe that there is an opportunity for developers to work directly with local communities to understand their views, needs and aspirations as part of the development process. For example, instead of using the often ambiguous current mechanisms to fund projects that the community may not link with a new development, there is real causal nexus between a development and what the community decide is most important to them. This new project could be anything from library, sports facilities or community centre upgrade to a contribution towards funding the renewal of a local town centre. In this regard, we are removing the politicking and potentially isolating and resolving development issues at the outset and thereby reducing the cost and time delays often associated with development.

The above model would work best in high-growth cities in areas that councils have identified for substantial change. We also support the empowerment of council officers to use discretion. Discretion is an important lever and allows for effective and efficient decision making around targeted outcomes, as outlined in the MBIE and MfE proposed diagram below:



This approach would streamline the consenting process and reduce variables like time delays and financial impost. To achieve this approach communication between the community and local council is essential in order to get “buy-in”. Property Council believes that this “buy-in” could come through councils publishing growth and development strategies that clearly identify where cities are expecting growth to come from and the outcomes they want from that development. These plans should be at a high level focussed on positive outcomes that set the direction of development and growth. These plans would also provide direction and identify areas for local and central government

	<p>investment that would send signals to the private sector intentions that the private sector can use to decide where they will make investments (without being prescriptive or focussed on picking winners).</p> <p>Those plans can then be supported by a range of other plans that detail how they will plan, fund and manage development. These could be seen as similar to current long-term plans and spatial plans. It is the detail of these plans that may change on 3-5-year horizon, or faster in high growth areas, to help ensure the longer-term outcomes are achievable and manage dynamic and complex circumstances.</p> <p>Property Council sees the introduction of national planning templates and an NPS on Urban Development playing a positive role. However, we still believe that wider reform of the whole planning system, including but not limited to the RMA, LTMA and LGA, is still required.</p>
<p><b><i>Land and the context for land use regulation in New Zealand</i></b></p>	
<p>Q4</p>	<p><i>Thinking beyond the existing planning system, how should diverse perspectives on the value of land be taken into account?</i></p> <p>Property Council’s position is that private property rights need to be respected. When public interest is deemed to override a private property right in a way that would affect the value of the land, any rules or restrictions to that effect should be subject to a thorough public interest and cost-benefit analyses and put into a transparent decision making process that considers all of the trade-offs before restrictions are put in place.</p> <p>As noted in question two, Property Council supports the use of contingent valuation methodologies such as willingness to pay to assess the value of a public good. We believe that where there could be tension between private and public interests, determining the financial value that the community is willing to buy could play an important role in considering all of the trade-offs.</p>
<p>Q5</p>	<p><i>Thinking beyond the existing planning system, how should the property rights of landowners and other public interests in the use of land be balanced?</i></p> <p>As noted above, Property Council’s position is that private property rights need to be respected. District and spatial plans need to provide clarity, certainty and assurance in this regard. In high-growth areas, like Auckland, plans need to communicate clearly and effectively land that has been identified for future growth and the trade-offs that decisions makers have made in determining any restrictions or boundaries on that growth.</p>

