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22 December 2014

New Zealand Productivity Commission
PO Box 8036
The Terrace
WELLINGTON 6143

Submission: Using Land for Housing - Issues Paper

This submission is lodged on behalf of the Foodstuffs group of companies: Foodstuffs North Island Limited, Foodstuffs South Island Limited, and their Federation headquarters, Foodstuffs (NZ) Limited [Foodstuffs].

Foodstuffs North Island Limited and Foodstuffs South Island Limited are retailer owned co-operative companies and the wholesale suppliers to cooperative members who run grocery retail outlets under the Foodstuffs owned trademarks of PAK'nSAVE, Write Price, New World, Shoprite, Four Square, and On the Spot, as well as many unaffiliated businesses. The two companies have wholly owned subsidiaries which own and develop supermarkets and related properties, numbering in the hundreds. Their property portfolios cover the length and breadth of New Zealand requiring them to engage with every Territorial, Regional, and Unitary Authority.

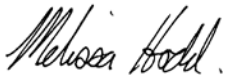
Foodstuffs has reviewed the New Zealand Productivity Commissions Issues Paper (November 2014). While the stated focus of the paper is on developing land for housing, the terms of reference are broad and have the potential to affect Foodstuffs, particularly if generic changes are recommended to planning processes.

Foodstuffs participates regularly in planning processes throughout the country in the consenting and rezoning of land to enable development to proceed. Supermarkets are recognised as an 'anchor tenant', acting as a lead tenant in a centre that then attracts other tenants, people/ growth and development of houses surrounding such centres. This is often expressly catered for through master planned development that involves an identified town centre and supermarket site which is integrated with housing supply. The district plan review process also provides regulatory authorities with the opportunity to develop affordable housing in accordance with a number of criteria, such as new residential developments being established within 800m walking distance of a supermarket (the proposed Christchurch District Replacement Plan being an example of such an initiative). It is therefore important that as the Productivity Commission carries out its review of the supply of land for housing, careful consideration is given to the implications for supermarkets and the role of such development as an integral part of a successful community.

Please find **attached** (Appendix 1) answers to the questions which are directly relevant to our interests and activities. I also attach our submission in response to the Ministry of Business, Innovation and Employment's consultation document "Improving our Resource Management System 2013" which covers similar ground (Appendix 2).

Foodstuffs appreciates the opportunity to comment and would be happy to follow up on aspects and provide further information should that be helpful.

Yours sincerely



Melissa Hodd
Executive Manager

APPENDIX 1: RESPONSES TO QUESTIONS RAISED IN "USING LAND FOR HOUSING: ISSUES PAPER"

Q1	**Is it helpful to think of the planning and development system as a means of dealing with externalities associated with land use and coordination problems? What other factors should the Commission consider in evaluating the role of the planning and development system?**

Assessing only externalities (that is, adverse effects such as traffic, noise, reduction on amenity) can limit the usefulness of the planning and development system.

The strategic direction from both national and local perspectives also needs to be evaluated. This includes the social, environmental and economic outcomes that the plan is expected to deliver.

Q2	**Can the current land planning and development system be made to work better to benefit cities throughout New Zealand? Is a different type of planning system required to meet the needs for housing in New Zealand's fastest growing cities?**

Yes, the current land planning and development system can be made better to benefit cities:

- Clear direction at the front of a plan to create certainty for investors (and plan users);
- High level objectives need to be realistic and practical (that is, the likely outcomes taking into account the users of the plan and economics);
- Clear expectations of the types of activities anticipated and the requirements for those activities (such as infrastructure);
- Less red tape;
- Certainty of regulatory timeframes and costs;
- Consistency across districts/regions.

Q4	**Would a significantly increase supply of development capacity lead to an increase supply of affordable housing, or would further regulatory or other interventions be required to achieve that outcome?**

We think the issue is more complex than simply making more land available for housing. There is a need to provide for commercial land to provide supporting amenity (services, employment etc) and to consider the funding and development of infrastructure necessary to support residential developments. The later, in particular, has impacts on affordability. These things need to go "hand and hand" to give developers the confidence to invest.

Q6	**Are there other local authorities exhibiting good land policies or practices in making land available for housing that the Commission should investigate?**

The Auckland Unitary Authority, Tauranga District Council, and Waikato District Council are embracing the concept of Special Housing Areas.

Q8	**Alongside the Resource Management, Local Government and Land Transport Management Acts, are there other statutes that play a significant role in New Zealand's planning and development system?**

The Building Act 2004.

The Sale and Supply of Alcohol Act 2012. The Act permits territorial authorities to develop local alcohol policies (LAP) which can restrict the location of licensed premises, limit the density of licensed premises, or place controls on their proximity to community facilities such as schools. Such restrictions could affect the viability of some supermarket developments.

Beer and wine are now an integral part of the offering for supermarkets and grocery stores. So much so that is simply not economic build a new supermarket unless a liquor licence can be obtained for it. Where LAPs restrict licensed premises, supermarket developments are unlikely to proceed, reducing the amenity value for nearby housing.

Q9	How easy is it to understand the objectives and requirements of local authority plans? What improves the intelligibility of plans?

Often objectives and requirements are not clearly set out and/or difficult to understand. The operative plan for Christchurch would be an example.

The proposed Christchurch District Replacement Plan is very large and complex. There is a clear disconnect between the Plan's objectives (broadly stated), which encourage development, and the many and varied detailed requirements which have to be worked through to establish the status of an activity and determine whether a consent is required. In short we have found the Plan to be both confusing and overwhelming.

More generally speaking, we also experience issues with council officers' liberal interpretation of plans – which often stretch to include wider considerations such as urban design, economic impacts for other land users etc.

Clear, concise, and well-structured plans are easiest to understand and operate with. We support the Government proposal to require councils to move to have a single integrated plan, based on a national template using standard terms and definition. This would simplify and streamline planning instruments and improve their consistency across different districts.

Each plan should be prefaced by a simple statement of vision which encapsulates the Council's goals and objectives and set the broader context.

Also, from a developer's perspective, plans that have a positive development focus, and seek to actively facilitate development, are much easier to work with.

We encourage greater use of national policy statements (NPS) and supporting guidance. For example a NPS could require councils to facilitate affordable housing and supporting infrastructure.

We would like to see greater use of "permitted activities" including supermarket developments meeting appropriate criteria. This would significantly reduce the cost and timeframes for developments.

Q13	How can the Plan development process be improved to increase the supply of development capacity?

See answers to Q9 above.

Consideration of the practicalities of the plan provisions on development capacity is required. Plan "usability" testing should be used more consistently.

Heritage rules can act as a constraint on development activity and need to be better targeted. In Auckland a blanket heritage overlay applies to all developments and projects involving properties that have no heritage value and are prime candidates for demolition and new development can be hamstrung simply because of the overlay. Added (unnecessary) costs are required to have the overlay set aside.

Q16	How effective are local authorities in ensuring that the rules and regulations governing land use are necessary and proportionate?

Local authorities are not effective at ensuring rules are appropriate, and tend to lean towards excessive prescription. A plan may say it anticipates or "enables" development, but a proposed development could then require unnecessary resource consents and a number of consultant assessments. Often the information and design elements required to be included in a resource consent application are onerous and/or unnecessary. We are often required to complete preliminary designs to meet council requests for further information. This adds significant costs when there is no certainty in terms of getting consent or the development proceeding. These matters could (and in our view should) be dealt with at building consent stage.

This issue has been demonstrated most recently in Christchurch where there are prescriptive requirements for transportation and urban design assessments. These requirements extent to even small developments (such as a metro grocery store). Such a level of prescription can act to stifle innovation and impacts on investor confidence.

There is also considerable uncertainty and inconsistency about the use of Section 32 of the Resource Management Act (RMA). The new guidance might assist, but there is duplication in the provisions and it still appears to be unnecessarily complicated.

Q18	**How effective are local authority processes for connecting decisions across the different planning frameworks? Which particular processes have been successful? What explains their success?**

This is an area where substantial improvement can and should occur.

We generally support the Government proposal to introduce a single planning instrument, and to facilitate joint planning with other jurisdictions (regional councils, neighbouring territorial authorities). Notwithstanding that we have concerns about some aspects of the Government's proposals in this regard, particularly the proposal to require an independent hearing panel and the proposal to narrow appeals (see Appendix 2 for further details).

Q19	**What impact does transport planning have on the supply of development capacity?**

A significant impact. Lack of infrastructure, and planning for infrastructure, can stall development.

Transport planning is a critical element of all our developments. It is particularly challenging in Auckland where there is a lack of coordination between Auckland Transport and Auckland Council, particularly in such matters as mitigation and urban design.

Q22	**How important is it that rules for development and land use provide certainty?**

Of absolute importance. Certainty is critical when assessing the viability of a proposal. Uncertainty inevitably leads to higher costs.