<p>Q6</p>	<p><i>How does the allocation of responsibilities to local government influence land use regulation and urban planning? Thinking beyond the current planning system, what allocation of responsibilities to different levels of government would support better urban planning?</i></p> <p>While Property Council is not hard-fixed on what responsibilities are allocated, we would expect the framework that was developed by the Productivity Commission in its May 2013 <i>Towards Better Local Regulation</i> Report to be utilised. The framework is the ideal starting point as it addresses the following key allocation questions:</p> <ul style="list-style-type: none"> <li>▪ Should the regulatory standard or policy be determined centrally or locally?</li> <li>▪ Should the regulation be implemented and administered centrally or locally?</li> </ul> <p>There is scope for rationalising regional, district and city council responsibilities. These will differ between regions depending on their boundaries, mix of rural/urban areas, and locally specific issues. Some degree of rethinking local government boundaries is also probably necessary. For example, it seems a nonsense that Wellington’s urban area is governed by four different city councils (and a district council if Kapiti is included) even though economically and geographically they are inextricably connected. Similarly, Christchurch city has burst its boundaries, introducing problems for Waimakariri and Selwyn District Councils to manage both rural and urban issues.</p> <p>Implementation of the current planning system has shown a real disconnect between central and local government in terms of direction. Although there is provision in the RMA for national direction it has proved difficult to finalise for a range of reasons. There is scope for additional tools that allow central government to give more region specific guidance (as opposed to have to give one-size fits all national guidance). There is also a good argument for non-RMA national guidance tools that would allow central government to give guidance on non-environmental local and regional development issues.</p> <p>Regardless of the guidance tools there is a fundamental need for better central and local Government collaborative processes to ensure local and national needs are being met and accounted for.</p>
<p><b><i>The current planning system</i></b></p>	
<p>Q7</p>	<p><i>How can an urban planning system better integrate land use regulation and infrastructure planning?</i></p> <p>In order for an urban planning system to better integrate land use regulation and infrastructure planning, the RMA, LGA and the LTMA need to complement and be in sync with each other. The three Acts are disconnected and provide a disjointed land use planning system that is</p>

	<p>unable to provide the necessary housing and infrastructure quick enough to cater for Auckland's and other urban centres experiencing high growth.</p> <p>Property Council believes there needs to be a substantial review of the RMA, LTMA and LGA that explores the issues and dynamics between the land use, infrastructure planning and funding mechanisms of the RMA, LTMA and LGA. They could be overhauled to help ensure each Act's legal purposes, processes, and criteria are aligned and work cohesively as single planning system. It may be easier if they were combined into a single planning act. Another option could be the creation of a separate Environment Act that provides effective protection and regeneration of our biodiversity and marine microsystems in both a rural and urban context. This Environment Act could complement the Planning Act, so that effective, efficient, objective and robust decision-making can occur in our environments. We are fully aware that there could be tensions in the inter-relationship between the two Acts, which would simply replicate the existing ones between the RMA, LTMA and LGA.</p> <p>Any review of the legislative arrangements for urban planning also needs to include a review of local government roles and responsibilities, boundaries and the relationship between local and central government. As noted in Q6 current local government boundaries in major cities do not make sense when viewed from how the urban areas have developed overtime. Equally the differing (but often overlapping) responsibilities between regional councils and city/district for urban issues (such as transport and waters provision) adds unnecessary complexity from a project developers' perspective. A better relationship between central and local government, including better central government direction is also required. We expand on those points below.</p>
Q8	<p><i>Are complicated rules needed to control complex social systems? What are the alternative approaches for dealing with complexity?</i></p> <p>Property Council does not believe so. By definition cities are complex systems that have self-formed and for the most part are self-managing. Any rules should only be used to nudge the system in a particular direction rather than control complexity. In order to be able to effectively deal with complexity, better integration, guidance, clarity, certainty, consistency and less bureaucracy are needed. In early 2015, Hon Dr Nick Smith highlighted the 10-metre stack of RMA plans, amounting to over 80,000 pages of objectives, policies, and rules. What this meant was, councils were effectively reinventing the wheel.</p> <p>Consenting must be less bureaucratic. Consenting processes under the RMA have become overly complex and controversial, resulting in regulatory authorities becoming highly risk averse and focusing on procedural compliance instead of on the quality of outcomes (an effects-</p>