Currently, the costs that are incurred at the beginning of a project, and before there is any certainty of it proceeding, are excessive. The cost/ risk balance is such that some projects never get out of the starting blocks.

Q23	**Are rules consistently applied in your area? Is certainty of implementation more important than flexibility?**

No, rules are not always consistently applied. In our experience, application of rules is variable within councils (where discretion is applied) and between councils.

Certainty and flexibility are both very important and they are not mutually exclusive. Certainty is particularly important when making a decision to proceed with the planning for a development. We therefore require certainty regarding the overall strategic direction of a plan, zoning, activity status, and consenting requirements and processes.

Flexibility is necessary to provide for site specific situations.

Too often we encounter disconnects between the objectives of a plan, and the consequences of its rules.

Q27	**How many developers work in more than one local authority? Do variations in planning rules between councils complicate, delay or add unnecessary cost to the process of developing land for housing?**

Foodstuffs operates in every territory/region.

Our experience is that the approach taken by councils throughout the country varies to a significant degree. As a result, the transaction cost of consenting a development are much higher than they logically should be.

There is limited overt sharing of best practice information between councils whereby councils, particularly those with stretched resources, could benefit from adopting practices found to efficient and effective elsewhere.

Generally speaking, we find that provincial councils are more encouraging and supportive of our developments and more willing to work with us to facilitate a win/win outcome.

Q28	**Which local authority pre-application advice and information services are the most effective for communicating expectations and reducing unnecessary costs for applicants? What makes them effective?**

Where Councils encourage and promote pre-application meetings we tend to get better outcomes.

Q29	**Which processes are most important to applicants for providing consistent and efficient assessments of resource consent applications?**

The ability for an applicant to request an Independent Commissioner to assess an application. Currently this option is only available when an application is notified. It should apply for non-notified applications as well. The current distinction is entirely arbitrary. Generally speaking we have greater confidence in the skills of Commissioners to assess applications than Council staff.

Pre-application meetings are generally very useful. They provide an effective way of identifying concerns early in the process enabling us to make modifications to our application to address the concerns raised. The process can circumvent the need for a hearing, saving both time and cost.

Q31	**What explains the variation between jurisdictions regarding requests for additional information and use of stop-the-clock provisions when assessing resource consent applications?**

Council resources make a large difference to timeframes for processing consents. Under-resourced councils tend to request more additional information and stop-the-clock more often to buy time. This in turn can have a significant impact on project timeframes with all the attendant costs.

Q34	**Which local authorities make the best use of pre-hearing meetings? What factors best contribute to successful pre-hearing meetings?**

In Foodstuffs' experience, a Council with greater resources will tend to use pre-hearing meetings more.

Meetings could be run more effectively. More use of independent commissioners in pre-hearing meetings would drive the process (for example to narrow issues, set timeframes, and evidence exchanges).

Q35	**Does the type of person making the decision on resource consent applications affect the fairness, efficiency or quality of the outcome? What difference (if any) does it make?**

Yes it can, and experience is that it has. Other than requiring decisions of officers to be reviewed internally, and the certification and ongoing training of commissioners, it is difficult to see how subjectivity can be removed in the decision making process, particularly when consent is required for a discretionary activity and process requires a judgment decision on its merits. This may well require a re-think of the rules that are imposed.

Q36	**Does the use of external experts (for example as independent commissioners or contracted**

	staff) in making resource consent decisions create conflicts of interest? If so, how are these conflicts managed?

In Foodstuffs' experience, conflicts have not occurred with independent commissioners or contracted staff.

Q37	**What processes do local authorities use for ensuring that consent conditions are fair and reasonable? How successful are local authorities in meeting the "fair and reasonable" test?**

In our experience, economic feasibility and/or the financial implications are generally not considered when councils assess the costs and benefits of conditions on consents. Ultimately further legislative provisions may be needed to remedy this. We also have concerns about the level of monitoring that can be imposed on developers by way of conditions, which add considerably to the cost of developments. It is all too easy to impose such conditions on consents when it is the developer that has to pay the bills.

Q38	**In your experience, what impact do conditions on resource consents have on the viability of development projects?**

A significant impact. Conditions of consents imposed by a decision maker, in response to a submitter's concerns, can affect the viability of a project. There should be an opportunity afforded to an applicant to respond to draft conditions prior to a decision on them being finalised. Such an approach has obvious benefits – it allows for early identification of errors avoiding the need for such errors to be corrected later on in the process and on occasion it may avert costly appeals.