	<p>based approach that the RMA had intended). Council officers should be encouraged to exercise discretion, to the point where they should have the discretion to waive the need for consent on minor issues.</p> <p>National planning templates and an NPS will help achieve this, and will also provide guidance, directives, clarity and bring about consistency. For instance, an NPS could require councils in high growth areas to act as one-stop-shops for resource consent applications, just as Auckland Council’s Housing Project Office (HPO) did. The HPO employed from a wide range of disciplines, including planning, urban design, development, and subdivision engineers. Where the HPO did not have in-house representation (for example, Auckland Council’s Parks Unit), it established relationships with key personnel to assist in the process. The way the HPO worked was to front-load any activity and thinking, as much as possible. This would start with a preliminary discussion in which potential issues were identified and addressed with the applicant.</p> <p>In short having clear outcomes based plans for a region’s growth and development (see Q3), backed up by government investment would send signals to the private sector about growth. Such direction should be sufficient to nudge the system – the complexity will sort itself out.</p>
Q9	<p><i>What principles around consultation and public participation should the Commission consider in the design of a new urban planning system?</i></p> <p>Property Council supports the role of the community in having a say in the development evolution of their towns and cities. However, as the development of the Auckland Unitary Plan shows, NIMBYs (Not In My Back Yard), LULUs (Locally Unwanted Land Use) and the BANANA (Build Absolutely Nothing Anywhere Near Anything) approach by a vocal minority (who are often residents associations) will sway councils from what is needed to compromised and diluted options that do not meet future needs, which as a result could undermine the liveability of existing and new communities.</p> <p>As illustrated above with the Unitary Plan example, there are substantial risks using the existing public consultation process within a city that has competing and divergent aspirations and needs. In regional New Zealand, this approach could work and be successful. But in our larger cities this approach risks creating sub-optimal planning outcomes. Councils, like Auckland Council have a history at poorly communicating issues to communities and as a result they do not get the “buy-in” of communities.</p> <p>Property Council believes that councils must sell the story of the urban environment better around growth, housing demography changes and general community changes. There needs to be a reduction in politicking, which is undermining the deliverables that councils, central government and the private sector are trying to deliver. We believe that a process of developers working with local communities to identify</p>

	<p>issues combined with outcomes and incentives that the community wants could reduce unnecessary conflict, time delays and financial impost.</p> <p>More importantly current approaches to collaboration very heavily favour existing residents over the commercial sector (which drives and funds growth) as well as future residents and generations. Although the RMA explicitly recognises the need to consider future generations, experience shows that existing communities tend to oppose the growth required to ensure those future generations can live prosperous lives. As noted above some communities oppose both densification (and hence not enough houses are built) as well as development of infrastructure now that will be needed in the future. Property Council believes that the system needs to require councils and central government to better plan for and fund growth.</p> <p>A greater collaborative planning process could encourage more front-end public engagement, which will produce plans that better reflect community values and will thereby reduce litigation costs and lengthy delays. A cultural shift away from a regulator mentality that many Councils have to one of facilitation – enabling positive outcomes and minimising negative ones – will be required.</p> <p>Property Council recognises that this will not be an easy shift and will take time. It needs to be supported by clear and strong legislation, with central government working with local government politicians and bureaucrats to ensure appropriate change support and training. Central government will also have to walk the talk and take a more collaborative (including innovative funding models) to support its expectations of local councils.</p>
Q10	<p><i>Thinking beyond the existing planning system, what should be the appropriate level of consultation in making land use rules or taking planning decisions?</i></p> <p>Property Council urges the Productivity Commission to consider further ways of providing increasing balance between the current and future needs of urban development and the existing requirements of communities. We cannot stress enough that cities, such as Auckland, are ever-evolving and changing. Consequently, a vocal minority with vested and static interests must not be able to substantially influence broader future planning and infrastructure rules and decisions.</p>