Q42	**How easy is it to obtain a Plan change or variation in your area? What are the major barriers?**

It depends on the particular Council. In our experience, some Councils, particularly those with limited resources or where plan changes are infrequently encountered, tend to take an overly risk averse approach and this leads to increased costs and time delays. Foodstuffs has also experienced situations where for a private plan change request, Councils have indicated they will decline the request under clause 25 of the First Schedule RMA unless changes are made so that the Council effectively agrees with the request. We note that there is a current moratorium on plan changes for the Auckland Plan.

Q54	**Do development contribution policies incentivise efficient decisions about land use, or do they unduly restrict the supply of land for housing?**

Theoretically development contributions and resulting infrastructure should incentivize development but this is not always how it occurs in practice.

Q55	**Are development contributions used exclusively to drive efficient decisions about land use, or are they used to promote broader goals?**

Appears to promote broader goals, not just land use decisions. This may change with recent amendments.

Q56	**How effective have the recent changes to development contributions been that were introduced in the Local Government Act 2002 Amendment Act 2014?**

Foodstuffs supported the legislative changes recently made to the development contributions regime but it's a little too early to assess the effectiveness of the changes. The experience to date is somewhat mixed.

Q58	**Do councils in high-growth areas require a greater range of approaches for funding infrastructure?**

	Yes.

Q67	**Is there a need for public agencies that can aggregate land in New Zealand cities? If so, who should establish these agencies? What powers and functions should they have?**

Yes, we agree this is worthy of further investigation, but we would recommend caution in regard to powers of compulsory land acquisition for new agencies as this would have impacts on private property rights and might lead to unintended consequences. Appropriate safeguards would be necessary to protect landowners from the unreasonable use of such powers, and reasonable compensation provided for compulsory land acquisitions. A proposal of this nature would require extensive consultation with the broader community.

Q73	**Are there wider lessons for New Zealand from the planning and development processes that have been used in greater Christchurch?**

The local authorities have demonstrated a poor understanding of the practical considerations for private sector development, despite the central Government's expectation that the private sector will drive the recovery process. As drafted, the Christchurch Replacement District Plan will require consents for even the smallest of developments (increasing cost and timeframes for the recovery) and its highly prescriptive and impractical rules will produce sub-optimal outcomes for developers and may even jeopardize some projects.

Further, the hearing of submissions on the Replacement District Plan is proving problematic for all the parties involved due to unrealistically truncated timeframes.

Foodstuffs South Island Limited can provide more detailed commentary to the Productivity Commission if required.

Appendix 2

Foodstuffs Submission: Improving our Resource Management System

This submission is made by Foodstuffs NZ Ltd on behalf of Foodstuffs (Auckland) Ltd, Foodstuffs (Wellington) Cooperative Society Limited, and Foodstuffs (South Island) Ltd which are retailer owned co-operatives. Foodstuffs NZ Ltd is the Federation headquarters of the Foodstuffs group of companies and co-ordinates national policy and input on public policy matters.

The Foodstuffs companies are 100 per cent New Zealand owned. The Foodstuffs companies develop retail stores which are franchised to co-operative members who own and manage the stores on a day-to-day basis. Our retail brands include PAK'nSAVE, New World, Four Square, On-the-Spot, Henry's Beer, Wine and Spirits, and Liquorland. The Foodstuffs organisation is the leading retail business in New Zealand with an aggregate turnover of $8.3 billion (2012).

The Foodstuffs companies are significant property owners, investing tens of millions of dollars in land, new store developments, and refurbishment projects annually. The companies and their members are also large employers with wholesale and retail staff exceeding 30,000.

Foodstuffs interest in resource management law flows directly from the companies' participation in district planning processes and their experiences as submitters in plan reviews and changes, and as resource consent applicants.

The organisation is generally supportive of the intent to improve both the quality and timeliness of resource management decisions. General feedback and our responses to the individual proposals contained in the public consultation document are set out below.

Further questions or enquiries should be directed to: Melissa Hodd, Executive Manager, Tel: 04 471 4810 [DDI], email: Melissa.hodd@foodstuffsnz.co.nz.

Part 1: Improving Resource Management – General Comments

Part 1 of the Paper endeavours to describe the key issues and opportunities within New Zealand's resource management system.

Overall, Foodstuffs considers that the resource management legislation provides a fair balance between competing interests and enables issues to be teased out and addressed in appropriate detail.

Foodstuffs considers that the presence of the Environment Court is a particularly important component of the system as it enables all interested parties to put their detailed views before an independent expert appeal authority and to have an objective decision made. Inevitably, the decisions made by the Court will not please all participants but the process itself enables all parties to express their views and the rationale for them. The fact that the judges are permanently appointed reinforces the Court's independence.

In Foodstuffs' experience, the cost and delay incurred through the resource management system is more often a consequence of the way in which it is administered rather than its legislative form. By way of example:

(a) Council officers will in many cases lack experience or be unwilling to exercise judgement and, as a result, will tend to resort to process issues in order to defer decision making.

(b) Councils often lack the resources needed to pursue matters through the Environment Court in a timely fashion, particularly in the context of plan changes or district plan reviews that are initiated by the council but take many years to complete. Legislative change cannot overcome that lack of resourcing.

(c) Foodstuffs' view is that a great deal of care needs to be taken in those cases in determining what legislative response, if any, should be made given that altering legislation will not overcome any lack of resourcing.

Part 3.1 - Proposal 1: Greater national consistency and guidance

3.1.1. Changes to the principles contained in section 6 & 7 of the RMA

It is proposed the current sections 6 and 7 be combined into a single section that lists the matters that decision-makers would be required to "recognise and provide for". The combined list includes some new matters and deletes others which the Government considers are effectively already covered in s5 of the Act (purpose).

Foodstuffs **support** the proposals. It is twenty years since the Act was first introduced and it is timely to reconsider what is important in the modern context. We agree the current separation between the matters identified in section 6 as "matters of national importance" and section 7 as "other matters" has led to an over emphasis of environmental considerations vis-à-vis economic social and cultural considerations. The development of a single combined list will ensure all relevant considerations are given appropriate weight.

We also support the addition of a specific reference to the built environment. This addresses an obvious omission in the current law and recognises that development activity is a legitimate and necessary activity to support economic and social advancement. A requirement to give appropriate recognition to the built environment will, in our view, lead to a better balancing of environmental, economic and social objectives.

3.1.2. Improving the way central government responds to issues of national importance and promotes greater national direction and consistency

It is intended that guidelines would be developed with criteria to clarify when and how each national tool or combination of tools would be used. Amendments would also be made to streamline the process for addressing urgent issues.

The proposal appears sound and is **supported**. Guidance could be expected to both clarify the Government intent and expectations, and provide greater certainty for the various stakeholders.

The Paper comments briefly on the possibility of streamlining processes for addressing urgent issues on a national basis. Foodstuffs is **opposed** to the suggestion regarding a streamlined process that would allow central government to consult on a proposed rule for a limited period and then advise a final decision without requiring the Council to follow the current Schedule 1 process to insert the rule into a plan.

3.1.3 Clarifying and extending central government powers to direct plan changes

The consultation document proposes a stepped process for central government to direct plan changes, with criteria in the RMA on the circumstances in which this process could be used.

While we are not opposed to the concept of central government intervention in local planning where necessary e.g. failure of a council to fulfil its statutory obligations or overriding national interest, Foodstuffs is **strongly opposed** to the proposal for a Minister of the Crown to be able to directly amend an existing operative plan if the Minister considers that the local authority has not adequately addressed an issue or outcome identified by the Minister.

Any provisions for central government intervention would need to have appropriate checks and balances to guard against the unreasonable use or abuse of power, including that provisions be subject to public submission and a hearing regime where the provisions can be tested and evaluated independently.

Central government intervention risks undermining the intent of the current regime to allow local communities to manage their own resources in a way that meets local community needs and any power to intervene must therefore be exercised with appropriate caution/safeguards.

3.1.4 Making NPSs and NESs more efficient and effective

The proposals would permit a combined NPS and NES so that guidance could be given on all components of a plan at one time. It is also intended to clarify that NPSs and NESs can be targeted to a specific region or locality, and introduce further streamlined processes for developing NPSs and NESs.

Foodstuffs **support** the proposals.

Proposal 2: Fewer resource management plans

3.2.1 A single resource management plan using a national template

The intention is that all councils would have a single plan in place within five years (per district of a broader area if agreed between the councils). Once in place the single plan would consolidate the three or more planning documents into one. The single plan would have to be consistent with a new national planning template developed by central government. This national template would include standardised terms and definitions and could also include content for specific standardised zones and rules for particular activities.