Q14	<p><i>Thinking beyond the current planning system, how should national interests in planning outcomes be recognised and taken into account? What are the national interests that should be recognised?</i></p> <p>A range of tools for central government to provide both environmental and non-environment development guidance to local government is needed. This must be able to be done nationally and regionally (for region specific issues). The direction tools need to be complemented by process to enable and encourage greater collaboration between central and local Government. An example is that central government should always be a submitter on all local and regional plans and central government views should have particular weight.</p> <p>Projects of national interest, like those identified in the 2015 National Infrastructure Plan must be incorporated into all relevant local government plans, such as strategic or land use planning. This will provide additional certainty and futureproofing of the projects.</p>
Q15 & Q16	<p><i>What difference has the planning system made to environmental outcomes over the past 20 years?</i></p> <p><i>What difference has the planning system made to urban outcomes over the last 20 years?</i></p> <p>In a November 2014 report, the Organisation for Economic Co-operation and Development’s (OECD) Working Party on Integrating Environmental and Economic Policies identified New Zealand as having one of the worst administrative burdens among its member nations when it comes to environmental regulation. The Productivity Commission’s <i>Using Land for Housing</i> Report found our urban planning laws and processes to be unnecessarily complicated, slow to respond to change and not meeting the needs of cities.</p> <p>In summary, the key difference has been lost opportunities (that is, lost national income) and suboptimal outcomes in many instances due to overzealous councils. These two questions cannot be fully answered without quantifying the differences the planning system has made, inclusive of opportunity benefits and costs.</p>
Q17	<p><i>What information about environmental outcomes and other urban outcomes would a decision-maker need to make good urban planning decisions?</i></p> <p>Property Council supports a robust process towards the provision of environment and urban related information for developments that is consistent across all forms of local government. A consistent approach would provide additional certainty for our members and should</p>

	<p>provide a more streamlined processing approach for decision-makers, which will reduce the costs associated with building risk into developments.</p> <p>Local government must collect robust quantitative and qualitative data, analysis, and monitoring information to use when developing policies and decisions that affect urban development. For objectivity purposes, we support the data collection and interpretation being undertaken by a third party. This information needs to be dynamic and reflect changing trends and analysis in the housing and commercial markets, such as supply data, demand growth, public land holdings, and the location of infrastructure and areas of constraint. This data must also be the basis of policy formulation.</p> <p>Furthermore, without a common set of demand forecasting assumptions, planning horizons and the use of consistent language and terminology it is impossible to make the comparisons needed to make good planning decisions. This is particularly important where local government has housing and commercial supply targets to deliver on. An up-to-date, robust set of data and information will assist both local government and the development community to achieve set targets.</p> <p>Councils must use that data to deliver meaningful analysis to support their planning and infrastructure development. Better use of cost-benefit analysis (especially of planning rules) and modelling of growth, are crucial to helping councils make informed and better decisions about urban development.</p>
<p>Q18</p>	<p><i>Why did the RMA not deliver on its original objectives?</i></p> <p>Fundamentally the RMA was designed to control the effects of activities on the environment, not to control activities through a focus on sustainable development. Without adequate other legislative and process to manage the other pillars of sustainable management the RMA was in a sense being asked to do too much without tools to manage for positive outcomes. The original architects' assumption that the market would ensure positive outcomes so long as negative ones were managed proved false.</p> <p>Property Council believes that a failure by successive governments to provide meaningful direction to local government has undermined the ability of the RMA to deliver on its original objectives. In the absence of national guidance, Councils were left to develop their own approaches to managing complex and common issues. Over the years, this has led to inefficiency and increased cost for ratepayers, with councils at times struggling to deliver robust management frameworks in a timely manner. The RMA attempted to do away with zoning and established an effects-based system, elaborated locally through district plans; however, existing district planning schemes under the Town and Country</p>

	<p>Planning were allowed to be rolled unchanged into the new regime. Instead of a new era, there has remained a distinct continuity between the Town and Country Planning Act and RMA regimes. The RMA was compromised from the beginning.</p> <p>The current resource management system has proven a failure in providing sustainable development, both for current and future generations. The most obvious example is its inability of it to provide the necessary infrastructure and housing quickly enough (and on current plans will never catch-up) to cater for Auckland’s growth. This is impacting on the current population and pricing future residents and generations out of Auckland.</p> <p>The cause of this failure is complex – it is a mix of a slow and unresponsive planning process, a governance structure that favours political expediency and current residents (e.g. NIMBY and BANANA), and inadequate planning and funding for growth. Changes to the RMA system (e.g. through special legislation, such as HASHA, and an independent hearing panel); local government structural changes (i.e. a unitary Auckland – which has worked well) and accelerated funding have all proved useful but not sufficient. This is not an Auckland problem alone warning signs are popping up in other high and medium growth areas such as Hamilton, Tauranga and Queenstown Lakes.</p>
<p>Q19</p>	<p><i>Does a goal of limiting the scope of land use regulation to managing effects, based around nationally-established environmental bottom lines, remain a valid objective?</i></p> <p>Yes, it does remain a valid objective for activities that will directly affect the natural environment (such as water, air, or soil). However, as noted in the introduction this is often not the case in urban environments (except for greenfield developments). So while it is a valid objective, it is most applicable in rural rather than urban environments. Any approach to urban planning should take into account environmental bottom lines.</p>
<p><b>Alternative approaches</b></p>	
<p>Q21</p>	<p><i>Would there be benefits in a future planning system making more provision for private lawsuits and bargaining to resolve disputes over land use? In what circumstances would lawsuits and bargaining be beneficial?</i></p> <p>In terms of making more provision for private lawsuits we are concerned it could make the process even more litigious and costly.</p> <p>The independent hearings panel has proved an effective and efficient way of mediating planning disputes at the plan making stage where political expediency can sometimes get in the way of good planning decisions. This may be a better option than private lawsuits. As we</p>

	<p>outlined in our response to Question 3, Property Council believes that negotiating between the developer and the community could provide a positive opportunity to decide what the community values and wants. This could provide tangible outcomes and casual nexus compared to current oblique funding mechanisms.</p> <p>Property Council supported the setting up of the Environmental Protection Authority and we believe it provides the ideal process for dealing with big infrastructure projects. The Commission may wish to consider the remit of widening the mandate of the Environmental Protection Authority instead. The key thing is that there be one comprehensive hearing with appeals to High Court only on point of law (not merit appeals).</p>
Q24	<p><i>Are there opportunities to make greater use of economic tools such as prices, fines and user charges in a future planning system? Where do these opportunities lie? What changes would be required to facilitate their use?</i></p> <p>Property Council believes that the Productivity Commission should be examining all local government funding mechanisms and whether there is an opportunity for the introduction of new ones that are more flexible and dynamic. The New Zealand Initiative has done some good initial thinking along these lines, but work probably needs to go further and be taken up by central Government. We envisage that this review should fall into a wider review of the land planning system that explores the feasibility of a Planning Act and Environment Act and looks at the role and responsibilities of local government.</p> <p>High growth cities need a range of funding mechanisms to fund essential infrastructure and services. Auckland Council has identified over \$70 billion in required infrastructure and services to manage the forecasted population growth. Realistically we cannot expect the rating base, development contributions and debt to fund the bulk of this. We are open to a number of different funding mechanisms as long as they are transparent, provide certainty, are efficient to collect and administer and to not add additional financial impost to existing funders of local government.</p> <p>We support the consideration of enterprise zones where rates are rebated for a set period of time like 5 or 10 years. This would encourage growth and or regeneration of specific industries and or locations. We also support a range of funding mechanisms to be made more available that reflect the needs of communities and New Zealand through central/local/private partnerships.</p>