Foodstuffs support the proposal for a single planning instrument although questions whether 5 years is a realistic timeframe to meaningfully develop a new planning instrument. A single planning instrument will encourage a single coherent plan for each area and reduce the complexity of the current system, as well as the time and effort individual businesses need to commit to engaging in planning processes. While a time-limit will be helpful in ensuring that councils get on with the job and make planning decisions in a reasonable timely fashion, so that developers have earlier certainty about planning rules, we doubt whether five years is sufficient for all councils to complete this process.

Guidelines requiring plans to follow a standard approach with common terms and definitions, will improve the consistency of plans and reduce the current ambiguity around terms used in planning documents and would be a welcome development.

Currently, because we have property and business interests in every local council district we need to monitor every district plan, plan review, and plan change, and usually need to engage in the consultation process, making submissions, attending hearings, and on occasion taking appeals. This creates a huge burden for the business and diverts resources away from more productive endeavours.

3.2.2: An obligation to plan positively for future needs e.g. land supply

The proposal is to advance a range of legislative and non-legislative changes to encourage a more positive future-focused approach to planning. Changes are proposed to sections 30 and 31 of the Act to indicate that managing for positive effects is one of the councils' core functions. Councils would be required to ensure there is adequate land supply to provide for at least 10 years of projected growth in demand.

Foodstuffs **support** the proposals.

We further submit that that there should be an explicit requirement that a council must review its plan if growth within the district exceeds original estimates above a tolerance threshold. This recognises that growth forecasts are not a precise science and growth will be uneven across districts. It is important the councils are responsive to significant changes that were unforeseen and are required to take account of and plan for them.

3.2.3: Enable a single resource plan (between councils) with narrowed appeals

It is proposed that district and regional councils could choose to group together and jointly prepare a single integrated plan for each district or larger area. A streamlined plan development process with limited rights of appeal would be made available to the councils if the proposed grouping met certain criteria. The proposed plan-making process would involve: a plan partnership agreement, pre-notification engagement and collaboration, an independent hearing panel, and narrowed appeals to the Environment court.

The ability to appeal council decisions on components of plans would be limited to where the council deviates from the recommendations of the independent hearing panel. The right to appeal to the High Court on points of law would be available where the council accepted the hearing panel's decision. The scope of the Environment Court's consideration of an appeal would also be narrowed. Appeals would be by way of rehearing rather than "de novo".

Foodstuffs has significant concerns regarding the hearings panel and narrowed appeals to the Environment Court proposed in items 3 and 4 on page 46 of the Paper. This mechanism is similar to the one that has been proposed for the Auckland Unitary Plan process. Foodstuffs has opposed the method in that context and **attaches** (Attachment 1) a copy of the relevant submission made to the Select Committee on the Resource Management Reform Bill (2012) ("**the Bill**").

In summary:

(a) The single hearing mechanism proposed will in practice lead to increased costs because parties will need to address all matters in full at that hearing and will need to exercise cross-examination rights in order to test assumptions and evidence. In comparison, the current three stage (council hearing, Environment Court mediation and Environment Court hearing) process allows for a relatively low-key and efficient hearing process at first instance followed by more detailed analysis on appeal in respect of only those matters that are not resolved at first instance.

(b) The quality of the plans produced through a single hearings process is likely to be lower than that developed through the current process. That is because the current process enables an iterative improvement and refinement of key provisions whereas the single hearing process will require the hearings committee to make definitive judgments on all aspects of the plan.

(c) Foodstuffs is becoming increasingly concerned by the constitutional implications of the tendency to appoint commissions or committees for particular resource management tasks in preference to utilising the specialist and independent Environment Court. We understand that the Court's judges are appointed on a permanent basis and thus are beyond any criticism of dependence upon their appointers for ongoing work. In contrast, the membership of commissions or committees appointed for particular tasks can be open to manipulation by the party with the power of appointment. Foodstuffs accepts that the role of the Environment Court may change as new structures for developing and approving planning instruments are implemented but considers that there is a need for truly independent assessment of such instruments and that the Environment Court remains the best body to carry out that role.

Foodstuffs suggest that the government await the outcome of the Auckland Unitary Plan process (if the Bill is adopted) before applying it elsewhere.

3.2.4: Empowering faster resolution of Environment Court proceedings

Changes are proposed to increase the Environment Court's existing power to enforce agreed timeframes e.g. the time period for exchanging evidence; strengthen existing provisions to require the parties to undertake alternative dispute resolution.

Foodstuffs **support** the proposal. In the commercial world planning delays cost money and efforts to speed up processes will reduce business costs.