Q25	<p><i>What international approaches to planning and environmental protection should the Commission consider?</i></p> <p>There are aspects of other countries' approaches that could be beneficial to New Zealand. For instance, the Resource Legislation Amendment Bill appears to have taken a leaf out of the German approach by giving regional councils a new function of establishing, implementing, and reviewing objectives, policies, and methods to ensure there is sufficient development capacity in relation to residential and business land to meet the expected long-term demands of the region.</p>
<p><b>Specific issues</b></p>	
Q26	<p><i>Should New Zealand continue to have a unitary regulatory framework for environmental and land use regulation? What are the advantages and disadvantages?</i></p> <p>Without a detailed and careful analyses of past trends, costs, benefits, lost opportunities and international best practices or alternatives Property Council does not believe that it can answer this question adequately. For instance, with regards to alternatives, many of the issues associated with the current unitary regulatory framework for environmental and land use regulation could well be due to the poor administration of statutes, which national planning templates and an NPS could address. Property Council believes an NPS on Urban Development to provide an overarching strategic framework that will reduce the conflict and litigious tension that often occurs between the natural and urban environments.</p> <p>It could be argued that while the RMA was intended to be a unitary regulatory framework but in practice is not. That is in part because various responsibilities for urban planning are divided between central, regional and city/district government. This results in a range of overlapping plans, rules and decision making, rather than a unified and coordinated approach. As noted above we support a range of ways to better integrate the RMA, LGA and LTMA, which might include consideration of an Environment Act and a Planning Act, consideration of the roles, responsibilities and boundaries of local government, and the relationships between central and local government.</p>
Q27	<p><i>Should regulating land use and/or environmental effects in an urban context be separated from resource management legislation that applies in non-urban areas? What are the advantages and disadvantages?</i></p> <p>We would be open to different statutes, as we see the RMA as failing New Zealand's cities. We further believe that the district planning process views urban development as being "undesirable" and a negative externality. So we would want to see a full review of the RMA, LGA and LTMA as per our response to Question 7.</p>

<p>Q28</p>	<p><i>Should provisions relating to infrastructure planning and funding be integrated in a planning statute? What are the advantages and disadvantages?</i></p> <p>Yes, Property Council would support an approach which blends the land use, and infrastructure planning and funding components of the RMA, LTMA and LGA. We particularly want to emphasise that the spatial plan provisions of the Local Government Act in regards to the establishment of Auckland Council needs to become mandatory for all regional councils. There must also be clear, consistent and robust linkages between spatial plans and district plans.</p> <p>We do not believe the RMA, LGA and LTMA, in their current forms, provide the most effective, efficient and robust resource management system to meet increasing challenges and pressures external forces will place on the natural environment. In particular, since each act has different purposes, processes, and timeframes there are often unnecessary conflict between their different planning requirements. The funding and provision of infrastructure are poorly aligned between the RMA, LTMA and LGA. This often results in planning misalignment and unnecessary bureaucracy and time delays for projects. Specific provisions would provide a clear plan of action, help identify issues relating to infrastructure provision and funding early on, and provide clarity and certainty. Also, with a coordinated approach, the current occurrence of ‘catch-up projects’ will be minimised significantly.</p>
<p>Q29</p>	<p><i>Are there provisions of other statutes (for example in the Conservation Act or Reserves Act) that should be integrated into a new statutory framework for urban planning? What reforms are needed to these frameworks?</i></p> <p>We believe that the Resource Legislation Amendment Bill will provide the additional integration that is needed with the Conservation and Reserves Act.</p>
<p>Q30</p>	<p><i>How could the planning system be designed to provide a sufficient supply of industrial and commercial land? Are there particular tools that could be used to ensure an adequate supply?</i></p> <p>The Resource Amendment Legislation Bill answers this question by proposing to amend sections 30 and 31 RMA to make it a function of regional councils and territorial authorities to ensure residential and business development capacity to meet long-term demand.</p> <p>The legislative change will be supported by a phased programme of national direction and guidance to support local authorities and the wider sector to ensure that the policy intent is delivered in practice. Phase 1 will include a requirement for local authorities to undertake an</p>

	<p>assessment of demand for and supply of development capacity based on functional urban areas and give effect to the findings of this assessment through their plans; it will be promulgated in 2016. Phase 2 will look at options for a methodology for assessing demand and development capacity, options for providing further direction around what ‘sufficient development capacity’ means, and monitoring the take-up of capacity. This will be delivered in 2017.</p> <p>In order to establish development capacity, Property Council submits that the Auckland Development Capacity Model is a particularly powerful tool – the model was developed by a group of experts as part of the Proposed Auckland Unitary Plan Independent Hearings Panel process and it calculates how many houses the market is likely to build under planning controls. One of the experts has confirmed a similar model can be developed to cater for industrial and commercial land. Property Council made the suggestion to the Ministry of Business, Innovation &amp; Employment last year and would be happy to refer the Commission to two of the key architects of the model.</p> <p>Another crucial aspect is that planning development capacity is referenced and linked into spatial and infrastructure plans all clearly linked to funding. This will help ensure that there really will be the services to support the development. The plans must be used by councils and central government in making decisions on their funding and annual plans.</p>
Q31	<p><i>How much discretion should be built into an urban planning system? Are there examples of urban planning systems in other countries that successfully manage the tension between certainty and discretion?</i></p> <p>Certainty and discretion are often thought of a dichotomy and they often are in a system, such as set up in the RMA, where the focus is on avoiding negative outcomes. With a council having discretion the burden of proof has tended to be on the developer to show how their development avoids, remedies or mitigates and is therefore ‘worthy’ of discretion.</p> <p>However, this does not have to be the case. In a system set-up to enable/facilitate positive outcomes (where the Council has to justify why its restrictions are in the public interest as describe above) developers would have greater certainty and there would still be a large degree of discretion. For this to work well a cultural change would be required within councils to take a more collaborative approach with developers i.e. how can we make the proposed development work even better for both sides rather than the more gatekeeper approach that seems prevalent at the moment.</p> <p>Property Council believes that a starting point could be to categorise applications into, for example, simple, medium and complex (and other categories as necessary). Simple applications would involve minimal processing and would have faster turnaround times. This can then be</p>

	<p>followed by setting minimum requirements with decision makers being given discretion over matters stipulated in an NPS. Applications should also be assessed on the degree to which they contribute to the outcomes councils have stated in their spatial and other plans with those strongly contributing positively going through an expedited process and those where it is less clear or potentially negative subject to greater 'facilitation'/scrutiny.</p> <p>Property Council are also firm supporters of the SmartGrowth Property Developers Forum that occurs in the Western Bay of Plenty sub-region.</p>
Q33	<p><i>How could a future planning system be designed to reflect the differing circumstances and needs of New Zealand cities? Are new or different planning and funding tools needed?</i></p> <p>For the planning system to be able to deliver positive outcomes that reflect the differing circumstances and need of different New Zealand cities there first needs to be a clear understanding of what those differences are and what the specific development and growth challenges each urban area is facing. Those challenges then need to be addressed through clear enunciation of the outcomes each urban area wants to achieve. This can be done through the spatial plans and other non-RMA plans (as outlined above). While each 'plan' needs to be owned locally (and tailored for the specific local needs), central government must be actively involved in the formation of the plans and give local government clear direction about the outcomes central government sees for that area (especially those that are of national importance).</p> <p>For example central government's expectation of Auckland could be to provide sufficient residential accommodation and related infrastructure for its growing population; in Wellington it could be the council needs to focus on making it easier for business to locate in the city to ensure its growing population has a growing economy to support it; in Queenstown in might be do not build up to preserve the views that tourists come for and focus on water and wastewater infrastructure to support the tourist numbers. Concurrent with the expectations should be a commitment from central government about the support, including funding, they will give to realise those outcomes. The New Zealand Initiative has done some good thinking on central-local government funding models that could support such an approach.</p> <p>The system must also include:</p> <ul style="list-style-type: none"> <li>• ensuring adequate commercial and residential land supply, to service and house the projected population for each local area</li> <li>• enabling sufficient quality, feasible development according to the population projections for each local area</li> <li>• ensuring infrastructure funding and provision is integrated into land-use planning</li> </ul>