Proposal 3: More efficient and effective consenting

3.3.1: A 10-working-day time limit for straight-forward non-notified consents

Under the proposed approach councils would have a shorter 10-working-day processing timeframe for those non-notified resource consents that are straight-forward. The Act would be amended to this effect. Criteria would be spelt out in regulations.

We **support** the proposal. A 10-working day processing timeframe is reasonable for straight-forward consents and will ensure that straight forward projects are not unduly delayed.

3.3.2: A new process to allow for an "approved exemption" for technical/minor rule breaches

The proposed approach would allow an activity to be "deemed permitted" by giving councils a small degree of tolerance to decide on a case-by-case basis that a full consent is not needed.

We **support** the proposal in concept. Providing limited discretion for councils to approve consents which would otherwise be very nearly permitted is a common-sense approach.

3.3.3: Specifying that some applications should be processed as non-notified

It is proposed to make sections 95A(3)(a) and 95B(2) further-reaching by allowing non-notification on the basis of other forms of regulation. Regulations could direct non-notification as a nationwide standard for some activity types.

We **support** this proposal. There may be common forms of activity where it makes sense to have a national regime rather than "reinvent the wheel 60 times". This approach would reduce business costs for developers and encourage more investment because developers could plan projects with greater certainty. Developers who were able to deal with one consenting agency might also benefit from reduced transaction costs.

3.3.4: Limiting the scope of consent conditions

The proposal would revise and strengthen the RMA provisions that set the types of conditions which can be put on different classes of consents. This might include limiting conditions so they are directly connected to the reason why a consent is required in the circumstances.

We **support** this proposal. Conditions on resource consents need to be both relevant to the activity for which consent is sought, its environmental effects, and be reasonable. The proposed limitations – that conditions are directly related to the provision in a district plan which has been breached, or the adverse environmental effects of the proposed activity, or matters agreed to by the applicant, appear to be a good basis on which to go forward.

3.3.5: Limiting the scope of participation in consent submissions and in appeals

The proposal involves amendments to the consenting process to limit the scope of submissions and third party appeals to only the reasons the application was notified and the effects related to

those reasons. This would require the council to identify why the application is being notified and to identify specific effects that meet the notification tests in the Act.

Resource consent applicants are entitled to know why their application is being notified. Accordingly we agree that councils should be required to clearly identify the reason(s) why the application is to be notified including the specific effects that meet the notification test. Such as requirement will ensure that councils use the notification provisions for the purpose they were intended and make councils more accountable for these decisions.

We note the consultation paper has suggested changes to the process by which written approval is obtained from neighbours who are affected by a development. The concept that councils might invite comment on a proposal by a particular date and limit submissions to those aspects of the development that affect the neighbour is a useful and pragmatic suggestion.

3.3.6: Changing consent appeals from de novo to appeals by way of rehearing

Foodstuffs is **opposed** to any proposal to limit the de novo hearing of resource consent applications at the Environment Court on appeal:

(a) Foodstuffs' understanding of the proposal is that resource consent applications would have a first instance hearing before the council followed by an appeal where the Environment Court would be able to rely on the record of evidence presented at the first instance hearing or could choose to seek the provision of additional evidence in specific areas.

(b) That approach may reduce the cost of providing evidence at the appeal hearing level but it will also:

(i) Inevitably lead to parties presenting more comprehensive evidence at the first instance hearing which will therefore take on a more expensive and lengthy character.

(ii) Require parties to have the power of cross examination at the first hearing so that the evidence that might be placed before the Court on appeal is adequately tested. This will increase the cost and duration of the first instance hearing markedly. [NB: Cross examination will also be needed with regard to the proposed mechanism in Part 3.2.3 of the Paper for planning instruments.]

(c) The advantages of the current process in respect of resource consents are similar to those that apply with respect to planning instruments. That is, it enables matters to be addressed relatively speedily and inexpensively at the first instance hearing and for any matters that are not resolved at that point to then be addressed iteratively through more detailed hearings on appeal. Foodstuffs considers that the proposal will sacrifice that advantage (which applies to the majority of cases that do not proceed on appeal) in return for a potential reduction in the duration of the small proportion of matters that actually proceed on appeal. Thus it will add to the cost of resource consent processes for all parties as it will require a comprehensive hearing at first instance instead of the efficient mechanism that is currently available under the two stage process.

(d) The Environment Court mediation process is a useful mechanism to resolve minor matters.

3.3.7 Improving the transparency around consent processing fees

The consultation document proposes a new requirement for councils to set their own fixed charges for certain types of resource consent e.g. charges could be based on the type of activity, zone, level of non-compliance and/or activity status. The fixed charge would represent the full and final cost for a resource consent that met the criteria.