	<ul style="list-style-type: none"> <li>• identifying and promoting greater equity in funding to prevent commercial ratepayers shouldering an increased burden of a city's development</li> <li>• ensuring timely, efficient, cost effective planning and consenting processes</li> <li>• strengthening the principles of the RMA on urban issues in New Zealand</li> </ul>
<p>Q34</p>	<p><i>Thinking beyond the existing planning system, how should a new model manage the risk of natural hazards? Who should bear the risk of building in areas where natural hazards may occur?</i></p> <p>There is definite scope for greater national direction on how councils deal with and plan for natural hazards.</p> <p>The risk of building or owning property in areas where natural hazards may occur must rest with the property owner. This applies equally to private property owners as well as the Council. Where possible Councils should avoid telling private property owners what they can and cannot do with their properties with respect to natural hazards nor force information onto LIMs. However, Councils should be clear in their spatial and other plans where the impact of natural hazards would be felt. Councils should also be clear about their intentions regarding any of their assets that may be affected by natural hazards – eg whether they intend to repair, replace or abandon their asset if it is affected by a natural hazard. Private property owners can then make their decisions accordingly.</p>
<p>Q35</p>	<p><i>Where will technological change put most pressure on the planning system? How could the system be designed to be flexible enough to respond to technological change?</i></p> <p>The urban planning system has not kept pace with advances in technology. For instance, the ability to lodge consent applications online has yet to become widespread.</p> <p>Property Council notes the Resource Legislation Amendment Bill contains provisions for the use of new web technology, including allowing for electronic serving of documents.</p> <p>Property Council is encouraged by the work being done by Auckland Council as part of its Consenting Made Easy project, a project we are involved in and support – several rollouts are planned for this year, ranging from a new interactive booking system that will allow customers to book an inspection themselves using digital, face-to-face or telephony based channels, to an upgraded model, which will allow Auckland Council to scale up activity.</p>

<p>Q36</p>	<p><i>Is there a need for greater vertical or horizontal coordination in New Zealand’s planning system? In which areas? How could such coordination be supported?</i></p> <p>Yes, definitely. As noted in several of the answers there is scope and need for greater central government direction and collaboration with local councils in plan making and funding, centred around a positive outcomes approach. There is also undoubtedly scope for between collaboration between local councils, especially where urban areas span several council boundaries. Property Council also believes there is scope to review local government boundaries, especially with regards to urban areas that have changed significantly since the boundaries were set. The role and function of existing local government authorities – particularly between regional and district/city councils should be looked at, especially in urban areas where the ‘natural’ environment is more limited.</p>
<p>Q37</p>	<p><i>Would there be tension between a fundamentally different approach to urban planning, and the prevailing culture within organisations and professions involved in urban planning? How should tensions best be managed to provide for a successful transition?</i></p> <p>A cultural shift away from a regulator mentality that many Councils have to one of facilitation – enabling positive outcomes and minimising negative ones – will be required. Property Council recognises that this will not be an easy shift and will take time. It needs to be supported by clear and strong legislation and with central government working with local government politicians and bureaucrats to ensure appropriate change support and training is provided. Central government will also have to walk the talk and take a more collaborative (including innovative funding models) to support its expectations of local councils.</p> <p>We further note that “town planning” graduates from New Zealand institutions often have little understanding of the fundamentals of land economics. The limited land economics knowledge that our graduates have is in stark contrast to that held by graduates from other jurisdictions where economics is a compulsory part of their qualification.</p> <p>Property Council believes that there needs to be a cultural change within councils – to take a more collaborative approach with developers. In particular, we are firm supporters of the SmartGrowth Property Developers Forum occurring in the Western Bay of Plenty sub-region.</p>

## 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



Alex Voutratzis  
Director of Policy and Advocacy

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PROPERTY COUNCIL NEW ZEALAND

*New Zealand's Commercial Property Voice*

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