Where fixed charged were not required councils would be required to estimate the additional charges in advance of the application being processed (replacing the current provision for an estimate to be provided at the request of the applicant).

The proposals would improve transparency and give developers certainty about the cost of consents, and are **supported** on this basis.

3.3.8: Memorandum accounts for resource consent activities

A new provision would require councils to publish memorandum accounts specifically for their consenting activities. This would bring greater transparency to charging, improve the discipline not to over-charge or cross-subsidise, and avoid erratic fee adjustments, etc.

Foodstuffs **support** this proposal. The preparation of memorandum account would encourage councils to align consent processing fees with the cost of delivering these services and discourage cross-subsidisation with activities which are more appropriately funded by rates. Greater scrutiny in this regard should result in improved accountability by councils.

3.3.9 Allowing a specified Crown-established body to process some types of consent

It is proposed that either the call in provisions be expanded or new legislation be developed to enable the Minister to designate nationally important issues, such as the availability of land for housing, to be eligible for an alternative consenting process in specified circumstances.

There may be circumstances when the concept has merit, however there would need to be very clear criteria defining the circumstances and conditions under which an alternate national consenting process could be put in place, with appropriate checks and balances to safeguard against the inappropriate use of these powers. There is a risk that any such proposal would add complexity (and therefore cost) to consent processes.

3.3.10: Providing the consent authorities tool to prevent land-banking

It is proposed to enable consenting authorities to set conditions when approving section 223 survey plans to require construction work to be completed in shorter time than currently.

Foodstuffs does not understand why the Paper is addressing this issue and **opposes** the proposal:

(a) In practice, what is termed "*land banking*" involves the early identification by prospective developers or investors of land that is likely to become attractive for development in the future; the consolidation of ownership of those properties; the provision of appropriate zoning where needed; and, in some cases, the obtaining of resource consents. In many cases, those works occur many years before the market is ready or able to accommodate the proposed development but they give the developer and the wider community confidence that land can and in the fullness of time will be developed. Land banking is an example of strategic thinking and forward planning – qualities that are generally considered to be beneficial.

(b) Holding costs on land are high. It is unusual for developers and investors to delay the implementation of zoned and consented development other than where market circumstances indicate that it is not economically viable to develop. In Foodstuffs' experience, most developers and investors would prefer to develop land relatively early and thus minimise holding costs and release the funds for investment in further development elsewhere.

(c) The proposed provisions involve enabling consent authorities to impose conditions that require construction work on subdivisions to be completed within a specific time period failing which the survey plan will lapse. There is no rationale for that approach. Sub-dividers in particular seek to release capital as soon as possible

and will not unnecessarily hold up subdivision of land. Furthermore, providing that subdivision consents lapse after a certain period of time will simply require developers to obtain new consents. That is likely to add to the delay prior to development occurring along with the cost (and hence risk) incurred by sub-dividers. It will discourage development from occurring rather than incentivise it.

Proposal 4: Better natural hazard management

In line with the recommendations of both the Canterbury Earthquake Royal Commission and RMA Technical Committee it is proposed that natural hazards be added as a matter in the principles of the RMA, and that section 106 be amended to ensure all natural hazards can be appropriately considered in both subdivision and other land-consents decisions.

It would be prudent to introduce requirements for the risks posed by natural hazards to be recognised and planned for. However consent conditions around risk mitigation must be commensurate to the probability and significance of the underlying risk. There is concern that an over-zealous approach by the consenting authorities to natural hazard management will significantly increase development costs and have a stifling effect on property investment.

Proposal 5: Effective and meaningful iwi/Maori participation

Where a council does not have an arrangement in place with local iwi it would be required to establish an arrangement that gives the opportunity for iwi/Maori to directly provide advice during the development of plans (ahead of council decisions on submissions).

Foodstuffs believe the existing arrangements are appropriate.

Proposal 6: Improving accountability measures

It is proposed that Government provide local authorities with greater clarity on what they are expected to achieve, how performance would be measured and what they are expected to report on. This direction would be provided through an *expectations system* developed in collaboration with councils. Expectations might be related to a customer-centric approach to service delivery. There would be enhanced monitoring of service delivery through the national monitoring systems and improved state of the environment reporting.

We **support** the proposals. Greater clarity around Government priorities and performance expectations could be expected to lead to a greater focus on the things that really matter, more consistent reporting of performance outcomes, and greater accountability for the quality of service performance.

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